

THE COURTS

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 300]

Return, Waiver and Failure of Service; Reinstatement

Introduction

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania approve a revision to the Note to Pa. R.C.P.D.J. No. 314 to clarify the costs for reinstating a civil complaint. 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,

Michael F. Krimmel, Counsel
 Supreme Court of Pennsylvania
 Minor Court Rules Committee
 5035 Ritter Road, Suite 700
 Mechanicsburg, PA 17055

or e-mail to: minorcourt.rules@supreme.court.state.pa.us
 no later than Monday, September 9, 2002.

By the Minor Court Rules Committee

THOMAS E. MARTIN, Jr.,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 300. CIVIL ACTION

Rule 314. Return, Waiver and Failure of Service; Reinstatement.

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Official Note:

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Subdivision E provides for the reinstatement, upon written request of the plaintiff, of a complaint that has been dismissed without prejudice for failure to make service under subdivision D. Compare Pa.R.C.P. No. 401(b). The written request for reinstatement may be in

any form and may consist of a notation on the permanent copy of the complaint form, "Reinstatement of complaint requested," subscribed by the plaintiff. The district justice shall mark all copies of the reinstated complaint, "Complaint reinstated. Request for reinstatement filed on _____ (date)." If it is necessary to use a new form for the reinstated complaint, the reinstated complaint, except for service portions thereof, shall be an exact copy of the original complaint, although signatures may be typed or printed with the mark "/s/" indicating an actual signature. The language in subdivision E that a complaint may be reinstated "at any time" will permit reinstatement after a faulty service without waiting for further proceedings in the case. Reinstatement must occur within the period of the statute of limitations from the date of the last filing or reinstatement. **[Since a reinstated complaint is merely a continuation of the original action, there is no filing fee for reinstating a complaint. However,] The cost for reinstating a complaint is specified in Section 1725.1 of the Judicial Code, 42 Pa.C.S. § 1725.1. In addition,** there may be additional server costs for service of the reinstated complaint.

Amended October 17, 1975, effective in 90 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 February 12, 2002, effective immediately; **Note revised _____, effective _____.**

REPORT

Proposed Revision to the Note to Pa. R.C.P.D.J. No. 314

Clarification Regarding Costs for Reinstating a Complaint

The Committee reviewed the Note to Pa. R.C.P.D.J. No. 314 in response to an inquiry. It was reported to the Committee that there may be confusion among the district justice courts as to what costs, if any, are to be charged when a civil complaint is reinstated pursuant to Rule 314E. The Committee recognized that the Note to Rule 314, as currently written, provides that, "[s]ince a reinstated complaint is merely a continuation of the original action, there is no filing fee for reinstating a complaint." Pa. R.C.P.D.J. No. 314, Note. While this statement is technically correct, the Committee further recognized that Section 1725.1(a)(10) of the Judicial Code, 42 Pa.C.S. § 1725.1(a)(10), specifies costs for the reinstatement of a complaint.¹

Accordingly, the Committee proposes that the Note to Rule 314 be revised to remove any confusion about the costs for reinstatement of a civil complaint. The revised Note would read, in pertinent part, "[t]he cost for reinstating a complaint is specified in Section 1725.1 of the Judicial Code, 42 Pa.C.S. § 1725.1."

[Pa.B. Doc. No. 02-1416. Filed for public inspection August 16, 2002, 9:00 a.m.]

¹The cost for reinstating a complaint is currently \$6.50. Under current law, the costs are adjusted annually pursuant to Section 1725.1(f) of the Judicial Code, 42 Pa.C.S. § 1725.1(f).

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Adoption of Family Division Rules 1702—1705; President Judge General Court Regulation No. 2002-01

Order

And Now, this 30th day of July, 2002, the Board of Judges of Philadelphia County having voted at the Board of Judges' meeting held on May 16, 2002 to adopt Philadelphia Family Division Dependency Rules 1702, 1703, 1704, and 1705, *It Is Hereby Ordered* that Philadelphia Family Division Dependency Rules 1702, 1703, 1704, and 1705 are adopted, as attached, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

This General Court Regulation shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. 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 Philadelphia County, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau, and the Civil 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,

Rule 1702. Training for Lawyers Seeking Appointment to the Dependent List

A lawyer seeking to receive appointments in dependency proceedings shall complete one (1) introductory training of not less than six (6) hours in the field of dependency law and practice, and one (1) Courtroom Observation Program of not less than three hours. In addition, each year lawyers must complete not less than three (3) hours of Continuing Legal Education in the field of dependency law and practice, or related topics in order to maintain their eligibility to receive appointments.

Adopted by the Board of Judges of the Court of Common Pleas on May 16, 2002. Effective 30 days after publication in the *Pennsylvania Bulletin*.

