

# THE COURTS

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE PART II. INTERNAL OPERATING PROCEDURES OF THE SUPERIOR COURT

[210 PA. CODE CHS. 35 AND 65]

#### Amendments to Business of the Superior Court and the Superior Court Internal Operating Procedures

*Rules of Appellate Procedure, Business of the Superior Court*

The Superior Court of Pennsylvania has amended procedures by which requests that a decision of the Court be published are made. This policy is reflected in the Pennsylvania Rules of Appellate Procedure—Business of the Superior Court, with the amendment to Rule 3519, appearing in 210 Pa. Code Chapter 35.

*Superior Court Internal Operating Procedures*

The Superior Court of Pennsylvania has amended procedures by which requests that a decision of the Court be published are made. This policy is reflected in the Superior Court Internal Operating Procedures with the amendment to 210 Pa. Code Sec. 65.37.

These changes were approved on September 24, 2003, and become effective November 24, 2003.

ERNEST GENNACCARO,  
*Chief Staff Attorney to the  
Superior Court of Pennsylvania*

#### Annex A

### TITLE 210. APPELLATE PROCEDURE

#### PART I. RULES OF APPELLATE PROCEDURE ARTICLE III. MISCELLANEOUS PROVISIONS CHAPTER 35. BUSINESS OF THE SUPERIOR COURT

#### APPEALS AND ARGUMENT LISTS

#### Rule 3519. Requests for Publication.

\* \* \* \* \*

(b) After an unpublished memorandum decision has been filed, the panel may sua sponte, or on the motion of any party to the appeal, or on request by the trial judge, convert the memorandum to a published opinion. In the case of a motion **of any party to the appeal** or a request from the trial judge, such motion or request must be filed with the Prothonotary within 14 days after the entry of the judgment or other order involved. The decision to publish is solely within the discretion of the panel.

#### PART II. INTERNAL OPERATING PROCEDURES

#### CHAPTER 65. INTERNAL OPERATING PROCEDURES OF THE SUPERIOR COURT

#### DECISIONAL PROCEDURES

#### § 65.37. Unpublished Memoranda Decisions.

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B. After an unpublished memorandum decision has been filed, the panel may sua sponte, or on the motion of any party to the appeal, or on request by the trial judge, convert the memorandum to a published opinion. In the case of a motion **of any party to the appeal** or a request from the trial judge, such motion or request must be filed with the Prothonotary within 14 days after the entry of judgment or other order involved. The decision to publish is solely within the discretion of the panel.

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[Pa.B. Doc. No. 03-1976. Filed for public inspection October 10, 2003, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[231 PA. CODE CH. 1910]

#### Amendments to the Rules of Civil Procedure Relating to Domestic Relations; No. 400 Civil Procedural Rules; Doc. No. 5

#### Order

*Per Curiam:*

*And Now*, this 24th day of 2003, Pennsylvania Rules of Civil Procedure 1910.16-5 and 1910.16-6 are amended as follows.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective immediately.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1910. ACTIONS FOR SUPPORT

#### Rule 1910.16-5. Support Guidelines. Deviation.

\* \* \* \* \*

(c) **In determining the duration of an award for spousal support or alimony pendente lite, the trier of fact shall consider the period of time during which the parties lived together from the date of marriage to the date of final separation.**

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

\* \* \* \* \*

(c) *Unreimbursed Medical Expenses.* Unreimbursed medical expenses of the obligee or the children shall be allocated between the parties in proportion to their respective net incomes [and]. **The court may direct that obligor's share be added to his or her basic support obligation, or paid directly to the obligee or to the health care provider.**

(1) For purposes of this subdivision, medical expenses are annual unreimbursed medical expenses in excess of \$250 per person [which are recurring and can be reasonably predicted by the court at the time of establishment or modification of the support or

der ]. Medical expenses include insurance co-payments and deductibles and all expenses incurred for reasonably necessary medical services and supplies, including but not limited to surgical, dental and optical services, and orthodontia. Medical expenses do not include cosmetic, chiropractic, psychiatric or psychological services unless specifically directed in the order of court.

