

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

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PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 66

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as follows. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The Committee solicits comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, September 26, 2003, directed to:

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By the Domestic Relations Procedural Rules Committee
ROBERT C. CAPRISTO,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.16-2. Support Guidelines. Calculation of Net Income.

The amount of support to be awarded is based in large part upon the parties' monthly net income.

(a) *Monthly Gross Income.* Monthly gross income is ordinarily based upon at least a six-month average of all of a party's income. The term "income" is defined by the support law, 23 Pa.C.S. § 4302, and includes income from any source. The statute lists many types of income including, but not limited to:

* * * * *

(6) [social security] Social Security disability benefits, [social security] Social Security retirement benefits, temporary and permanent disability benefits, workers' compensation and unemployment compensation;

* * * * *

(b) *Treatment of Public Assistance, SSI Benefits and Social Security Payments to a Child Due to a Parent's Death, Disability or Retirement.*

(2) If a child for whom support is sought is receiving [social security retirement or disability derivative] Social Security benefits as a result of a parent's [age] retirement, death or disability, the benefits the child receives shall be added to the combined monthly net incomes of the obligor and obligee to calculate the income available for support on the vertical axis of the basic child support schedule set forth in Rule 1910.16-3. The presumptive amount of support as set forth on the schedule at the combined income of the obligee, obligor and child's benefits shall then be reduced by the amount of the child's [social security or disability derivative] benefits before apportioning the remaining support obligation between the parties pursuant to Rule 1910.16-4. For purposes of determining the support obligation of a surviving parent when the child is receiving benefits as the result of the other parent's death, the income of a non-parent obligee who is caring for a child but has no support obligation to that child shall include only those funds the obligee is receiving on behalf of the child.

Example 1. If the obligor has net monthly income of \$1200 per month; the obligee has net monthly income of \$800; and the child receives [social security] Social Security derivative benefits of \$300 per month as a result of either the obligor's or obligee's retirement or disability, then the total combined monthly net income is \$2,300. Using the schedule at Rule 1910.16-3 for one child, the amount of support is \$539 per month. From that amount, subtract the amount the child is receiving in [social security] Social Security derivative benefits (\$539 minus \$300 equals \$239). Then, apply the formula at Rule 1910.16-4 to apportion the remaining child support amount of \$239 between the obligor and the obligee in proportion to their respective incomes. Obligor's \$1200 net income per month is 60% of the total of obligor's and obligee's combined net monthly income. Thus, obligor's support obligation would be 60% of \$239, or \$143.40, per month.

Example 2. Two children live with grandmother who receives \$400 per month in Social Security death benefits for the children as a result of their father's death. Grandmother also receives \$500 per month from a trust established by father for the benefit of the children. Grandmother is employed and earns \$2,000 net per month. Grandmother seeks support from the children's mother, who earns \$1,500 net per month. For purposes of calculating mother's support obligation, grandmother's income will be \$500, the amount she receives on behalf of the children from the trust. Therefore, obligee's and obligor's combined net monthly incomes total \$2,000. Add to that the \$400 in Social Security benefits grandmother receives for the children to find the basic child support amount in Rule 1910.16-3. The basic support amount at the \$2,400 income level for two children is \$811. Subtracting from that amount the \$400 in Social Security derivative benefits grandmother receives for the children, results in a basic support amount of \$411 to be apportioned between the parties. As mother's income is 75% of the parties' combined income of \$2000, her support obligation to grandmother is \$308 per month.

* * * * *

Rule 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation.

(a) *Child care expenses.* Reasonable child care expenses paid by the custodial parent, if necessary to maintain employment or appropriate education in pursuit of income, are the responsibility of both parents. These expenses shall be allocated between the parties in proportion to their net incomes and obligor's share added to his or her basic support obligation. When the custodial parent is receiving a child care subsidy through the Department of Public Welfare, the expenses to be allocated between the parties shall be the full unsubsidized cost of the child care, not just the amount actually paid by the custodial parent. However, if allocation of the unsubsidized amount would result in a support order that is overly burdensome to the obligor, deviation pursuant to Rule 1910.16-5 may be warranted.

