

THE COURTS

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 300]

Order Amending Rule 314 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices; No. 207 Magisterial Doc. No. 1

The Minor Court Rules Committee has prepared a Final Report explaining the amendments to Rule 314 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, effective July 1, 2004. These rule changes provide clarification regarding the costs for reinstating a civil complaint. The changes also provide for technical or "housekeeping" amendments to the rule. The Final Report follows the Court's Order.

Order

Per Curiam:

And Now, this 22nd day of April, 2004, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at 32 Pa.B. 4032 (August 17, 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 Pa. R.C.P.D.J. No. 314 is amended in the following form.

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

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 300. CIVIL ACTION

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

A. The person serving the complaint shall, at or before the time of the hearing, make proof of service [**on the form provided,**] which shall show [**the manner of service, the day, hour and place thereof, and the name and relationship or title, if any, of the person on whom the copy of the complaint was served**] (1) **the manner of service,** (2) **the date, time, and place of service and,** (3) **the name and relationship or title, if any, of the person on whom the complaint was served.** The proof of service shall be [**attached to**] **filed with** the original complaint [**form**].

B. When service is made by registered or certified mail, the return receipt shall be [**attached to**] **filed with** the original complaint [**form**].

* * * * *

Official Note:

* * * * *

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.

FINAL REPORT¹

Amendment to Pa. R.C.P.D.J. No. 314

Clarification Regarding Costs for Reinstating a Complaint; Technical Amendments

On April 22, 2004, effective July 1, 2004, upon recommendation of the Minor Court Rules Committee,² the Supreme Court of Pennsylvania amended Rule 314 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices.³

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 Official Note to Rule 314, prior to this amendment, provided 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, Official 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.⁴

Accordingly, the Committee recommended that the Official Note to Rule 314 be revised to remove any confusion about the costs for reinstatement of a civil complaint. The revised Official Note will now 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."

In addition, the Committee recommended several technical or "housekeeping" amendments to subdivisions A and B of the rule. Specifically, in subdivision A, the Committee recommended that the list of contents of the return of service be enumerated to enhance readability.

¹ The Committee's Final Report should not be confused with the Official Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee's Official Notes or the contents of the explanatory Final Reports.

² Recommendation No. 5 Minor Court Rules 2003.

³ Supreme Court of Pennsylvania Order No. 207, Magisterial Docket No. 1, (April 22, 2004).

⁴ The cost for reinstating a complaint is currently \$7.00. 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).

Also, in subdivisions A and B, the Committee recommended that the requirement that items be "attached to" the original complaint be deleted. This requirement is unnecessary and not in keeping with actual practice in the district justice courts.

[Pa.B. Doc. No. 04-804. Filed for public inspection May 7, 2004, 9:00 a.m.]

[246 PA. CODE CH. 400]

Order Amending Rule 420 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices; No. 208 Magisterial Doc. No. 1

The Minor Court Rules Committee has prepared a Final Report explaining the amendments to Rule 420 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, effective July 1, 2004. These rule changes provide clarification regarding the relief a district justice may grant in connection with obligations to levy. The changes also provide for technical or "house-keeping" amendments to the rule. The Final Report follows the Court's Order.

Order

Per Curiam:

And Now, this 22nd day of April, 2004, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at 32 Pa.B. 5046 (October 12, 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 Pa. R.C.P.D.J. No. 420 is amended in the following form.

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

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 400. EXECUTION OF JUDGMENTS FOR THE PAYMENT OF MONEY

Rule 420. Determination of Property Claims and Disputes.

* * * * *

B. In acting under subdivision A of this rule, the district justice may:

(1) Reappraise or redesignate property appraised or designated by the executing officer, or order inclusion in the levy of property set aside by that officer.

(2) **[Stay or order] Order** the abandonment of the levy in whole or part, or release property from the levy.

* * * * *

Official Note: [Subdivisions] Subdivision A [and B] of this rule [set] sets forth the various disputes concerning the execution [which] that, along with property claims, [the district justice is to hear and determine and what he may do in connection therewith] may be brought before the district justice. Subdivision B sets forth the relief that the district justice may grant in connection with these disputes. The [subsections of A and B should] provi-

sions of this rule can be compared with the Pennsylvania Rules of Civil Procedure as follows:

* * * * *

This rule does not provide for a preliminary determination by the executing officer as to the merits of a property claim by a third party (see Pa. R.C.P. Nos. 3206, 3207), for it was considered that the district justice should be readily available for this purpose and that it would not be desirable to allow constables to make any such determination. Also, it was thought to be permissible to require the district justice to make the determinations and to take the actions mentioned in this rule as an exercise of power ancillary to [his] the district justice's general power to order execution of the judgment. Subdivision C of the rule is based on Pa. R.C.P. No. 3132.