\* \* \* \* \*

**[ (2) If there are annual medical expenses in excess of \$250 per person which are unpredictable or non-recurring, the court may order that such expenses, if incurred, be allocated in proportion to the parties' net incomes. The court may direct obligor to pay his or her share either to the obligee or directly to the health care provider. ]**

**[ (3) ] (2) \* \* \***

**[ (4) ] (3) \* \* \***

\* \* \* \* \*

[Pa.B. Doc. No. 03-1977. Filed for public inspection October 10, 2003, 9:00 a.m.]

## Title 246—MINOR COURT CIVIL RULES

### PART I. GENERAL

#### [246 PA. CODE CH. 400]

#### Clarification Regarding Distribution of Proceeds of Sale

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 416 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices to clarify that an executing officer shall distribute the proceeds of a sale directly to the party or parties entitled to receive the proceeds. 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 Committee's Official Notes to the rules. The Supreme Court does not adopt the Committee's Official 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  
Fax 717-795-2175

or e-mail to: [minorrules@pacourts.us](mailto:minorrules@pacourts.us)

no later than Monday, November 17, 2003.

By the Minor Court Rules Committee

THOMAS E. MARTIN, Jr.,  
Chair

### Annex A

#### TITLE 246. MINOR COURT CIVIL RULES

##### PART I. GENERAL

#### CHAPTER 400. EXECUTION OF JUDGMENTS FOR THE PAYMENT OF MONEY

##### Rule 416. Distribution of Proceeds. Priorities.

A. Not later than five **[ (5) ]** days after the sale of personal property the officer executing the order shall prepare a **proposed** schedule of **[ proposed ]** distribution of the proceeds of sale which shall be kept on file in the office of the district justice from which the order issued and shall be available for inspection. No schedule of distribution need be filed when the property is sold to the plaintiff for costs only.

B. When a receipt of the plaintiff has been accepted on account of the purchase price, the schedule shall set forth **[ his ] the plaintiff's** name and address, the amount of **[ his ] the** judgment and the amount of credit claimed or allowed upon the purchase price.

C. **[ The officer executing the order shall distribute the proceeds of the sale in accordance with the proposed schedule of distribution unless written exceptions are filed in the office of the district justice from which the order issued not later than ten (10) days after the filing of the proposed schedule. ]** Unless written exceptions are filed in the office of the district justice from which the order issued not later than ten days after the filing of the proposed schedule of distribution, the officer executing the order shall distribute the proceeds of the sale directly to the party or parties entitled to receive the proceeds in accordance with the proposed schedule.

\* \* \* \* \*

#### REPORT

#### *Proposed Amendment to Rule 416 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices*

#### CLARIFICATION REGARDING DISTRIBUTION OF PROCEEDS OF SALE

The Minor Court Rules Committee (hereinafter the Committee) undertook a review of Pa. R.C.P.D.J. No. 416 (Distribution of Proceeds. Priorities.) in response to an inquiry about who is to distribute the proceeds of a sale of personal property held in accordance with an order of execution. The Committee learned that some executing officers (sheriffs and constables) are forwarding the proceeds of the sale to the district justice court for distribution. The Committee believes that the appropriate procedure, and the intent of Rule 416C, is for the executing officer to distribute the proceeds of the sale directly to the party or parties entitled to receive the proceeds. The Committee noted that the district justice has very limited direct involvement in the execution process beyond the issuance of the order of execution and the determination of property claims and disputes, if any.<sup>1</sup> Importantly, the Committee believes that there is no specific accounting mechanism in the district justice courts to receive, account for, and distribute the proceeds of a sale.

Accordingly, the Committee proposes that Rule 416C be amended to further clarify that "the officer executing the

<sup>1</sup> See generally Pa.R.C.P.D.J. Nos. 401—482 (relating to execution of judgments for the payment of money).

order shall distribute the proceeds of the sale directly to the party or parties entitled to receive the proceeds." In addition, the Committee proposes minor technical or "housekeeping" amendments to the Rule to address gender neutrality and to conform to modern drafting style.