(1) Except as provided in subsection (2), the total child care expenses shall be reduced [**by 25%**] to reflect the **amount of the** federal child care tax credit available to the custodial parent, whether or not the credit is actually claimed by that parent, up to [**a**] the maximum annual cost [**of \$2,400 per year for one child and \$4,800 per year for two or more children**] allowable under the Internal Revenue Code. [**For example, where the custodial parent incurs \$7,000 per year of reasonable child care expenses for two children, the net child care expenses subject to allocation between the parties is calculated as follows. Multiply the first \$4,800 of these expenses by .75—\$3,600. Add the remaining child care expenses of \$2,200 to this amount for a total of \$5,800. Divide this amount by 12 months for a total of \$483 per month of net child care expenses that are subject to allocation between the parties in proportion to their net incomes.**]

(2) The federal child care tax credit shall not be used to reduce the child care expenses subject to allocation between the parties if the custodial [**parent's gross income (before considering any support) falls below \$1,200 per month for one child, \$1,600 per month for two children, \$1,800 per month for three children, \$2,000 per month for four children, \$2,300 per month for five children and \$2,500 per month for six children**] parent is not qualified to receive the credit.

* * * * *

(e) *Mortgage Payment.* The guidelines assume that the spouse occupying the marital residence will be solely responsible for the mortgage payment, real estate taxes, and homeowners' insurance. Similarly, the court will assume that the party occupying the marital residence will be paying the items listed unless the recommendation specifically provides otherwise. If the obligee is living in the marital residence and the mortgage payment exceeds 25% of the obligee's net income (including amounts of spousal support, APL and child support), the court may direct the obligor to assume up to 50% of the excess amount as part of the total support award **until such time as an order of equitable distribution is entered.** For purposes of this subdivision, the term "mortgage" shall include first mortgages, real estate taxes and homeowners' insurance and may include any subse-

quent mortgages, home equity loans and any other obligations incurred during the marriage which are secured by the marital residence.

Explanatory Comment—2003

Subdivision (a), relating to the federal child care tax credit, has been amended to reflect recent amendments to the Internal Revenue Code. 26 U.S.C.A. § 21. By referring to the tax code in general, rather than incorporating current code provisions in the rule, any further amendments will be incorporated into the support calculation.

Subdivision (e), relating to mortgages on the marital residence, has been amended to clarify that the rule cannot be applied after a final order of equitable distribution has been entered. To the extent that *Isralsky v. Isralsky*, ___ A.2dT___ (Pa. Super. 2003) holds otherwise, it is overruled. At equitable distribution, the former marital residence will either have been awarded to one of the parties or otherwise addressed.

[Pa.B. Doc. No. 03-1400. Filed for public inspection July 18, 2003, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL**[246 PA. CODE CH. 300]**

Order Amending Rule 302 and Revising the Official Note to Rule 314 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices; No. 196 Magisterial Doc. No. 1; Book No. 2

The Minor Court Rules Committee has prepared a Final Report explaining the amendments and revisions to the Official Notes to Rules 302 and 314 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, effective January 1, 2004. These rule changes provide clarification regarding venue and transfer of cases to and from other courts when venue is found to be improper in the originating court. The changes also provide for several technical or "housekeeping" amendments to these rules. The Final Report follows the Court's Order.

Order

Per Curiam:

And Now, this 3rd day of July, 2003, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at 32 Pa.B. 2318 (May 11, 2002), 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 302 and 314 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices be and hereby are amended and the Official Notes thereto are revised in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2004.

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 300. CIVIL ACTION

Rule 302. Venue.

A. An action against an individual may be brought in and only in a magisterial district where:

(1) [he] the individual may be served, or

* * * * *

H. [If the district justice in the magisterial district in which the complaint was filed finds that venue in that magisterial district is improper, he shall transfer the complaint to a magisterial district having proper venue.] The district justice or the defendant may raise improper venue at any time prior to the conclusion of the hearing. If the district justice finds that venue is improper and there is a court of proper venue within Pennsylvania, the complaint shall not be dismissed but may be transferred to the court having proper venue.

Official Note: This rule replaces the temporary venue provisions of § 14 of the Schedule to Article V, Pennsylvania Constitution, 1968. It combines, with some minor changes, the Pennsylvania Rules of Civil Procedure relating to venue. See:

(1) Individuals: Pa. R.C.P. [Nos.] No. 1006(a) [, 2078(a)(2)].

* * * * *

For a definition of "transaction or occurrence" see Craig v. W. J. Thiele & Sons, Inc., 395 Pa. 129, 149 A.2d 35 (1959).