Rule 1703. Eligibility of Lawyers for Dependency Court List

A. List of Qualified Lawyers

The Supervisor of Dependent Court Operations will maintain a list of lawyers who are qualified for appointment in dependency cases.

B. Selection of Lawyers

Each lawyer who desires appointment in dependent cases must complete and submit to the Office of the Administrative Judge of the Family Court (hereinafter "OAJFC"):

1. A questionnaire; and
2. A certification that the lawyer has completed his or her required training. The OAJFC will periodically, and not less than four (4) times per year, review all questionnaires and certifications submitted and will designate to

the Supervisor of Dependent Court Operations those lawyers who are qualified to receive appointments.

C. Rotation of Appointments

1. Appointments shall ordinarily be made by the Supervisor of Dependent Court Operations, on a fair and equitable basis among lawyers who meet the qualifications set forth herein.

2. The list of eligible lawyers will be updated regularly by the OAJFC and forwarded to the judges assigned to Dependent Court cases.

D. Standards for the Appointment of Counsel in Dependency Cases

A lawyer may be appointed counsel only if that lawyer:

1. Has been admitted to the Bar of the Pennsylvania Supreme Court;

2. Has completed at least one (1) introductory training of not less than six hours in the field of dependency law and practice, and one (1) Courtroom Observation Program of not less than three (3) hours, which is certified by the judge observed;

3. Has within the last year completed at least one (1) Continuing Legal Education program of not less than three (3) hours in the field of dependency law and practice, or related topics;

4. Is familiar with the Pennsylvania Juvenile Act, the Philadelphia Court of Common Pleas Juvenile Court Rules, and other relevant law and regulations;

5. Is reasonably available to accept appointment and maintain representation until discharged by the Court; and

6. Is approved by the Office of the Administrative Judge of Family Court

E. Lawyers Sanctions

1. In an individual proceeding, any party to a proceeding may request that the Trial Judge remove a lawyer from that case where the lawyer fails to substantially comply with the requirements of the rules herein or with the Rules of Professional Conduct. If the Trial Judge determines that the removal of the lawyer is warranted, the Judge shall forward such determination and the reasons therefor, in writing, to the OAJFC, and shall immediately appoint new counsel.

2. The Supervisor of Dependent Court Operations will identify to the OAJFC any lawyer who, though qualified, consistently refuses to accept appointment.

3. The Supervisor of Dependent Court Operations shall receive and forward immediately to the OAJFC complaints regarding Court appointed counsel. The OAJFC shall review and investigate, or assign a person or persons to review and investigate all complaints received. Complaints shall be investigated and disposed of (i.e., dismissal or appropriate sanctions of the lawyer) within thirty (30) days of receipt of the complaint.

4. The Administrative Judge of Family Court reserves the right to suspend or remove for cause any lawyer from the list of eligible lawyers.

Adopted by the Board of Judges of the Court of Common Pleas on May 16, 2002. Effective 30 days after publication in the *Pennsylvania Bulletin*.

Rule 1704. Practice in Dependent Court Proceedings

All lawyers representing parties in Dependent Court proceedings shall have the following powers and duties, except where otherwise limited by law or rule of Court:

A. The lawyer shall review and be given timely access to relevant Court records; reports relevant to the case; reports of examination of the parents or other custodial of the child made pursuant to the proceeding; and medical, psychological and school records as permitted by law.

B. The lawyer shall attend all Court hearings and reviews, and in person or by representative, participate in telephone conferences and attend Family Service Plan (FSP) meetings regarding the client's case.

C. The lawyer or lawyer's representative shall meet with the client as soon as possible following appointment, and thereafter on a regular basis.

D. The lawyer shall notify other parties and representatives of the appointment and commence zealous advocacy on behalf of the client immediately upon receipt of the appointment.

E. The lawyer shall interview potential witnesses, review relevant documents, and conduct such further independent investigation as may be necessary to ascertain the facts of the case.

F. The lawyer shall serve appropriate subpoenas, prepare appropriate exhibits, obtain relevant and appropriate expert opinions when indicated, and conduct such further preparation for trial as may be necessary to protect the client's interests.

G. The lawyer shall examine and cross-examine witnesses and present evidence, request the Court to enter clear and specific orders for the provision of services, treatment, evaluation, assessment and protection, as appropriate to the representation. The lawyer shall participate in the proceedings to the degree necessary to represent his or her client, including the filing of motions, responses, objections and appeals at all appropriate stages of the proceedings.

Adopted by the Board of Judges of the Court of Common Pleas on May 16, 2002. Effective 30 days after publication in the *Pennsylvania Bulletin*.