[Pa.B. Doc. No. 03-1978. Filed for public inspection October 10, 2003, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### CLARION COUNTY

#### Order Amending Local Rules of Procedure for Civil Actions; Misc. Doc. No. 1211 MISC 2003

##### Order

And Now, September 25, 2003 it is hereby ordered:

1. Clarion County Local Rule of Civil Procedure L1915.3, Actions For Custody, Partial Custody and Visitation of Minor Children and Local Rules of Civil Procedure L1940.3 Mediation in Custody Actions and Local Rule 1940.5 Duties of Mediator, copies of which follow this order, are adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

2. The Clarion County Court Administrator is directed to:

A. File seven (7) certified copies of this Order and the attached Rules with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order and the attached Rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the attached Rules with the Pennsylvania Domestic Relations Procedural Rules Committee.

D. Provide the Clarion County Prothonotary with a copy of the new Rules. The Clarion County Prothonotary shall, upon adoption of Local Rules L1915.3, 1940.3 and 1940.5, include a copy of the new adopted Rules in all copies of the Local Rules of Procedure when those rules are delivered to persons requesting a copy.

By the Court

JAMES G. ARNER,  
President Judge

#### ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

##### Rule L1915.3. Commencement of Action. Complaint. Order for Conciliation Conference. Conciliation Conference.

(a) Upon commencement of an action for custody, partial custody or visitation of minor children, or the filing of a petition seeking modification or contempt of an existing order or seeking relocation, the plaintiff/petitioner shall attach an order to the original complaint or petition, directing the defendant/respondent to attend a conciliation conference. The court will schedule the conciliation conference at a court facility and the Prothonotary will provide a copy of a scheduling order to the plaintiff/petitioner for service on the defendant/respondent.

(b) The parties and their attorneys shall attend the conciliation conference.

(c) At the conference, the parties and their attorneys shall meet and discuss the issues and use their best efforts to reach a settlement based on the best interests and welfare of the child/children.

(d) Upon reaching a settlement, the attorneys and parties shall immediately dictate a consent order. The court will make a member of its staff available to prepare the order. The parties shall sign the order and present it to the court staff before leaving the court facility.

(e) If the parties are unable to reach a settlement of the issues, they shall notify the court before leaving the court facility.

(f) In the event Pa.R.C.P. 1940.3(b) or another rule or law prevents the court from ordering a mediation orientation session, the parties and their attorneys shall so notify the court at the conclusion of the conciliation conference and the court will proceed to schedule a pre-hearing conference. Otherwise, the court will order a mediation orientation session and mediation pursuant to Rule L1940.3.

In those cases which proceed to a pre-hearing conference, a pre-hearing statement shall be filed with the court by each party at least seven (7) days before the pre-hearing conference. If no agreement is reached at the pre-hearing conference the court will schedule a hearing.

#### MEDIATION IN CUSTODY ACTIONS

##### Rule L1940.3. Order for Orientation Session and Mediation. Selection of Mediator

(a) In those cases where the parties have participated in a conciliation conference pursuant to Rule L1915.3 and have been unable to reach a settlement, except when mediation is prohibited by Pa.R.C.P. 1940.3(b) or another rule or law, the court will order an orientation session and a mediation conference ("the mediation") and the parties and their counsel shall attend and participate as ordered.

(b) The court shall set a date and time for the mediation as soon as practical after the pleading asserting the child custody issue is brought to the attention of the court.

(c) The cost of the mediation shall be paid equally by the parties and each party shall deposit his/her share with the court administrator not later than seven (7) days prior to date of the mediation.

(d) All applications for continuance shall be made in writing to the court and shall follow Clarion County Rule L216. No requests for continuance shall be made less than seven (7) days prior to the scheduled mediation.

##### Rule L1940.5. Duties of Mediator

(a) The child custody mediator shall ascertain the issues in the action through discussion with the attorneys and/or the parties. He/she shall not take testimony and the mediation shall not be of record. Rather, the mediator shall attempt to determine the relevant facts through discussion and shall suggest or recommend a proposed settlement.

(b) The mediation procedure shall at all times be in the sole discretion of the child custody mediator, in accordance with applicable rules of court.