Subdivision G is intended to take care of indistinct, "center line" or other confusing boundaries in the respects mentioned. When a complaint is transferred under subdivision H, it is treated as if originally filed in the transferee [magisterial district] court on the date first filed in a [magisterial district] court. If service of the complaint has already been made, no new service [is] may be necessary, but the [district justice in the] transferee [magisterial district] court must set a new date, time and place for the new hearing and notify the parties thereof. It is the intent of this rule that cases may be transferred to any Pennsylvania court with appropriate jurisdiction and venue, including the Philadelphia Municipal Court. Likewise, nothing in this rule prohibits a court other than a district justice court from transferring a case to a district justice court with proper jurisdiction and venue, in accordance with the procedural rules of the transferring court. The jurisdictional limits of the district justice courts and the Philadelphia Municipal Court are governed by Sections 1515 and 1123 of the Judicial Code, respectively. 42 Pa.C.S. §§ 1515 and 1123.

There [is] are no [fee] costs for transfer of the complaint and no additional filing [fee] costs when a case is transferred from one district justice court to another district justice court. There are no additional filing costs when a case is transferred from the Philadelphia Municipal Court to a district justice court.

There may be additional service costs when a case is transferred.

Amended June 1, 1971; amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; amended July 3, 2003, effective January 1, 2004.

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

* * * * *

Official Note: The provision concerning appearance not being a waiver of venue was inserted in subdivision C of this rule to prevent the concentration of business in the office of a favorable district justice. Also, the public cannot generally be expected to be aware of venue provisions. See Rule 302H regarding improper venue.

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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 July 3, 2003, effective January 1, 2004.

FINAL REPORT¹

Amendments to Pa. R.C.P.D.J. No. 302 and Revision to the Official Note to Pa. R.C.P.D.J. No. 314

VENUE; TRANSFER OF CASES TO AND FROM OTHER COURTS WHEN VENUE IS FOUND TO BE IMPROPER IN THE ORIGINATING COURT

On July 3, 2003, effective January 1, 2004, upon the recommendation of the Minor Court Rules Committee,² the Supreme Court of Pennsylvania amended Rule 302 and revised the Official Note to Rule 314 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices.³

I. Background

The Committee undertook a review of Pa. R.C.P.D.J. No. 302 in response to a request from the Administrative Office of Pennsylvania Courts (AOPC). The AOPC reported that it had received an inquiry from the court administrator's office of a suburban Philadelphia county about apparent conflicts between the Rules of Civil Procedure Governing Actions and Proceedings Before District Justices (Pa. R.C.P.D.J.) and the Philadelphia Municipal Court Rules of Civil Practice (Phila.M.C.R.Civ.P.) with regard to the transfer of cases when venue is found to be improper in the originating court. Also, the Committee had received a suggestion from a district justice that raised the question of how and by whom improper venue is to be raised under Rule 302.

After consideration of the issues raised, the Committee concluded that an amendment to Rule 302 was needed, as described below, to clarify that the district justice or the defendant may raise improper venue at any time prior to the conclusion of the hearing, and to provide for the transfer of cases to and from other courts when venue is found to be improper in the originating court. Finally, the Committee identified a need to make other minor correla-

¹The 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.

²Recommendation No. 3 Minor Court Rules 2003.

³Supreme Court of Pennsylvania Order No. 196, Magisterial Docket No. 1, Book No. 2 (July 3, 2003).

tive, technical, or "housekeeping" amendments to Rule 302 and the Official Note to Rule 314.

II. Objection to Venue

As a result of the suggestion that it had received, the Committee discussed how and by whom improper venue is to be raised under Rule 302.

Venue in civil matters at the common pleas level is generally governed by Pa.R.C.P. No. 1006(e), which states, *inter alia*, "[i]mproper venue shall be raised by preliminary objection and if not so raised shall be waived." The Committee noted, however, that the district justice venue rule (Rule 302) differed from the common pleas rule in that Rule 302 was not clear as to who must raise an objection to venue, and did not appear to provide for a waiver of venue. Prior to the current amendment, Pa. R.C.P.D.J. No. 302H stated, "[i]f the district justice in the magisterial district in which the complaint was filed finds that venue in that magisterial district is improper, he shall transfer the complaint to a magisterial district having proper venue." (Emphasis added.) It became apparent to the Committee that some district justices were construing this rule to mean if, during the hearing, the district justice makes a sua sponte determination that venue is improper the issue cannot be waived, the hearing must cease, and the case must be transferred to another district justice court with proper venue.