Rule 1705. Fees and Costs

A. Court-appointed lawyers shall be fairly compensated for representation in Dependent Court proceedings.

B. Counsel for indigent parties may make a motion to the Administrative Judge of Family Court to request independent expert or investigative services. The motion must be in writing. If the motion is granted, the Court shall pay reasonable expenses for the ordered services.

The motion must set forth a specific and concise theory as to the purpose and necessity of the service requested and what outcome would be accomplished by the provision of these services. The Court shall grant motions which show that the issues to be addressed by the expert are in controversy in the case; that a second opinion is needed to counter an expert opinion obtained by the Department of Human Services; or that additional investigative work is needed beyond what counsel may reasonably do on his or her own.

Adopted by the Board of Judges of the Court of Common Pleas on May 16, 2002. Effective 30 days after publication in the *Pennsylvania Bulletin*.

Commentary to Rules 1702 through 1705

The Court seeks to ensure the provision of competent and effective counsel in Dependent Court for Philadelphia parents and children. These rules arise from the belief that Dependent Court work is a sensitive and important practice in which lawyers are entrusted with the protec-

tion of the fundamental rights of parents and children. Members of the dependency bar participate in decisions that will critically affect a family's future and may expose a parent to criminal liability. Untrained or ineffective parents' lawyers may risk full termination of their clients' parental rights and the loss of their children forever. Unskilled child advocates may fail to adequately protect a child from further abuse or may relegate a child to a life of foster care adrift. Quality advocacy can protect children and preserve families. Ineffective lawyering may have devastating consequences for children and families.

These rules recognize the interdisciplinary nature of Dependent Court work. The problems that families bring to Court are not strictly legal problems; to be effective, lawyers must be conversant with many fields. Medical, psychological and social work practice are integral to dependency work, as these disciplines provide information about child abuse and neglect, the treatment of substance abuse, family dysfunction, child development, and many other relevant topics.

Dependent Court practitioners should be competent in the following areas:

a. Relevant federal and state laws, agency regulations, Court decisions and Court rules;

b. Use of expert witnesses and scientific and medical evidence, including but not limited to, psychiatric and pathological evidence;

c. Child development, needs and abilities;

d. Family dynamics and dysfunction, including cultural aspects of families and the use of kinship care;

e. Substance abuse and rehabilitation/treatment programs and resources;

f. Public benefits including Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), adoption assistance, kinship foster care subsidy, medical assistance and managed care;

g. Information on accessible child welfare, family preservation, medical, educational and mental health resources, including placement, evaluation/diagnostic, and treatment services; and other services which may constitute reasonable efforts to preserve and/or reunify families; and

h. risk assessment and case plans.

[Pa.B. Doc. No. 02-1417. Filed for public inspection August 16, 2002, 9:00 a.m.]

Title 25—LOCAL COURT RULES

ALLEGHENY COUNTY

Rules of the Court of Common Pleas; No. 7 of 2002

Order of the Court

And Now, to-wit, this 29th day of July, 2002, pursuant to action of the Board of Judges, the following new Local Rules of the Summary Appeals Branch are adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

ROBERT A. KELLY,
President Judge

Local Rules of the Summary Appeals Branch of the Court of Common Pleas

Rule 1. Administrative Judge and Presiding Judge.

The President Judge shall be the supervising judge of the Summary Appeals Branch. He or she shall, from time to time, designate a judge to preside over the Summary Appeals Branch and may specially assign a judge or judges to hear specific classes of cases as may be necessary.

Rule 2. Filing of Appeals.

A. The following Summary Appeals shall be filed in the office of the Clerk of Courts in accordance with Rule 460 of the Rules of Criminal Procedure:

Summary criminal convictions

Summary ordinance violations

Summary convictions for offenses of the Vehicle Code

B. The following Statutory Appeals shall be filed in the office of the Prothonotary in accordance with 42 Pa.C.S.A. Section 933 (Appeals from Government Agencies) and the specific statutory provisions sited thereunder. Appeals from orders or decisions of:

Civil service commissions

Zoning boards

Pennsylvania Liquor Control Board

Pennsylvania Department of Transportation

Any other proceeding from which an appeal to the Court of Common Pleas is specifically authorized by statute.

Rule 3. Notice of Appeal.

The appellant shall notify the appellee and the District Justice, City Magistrate, or governmental agency from which the appealed order or decision is being filed in accordance with the aforementioned Pennsylvania Rules of Criminal Procedure and statutes referenced under 42 Pa.C.S.A. Section 933.

Rule 4. Determination of Timeliness of Appeal.

The office of the Prothonotary and the Clerk of Courts shall determine if the appeal is timely. All untimely attempts to file an appeal shall be rejected by the filing agency unless a Common Pleas Court order granting allowance to appeal nunc pro tunc accompanies the appeal.