(c) When the child custody mediator determines that the parties have reached full agreement concerning the matter, he/she shall immediately have the parties and

their attorneys report to the court administrator. The court administrator shall make a member of the court staff available to prepare a consent order, which shall be dictated either by the attorneys or by the mediator. Upon preparation and execution thereof the same shall be submitted to the court for approval and signature.

(d) If the parties can reach only partial agreement concerning the action, the child custody mediator in his/her discretion may dictate a consent order covering the partial agreement and refer the disputed areas to the court for decision, or may refer the entire action to the court for decision. The child custody mediator may further, in his/her discretion, dictate a consent order based upon the submission of a written stipulation executed by the attorneys and/or the parties.

(e) If, when the mediation is called, one party does not appear either personally or by counsel, the mediator shall ascertain whether service and notice of the mediation have been made upon the non-appearing party. If service and notice have been made, the mediator may, in his/her discretion, dictate an order granting the relief requested by the appearing party. If no party appears either personally or through an attorney, the mediator shall submit a report to the court, together with a proposed order to dismiss the action, in which event costs shall be assessed and collected.

(f) If it appears to the mediator that psychological evaluations and/or home studies are needed for ultimate resolution of the matter, he/she shall report that decision to the court. The court will then decide whether to issue an order of court directing such psychological evaluations and/or home studies. The costs of such evaluations and/or home studies shall be paid equally by the parties unless for cause shown the court directs otherwise.

(g) In those actions where the parties cannot reach agreement, the mediator shall prepare and file a report pursuant to Pa.R.C.P. 1940.6.

(h) With the consent of the parties, the mediator shall state in the report a concise summary of the mediation, including the background of the action, the allegations of the parties concerning the areas of dispute, and the recommendations, if any, of the mediator concerning disposition. The mediator shall attach any evaluation reports and home studies to such report. The report shall also include pre-trial information, which the attorneys shall be prepared to provide to the child custody mediator, such as lists of witnesses, exhibits, and stipulations, and an estimate of trial time.

(i) A proposed order setting the matter for a pre-hearing conference before the court and requiring the filing of pre-hearing statements at least seven (7) days before the pre-hearing conference shall be attached to any report submitted by the mediator.

[Pa.B. Doc. No. 03-1979. Filed for public inspection October 10, 2003, 9:00 a.m.]

## SOMERSET COUNTY

### Consolidated Rules of Court; No. 58 Misc. 2003

#### Adopting Order

Now, this 10th day of September, 2003, it is *Ordered*:

1. Somerset County Rules of Civil Procedure (Som.R.C.P.) 3103, Attachment Of Personal Earnings To

Satisfy Judgment Awarded To A Judgment Creditor-Landlord, and 3252, Form Of Writ Of Execution-Attachment Of Personal Earnings To Satisfy Judgment Awarded To A Judgment Creditor-Landlord, are amended to read in their entirety as reflected in revised Som.R.C.P. 3103 and Som.R.C.P. 3252, as follows, effective thirty days after publication in the *Pennsylvania Bulletin*.

2. The Somerset County Court Administrator is directed to:

A. File seven (7) certified copies of this Order and the attached Rules with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order and the attached Rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the attached Rules with the Pennsylvania Civil Procedural Rules Committee.

D. File proof of compliance with this Order in the docket for these Rules, which shall include a copy of each transmittal letter.

*By the Court*

EUGENE E. FIKE, II  
*President Judge*

#### **Som.R.C.P. 3103. Attachment Of Personal Earnings To Satisfy Judgment Awarded To A Judgment Creditor-Landlord.**

A. To execute on a judgment by means of attachment of personal earnings of a judgment debtor-tenant, to recover amounts awarded to a landlord on a residential lease, the judgment creditor-landlord shall file in the Prothonotary's Office a praecipe for writ of execution in substantially the form specified in applicable Pennsylvania Rules of Civil Procedure.

B. The judgment creditor-landlord shall attach to the praecipe a signed statement certifying:

1. The amount awarded to the judgment creditor-landlord, and the amount subject to attachment.

2. That the amount awarded arose out of a residential lease upon which a court has rendered final judgment.

3. That forfeited security deposits, if any, have been deducted as required by § 8127 of the Judicial Code, 42 Pa.C.S.A. § 8127, or that, if not deducted, the security deposit has been applied to payment of rent due on the subject premises.