In light of these findings, the Committee recommended that Rule 302 be amended to clarify that the district justice or the defendant may raise improper venue at any time prior to the conclusion of the hearing. The Committee determined that the defendant should be given until the end of the hearing to raise the objection because the face of the complaint might not give the defendant enough information about the claim to raise to the objection earlier, given the simplified notice pleadings used in district justice civil cases. The Committee believes that allowing either the district justice or the defendant to raise improper venue affords protections against possible abuses of the system in a case in which an unsophisticated pro se defendant might not know to raise an objection to venue.

In addition, the Committee recommended that Rule 302 provide that the district justice may transfer the case if he or she finds venue to be improper. The Committee believes the decision to transfer the case best be left to the district justice. The Committee contemplated situations in which the district justice might choose to transfer the case to prevent abuses of the system by a plaintiff seeking a convenient forum in which to file claims. Conversely, the Committee contemplated situations in which the district justice might choose not to transfer the case, such as where the parties are present in court and agree to proceed, and it would create a hardship to require the parties to reconvene in another court at another time.

III. Transfer of Cases When Venue is Found to be Improper

In its request, the AOPC asked that the Committee consider the following issues:

a. Whether a district justice court has the authority to accept a civil case transferred from the Philadelphia Municipal Court?

b. Whether a district justice court has the authority to transfer a civil case to the Philadelphia Municipal Court

when the district justice finds that venue properly lies with the Municipal Court?

c. If transfers between the district courts and the Municipal Court are permissible, whether either party is required to pay additional filing costs?

With regard to the first issue, the Committee noted that Phila.M.C.R.Civ.P. No. 108(c) states, "[i]f objection to venue is sustained and there is a court of proper venue within Pennsylvania, the action shall not be dismissed but shall be transferred to the appropriate District Justice Court or Court of Common Pleas." The Committee agreed that, under this rule, the Municipal Court may transfer, and a district justice may accept, a civil case where venue is found to be improper in the Municipal Court (assuming, of course, that the amount in controversy is within the jurisdictional limit of the district justice court).⁴

As to the second issue, however, the Committee noted that prior to the current amendment Pa. R.C.P.D.J. No. 302H stated, "[i]f the district justice in the magisterial district in which the complaint is filed finds that venue in that magisterial district is improper, he shall transfer the complaint to a magisterial district having proper venue." (Emphasis added.) It was the Committee's opinion that the rule restricted district justices to transferring cases only to other magisterial district courts, and did not give authority to transfer cases to courts outside the district justice system, including the Philadelphia Municipal Court. The Committee further concluded that if a district justice found that venue lay with a court outside the district justice system, such as the Philadelphia Municipal Court, the district justice's only alternative might have been to dismiss the case without prejudice and require the plaintiff to refile the case in the appropriate court. In so concluding, the Committee was mindful that the plaintiff could be barred from refile if the case was dismissed after the statute of limitations had run.

Consideration of the third issue, with regard to the payment of additional filing costs, resulted in the most discussion within the Committee. The Committee noted that when a case is transferred between district justice courts, the transferring court sends the filing costs along with the case to the receiving court. Further, prior to the current revision the Note to Pa. R.C.P.D.J. No. 302, with regard to transfers between district justice courts, stated, "[t]here is no fee for transfer of the complaint and no additional filing fee." The Committee was aware, however, that the disposition of filing costs has created confusion and problems when cases have been transferred to a district justice court from Municipal Court, especially since the statutorily set district justice court filing costs are different than Municipal Court costs. After discussion, the Committee agreed that the current procedure of transferring costs between district justice courts should remain the same. As for transfers to and from Municipal Court, the Committee concluded that no additional filing costs are to be collected when a case is transferred from Municipal Court to a district justice court. Further, any procedure regarding costs collected by the Municipal Court when a case is transferred from a district justice court to the Municipal Court is governed by the Municipal Court rules.

⁴The jurisdictional limit in civil cases in the Municipal Court (\$10,000) is different from that of the district justice courts (\$8,000). See 42 Pa.C.S. § 1123(a)(4) and 42 Pa.C.S. § 1515(a)(3). This does not create a problem with regard to the transfer of cases from the Municipal Court, as that court's Rule 108(c) provides for transfer to the "appropriate District Justice Court or Court of Common Pleas." Phila.M.C.R.Civ.P. No. 108(c) (emphasis added).