Rule 5. Sessions of Court.

The regular sessions of the Summary Appeals Court shall be held daily, when court is open, before the assigned judge commencing at 8:30 a.m. and 1 p.m. unless otherwise ordered by the President Judge.

Rule 6. Motions other than for Postponement.

All motions in Summary Appeals Court shall be presented Monday through Friday at 8:30 a.m. Said motions must be pre-scheduled for a hearing by the Summary Appeals staff. The moving parties shall notify the respondent, in writing, of any presentation to the court (with the exception of Motions to Proceed in forma pauperis) at least five (5) days prior to the date of presentation.

Rule 7. Motions for Postponement.

All motions for postponement shall be completed using forms supplied by the Summary Appeals Court. The

procedures in Rule 6 (Motions other than for postponement) shall apply. Motions for postponement granted by the court shall, on the same day the motion is granted, be filed along with the appropriate filing fee in the office of the Prothonotary or Clerk of Courts.

Rule 8. Petitions to Proceed In Forma Pauperis.

Petitions to proceed in forma pauperis in appeals filed pursuant to Rule 2A of these rules shall be presented to the Summary Appeals Judge within thirty (30) days of the date of the order from which an appeal is being taken.

Rule 9. Specially Assigned Summary Appeals.

Appeals filed pursuant to Rule 2B of these Summary Rules may be specially assigned to a judge. In such instances the assigned judge shall schedule and decide all pre-hearing, hearing, and post hearing matters. The hearing decisions of the specially assigned judge must be reported to the Summary Appeals clerk in a timely manner. The Summary Appeals clerk shall forward the final decision on all matters before the Summary Appeals Branch to the lower court or governmental agency from which the appeal was taken.

Recession

The following Administrative Docket Orders are rescinded to the extent that they are inconsistent herewith: Administrative Docket Orders Numbers 10, 12, 23, and 114 all of 1996. The Local Rules of the Summary Appeals Branch of the Court of Common Pleas of Allegheny County adopted April 11, 1996 are also hereby rescinded.

[Pa.B. Doc. No. 02-1418. Filed for public inspection August 16, 2002, 9:00 a.m.]

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1793 S 1989

Order

And Now, this 1st day of August, 2002, Dauphin County Local Rules of Civil Procedure are amended as follows:

Rule 214 [215]. Preferences: A trial list preference may be requested in all cases in which a jury previously has been impaneled and sworn, or which were listed and available for trial in the preceding civil trial session but were not reached. Such preference shall be presented in the form of an application for preference. The application must be filed with the Prothonotary at least three weeks prior to the first day of the trial session. Copies must be served upon all other counsel and the Court Administrator's Office. The Calendar Judge will determine the order of preference.

This rule shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH H. KLEINFELTER,
President Judge

[Pa.B. Doc. No. 02-1419. Filed for public inspection August 16, 2002, 9:00 a.m.]

LEHIGH COUNTY

Administrative Order Governing Destruction of Trial Exhibits in Civil Cases Tried Prior to January 1, 2002 and Held by the Court Transcription Unit; File No. 2002 J 75

Order

And Now, this 22nd day of July 2002, *It Is Hereby Ordered and Deceed* that the Court Administrator of the Lehigh County Court of Common Pleas destroy all trial exhibits held by the Court Transcription Unit, resulting from civil cases tried prior to January 1, 2002, and from which no appeal has been taken. The Court Administrator shall give notice of such action by publication in the *Pennsylvania Bulletin*, the *Lehigh Law Journal*, and a newspaper of general jurisdiction. Any plaintiff, defendant, or attorney of record shall have thirty (30) days from the effective date of this order to notify the Court Administrator of intention to reclaim such civil case exhibits.

By the Court

WILLIAM H. PLATT,
President Judge

[Pa.B. Doc. No. 02-1420. Filed for public inspection August 16, 2002, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Francis X. Gavin, having been suspended from the practice of law in the State of New Jersey for a period of six months, the Supreme Court of Pennsylvania issued an Order dated August 1, 2002 suspending Francis X. Gavin from the practice of law in this Commonwealth for a period six months, effective August 31, 2002. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides

outside the Commonwealth of Pennsylvania, 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. 02-1421. Filed for public inspection August 16, 2002, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that on August 1, 2002, pursuant to Rule 214(d)(1) of the Pa.R.D.E., Roger Clark Peterman 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., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, 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. 02-1422. Filed for public inspection August 16, 2002, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that on August 1, 2002, pursuant to Rule 214 of the Pa.R.D.E., Mark E. Steiner 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., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, 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. 02-1423. Filed for public inspection August 16, 2002, 9:00 a.m.]