C. Upon presentation of the praecipe with attached statement as required by subparagraph B. of this Rule, a writ of execution-attachment shall issue, in substantially the form specified in Som.R.C.P. 3252. The writ of execution-attachment shall have attached a copy of § 8127 of the Judicial Code, 42 Pa.C.S.A. § 8127.

D. The judgment creditor-landlord shall be responsible for effecting service of the writ of execution-attachment through the Sheriff's Office. The writ of execution-attachment shall have attached a copy of § 8127 of the Judicial Code, 42 Pa.C.S.A. § 8127.

#### **Som.R.C.P. 3252. Form Of Writ Of Execution-Attachment Of Personal Earnings To Satisfy Judgment Awarded To A Judgment Creditor-Landlord.**

(Caption)  
WRIT OF EXECUTION-ATTACHMENT  
NOTICE

This paper is a writ of execution-attachment. It has been issued because there is a judgment against you. It may cause your personal earnings, including wages, to be taken to pay the judgment. You may have legal rights to prevent your earnings from being taken. A lawyer can advise you more specifically of these rights. If you wish to exercise your rights, you must act promptly.

The law provides that earnings, including wages, cannot be taken under certain circumstances. There are exemptions which may be applicable to you.

If you believe your earnings should be exempt, you should do the following promptly: (1) Fill out the attached claim form and demand for a prompt hearing. (2) Deliver the form or mail it to the Sheriff's Office at the address noted.

You should come to court ready to explain your exemption. If you do not come to court and prove your exemption, a portion of your earnings will be attached, deducted and paid toward satisfaction of the judgment.

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

Southwestern Pennsylvania Legal Services, Inc.  
132 East Catherine Street  
Somerset, PA 15501  
(814) 443-4615

WRIT OF EXECUTION-ATTACHMENT  
COMMONWEALTH OF PENNSYLVANIA )  
 )ss:  
COUNTY OF SOMERSET )

TO THE SHERIFF OF SOMERSET COUNTY:  
To satisfy the judgment, interest, and costs against \_\_\_\_\_, defendant, you are directed to attach the personal earnings, including wages, of the defendant, due or to become due from the defendant's employer, \_\_\_\_\_  
(Name of Employer-Garnishee)  
as garnishee, and to notify the employer-garnishee that the employer-garnishee is required to deduct from the defendant's personal earnings, including wages, and pay over to the Prothonotary's Office, a sum which shall be no more than ten (10%) percent of the net wages per pay

period of the defendant or a sum not to place the defendant's net income below the poverty income guidelines as provided annually by the Federal Office of Management and Budget, whichever is less, as provided for, and subject to the restrictions contained in, § 8127 of the Judicial Code, 42 Pa.C.S.A. § 8127, copy of which is attached. Deduction shall continue until the amount of the judgment is satisfied.

AMOUNT DUE \$ \_\_\_\_\_

Seal of the Court: \_\_\_\_\_  
(Name of Prothonotary or Clerk)

By \_\_\_\_\_  
(Prothonotary or Deputy)  
(Caption)

CLAIM FOR EXEMPTION  
TO THE SHERIFF OF SOMERSET COUNTY:

I, the above named defendant, claim exemption of personal earnings, including wages, from attachment for the following reasons (specify amount and basis of claim of exemption):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I request a prompt court hearing to determine the exemption. Notice of the hearing should be given to me at: \_\_\_\_\_

\_\_\_\_\_  
(Address and Telephone Number)

I verify that the statements made in this claim for exemption are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

\_\_\_\_\_  
(Date) (Defendant)

THIS CLAIM IS TO BE FILED WITH THE OFFICE OF THE SHERIFF OF SOMERSET COUNTY:

127 East Fairview Street  
Somerset, PA 15501  
(814) 445-1500

[Pa.B. Doc. No. 03-1980. Filed for public inspection October 10, 2003, 9:00 a.m.]