IV. Discussion of Rule Changes

A. Rule 302

1. *Objection to Venue*

As stated above, the Committee recommended that an amendment to Rule 302 was needed to clarify that the district justice or the defendant may raise improper venue at any time prior to the conclusion of the hearing. Further, the amended rule gives the district justice discretion to transfer the case or not, in the interest of justice.

2. *Transfer of Cases When Venue is Found to be Improper; Costs*

The Committee further recommended that the Note to Rule 302 be revised to make clear that it is the intent of the rule that cases may be transferred to any Pennsylvania court with appropriate jurisdiction and venue, including the Philadelphia Municipal Court. Likewise, nothing in the Rule prohibits a court outside of the district justice system from transferring a case to a district justice court with proper jurisdiction and venue, in accordance with the procedural rules of the transferring court. The Rule and Note have been amended to delete the references to "magisterial district" and replace them with more generic references to "court." Finally, the Committee recommended that the Note be revised to make clear that there are no costs for transfer of a complaint and no additional filing costs when a case is transferred from one district justice court to another district justice court. Also, there are no additional filing costs when a case is transferred from the Philadelphia Municipal Court to a district justice court.

B. *Correlative Revision to the Note to Rule 314*

In light of the amendment to Rule 302 regarding improper venue, the Committee deemed it advisable to add a cross-reference to Rule 302 in the Note to Rule 314. Rule 314C provides that "[t]he appearance of a defendant . . . shall be deemed a waiver of any defect in service *but not a waiver of a defect in venue.*" Pa. R.C.P.D.J. No. 314C (emphasis added).

C. *Technical and "Housekeeping" Amendments*

In conjunction with the amendments to Rule 302 discussed above, the Committee also recognized the need for minor changes to the rule to address gender neutrality issues, to correct or add appropriate citations and cross references, and to conform with modern drafting style.

[Pa.B. Doc. No. 03-1401. Filed for public inspection July 18, 2003, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CARBON COUNTY

Guidelines for Defendants Serving Weekend Sentences; No. 094 MI 03

Administrative Order 14-2003

And Now, this 3rd day of July, 2003, in order to ensure public safety and offender accountability, it is hereby

Ordered and Decreed that, effective September 1, 2003, the Carbon County Court of Common Pleas hereby

Adopts the following guidelines for defendants serving weekend sentences:

1. The Defendant shall not appear at the prison with alcohol on his/her breath.

2. The Defendant shall not appear at the prison and test positive for any non-prescribed drugs.

3. The Defendant shall not be arrested for a misdemeanor or felony offense while serving the weekend sentence.

4. The Defendant shall not be arrested for Driving Under Suspension, 75 Pa.C.S.A. 1543, while serving the weekend sentence.

5. The Defendant shall not be arrested for any alcohol related offense while serving the weekend sentence.

6. The Defendant shall not violate any prison rules or regulations.

It Is Further Ordered and Decreed that if the Defendant during the period of his/her minimum sentence violates any of the aforementioned guidelines, the Defendant shall not be released from the Correctional Facility and shall begin serving his/her sentence on continuous days. At the end of his/her minimum sentence, the Defendant shall petition the Court for parole. The Warden or designee *Shall Notify* the Court of any violation of the above guidelines. All minimum sentences of sixty (60) days or more are *Not Eligible* for weekend sentences.

The Carbon County District Court Administrator is Ordered and Directed to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the Pennsylvania Criminal Procedural Rules Committee.

4. Forward one (1) copy for publication in the *Carbon County Law Journal*.

5. Forward one (1) copy to the Carbon County Law Library.

6. Keep continuously available for public inspection copies of the Order in the Clerk of Court's Office.

By the Court

RICHARD W. WEBB,
President Judge

[Pa.B. Doc. No. 03-1402. Filed for public inspection July 18, 2003, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Roger Clark Peterman, having been Suspended from the practice of law in the State of New Jersey by Order dated September 17, 2002, the Supreme Court of Pennsylvania issued an Order on

June 30, 2003, Disbarring Roger Clark Peterman, from the Bar of this Commonwealth, retroactive to August 1, 2002. 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. 03-1403. Filed for public inspection July 18, 2003, 9:00 a.m.]