FINAL REPORT¹

Amendment to Pa. R.C.P.D.J. No. 420

Clarification Regarding the Relief a District Justice May Grant in Connection with Objections to Levy

On April 22, 2004, effective July 1, 2004, upon recommendation of the Minor Court Rules Committee,² the Supreme Court of Pennsylvania amended Rule 420 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices.³

The Committee reviewed Pa. R.C.P.D.J. No. 420 when, in the course of designing and revising forms relating to other rule changes, it was brought to the Committee's attention that the language in Rule 420B(2) was causing confusion about the relief that a district justice may grant in connection with an objection to levy. Specifically, Rule 420B(2), prior to this amendment, referred to a "[s]tay . . . of the levy . . ." The Committee noted that a stay issued in accordance with Rule 410, a supersedeas, or a bankruptcy stay, will stay the entire execution. And, the Committee further noted that such a stay may take effect prior to the executing officer making a levy upon the defendant's property. However, the Committee could not contemplate any procedural occurrence in which the limited relief of staying the levy itself would be necessary or appropriate. The Committee also noted that, as a form of relief in connection with an objection to levy, a stay of the levy is procedurally impossible. In order for an objection to a levy to be raised, the levy must necessarily have already occurred. In such a situation, the appropriate relief may be a stay of the sale, which is provided for in Rule 420B(3).

Accordingly, the Committee recommended that Rule 420B(2) be amended to delete the reference to a stay, and thus remove any confusion about the relief that a district justice may grant in connection with an objection to levy.

In addition, the Committee recommended other minor revisions to the Official Note to address gender neutrality issues and to enhance clarity.

[Pa.B. Doc. No. 04-805. Filed for public inspection May 7, 2004, 9:00 a.m.]

¹ The Committee's Final Report should not be confused with the Official Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee's Official Notes or the contents of the explanatory Final Reports.

² Recommendation No. 6 Minor Court Rules 2003.

³ Supreme Court of Pennsylvania Order No. 208, Magisterial Docket No. 1, (April 22, 2004).

COMMONWEALTH COURT

Regular Sessions of the Commonwealth Court for
the Year 2005; 126 M.D. No. 3

Order

And Now, this 27th day of April 2004, it is ordered that the argument sessions of the Commonwealth Court of Pennsylvania shall be held in the year 2005 as follows:

| <i>Session</i> | <i>Situs</i> |
|---------------------|---------------------------------|
| January 31-Feb 4 | Pittsburgh |
| February 28-March 4 | Philadelphia |
| April 4-8 | Harrisburg |
| May 2-6 | Pittsburgh |
| June 6-10 | Philadelphia |
| July 12 | Administrative Video Conference |
| September 12-16 | Harrisburg |
| October 17-21 | Pittsburgh |
| November 14-18 | Philadelphia |
| December 12-16 | Harrisburg |

JAMES GARDNER COLINS,
President Judge

[Pa.B. Doc. No. 04-806. Filed for public inspection May 7, 2004, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Arthur C. Kellum having been disbarred from the practice of law in the State of Missouri by Order dated September 23, 2003, the Supreme Court of Pennsylvania issued an Order on April 20, 2004, disbaring Arthur C. Kellum from the Bar of this Commonwealth, effective May 20, 2004. 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. 04-807. Filed for public inspection May 7, 2004, 9:00 a.m.]

Notice of Disbarment

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated April 20, 2004, Leon Lewis Vinokur is Disbarred on Consent from the practice of law in this Commonwealth, retroactive to January 24, 2003. 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. 04-808. Filed for public inspection May 7, 2004, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that G. Jeffrey Moeller having been suspended from the practice of law in the State of New Jersey by Order dated September 4, 2003, the Supreme Court of Pennsylvania issued an Order on April 23, 2004, suspending G. Jeffrey Moeller from the Bar of this Commonwealth for a period of one year, effective May 23, 2004. 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. 04-809. Filed for public inspection May 7, 2004, 9:00 a.m.]