

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

Amendments to the Pennsylvania Rules of Disciplinary Enforcement Relating to Discipline on Consent

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania is considering recommending to the Pennsylvania Supreme Court that it amend the Pennsylvania Rules of Disciplinary Enforcement as set forth in Annex A to provide for the imposition of discipline other than disbarment upon consent.

The Rules of Disciplinary Enforcement currently provide that an attorney who is the subject of an investigation into misconduct may request disbarment, but the rules do not provide a procedure for an attorney to consent to a type of discipline less than disbarment. The Board believes that the disciplinary process could be improved if attorneys were also permitted to agree to the imposition of a lesser sanction.

Interested persons are invited to submit written comments regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, First Floor, Two Lemoyne Drive, Lemoyne, PA 17043, on or before January 7, 2005.

By The Disciplinary Board of the Supreme Court of Pennsylvania

ELAINE M. BIXLER,
Secretary of the Board

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 215. [Resignations by attorneys under disciplinary investigation] Discipline on Consent.

(a) **Voluntary resignation.**—An attorney who is the subject of an investigation into allegations of misconduct by the attorney may submit a resignation, but only by delivering to the Board a verified statement stating that the attorney desires to resign and that:

* * * * *

(b) **Order of disbarment.**—Upon receipt of the required statement, the Board shall file it with the Supreme Court and the Court shall enter an order disbarring the attorney on consent.

(c) **Confidentiality of resignation statement.**—The order disbarring the attorney on consent shall be a matter of public record, but for the purposes of Enforcement Rule 402(a)(1) (relating to confidentiality) the order

shall not be an order for the imposition of public discipline. The statement required under the provisions of subdivision (a) of this rule shall not be publicly disclosed or made available for use in any proceeding other than a subsequent reinstatement proceeding except:

* * * * *

(d) **Other Discipline on Consent.**—At any stage of a disciplinary investigation or proceeding, a respondent-attorney and Disciplinary Counsel may file a joint Petition in Support of Discipline on Consent. The Petition shall include the specific factual allegations that the attorney admits he or she committed, the specific Rules of Professional Conduct and Rules of Disciplinary Enforcement allegedly violated and a specific recommendation for discipline. The Petition shall be accompanied by an affidavit stating that the attorney consents to the recommended discipline and that:

(1) the consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of submitting the consent; and whether or not the attorney has consulted or followed the advice of counsel in connection with the decision to consent to discipline;

(2) the attorney is aware that there is presently pending an investigation into, or proceeding involving, allegations that the respondent-attorney has been guilty of misconduct as set forth in the Petition;

(3) the attorney acknowledges that the material facts set forth in the Petition are true; and

(4) the attorney consents because the attorney knows that if charges predicated upon the matter under investigation were filed, or continued to be prosecuted in the pending proceeding, the attorney could not successfully defend against them.

(e) **Handling of Petition.**—The Petition shall be filed with the Board. The filing of the Petition shall stay any pending proceeding before a hearing committee, special master or the Board. The Petition shall be reviewed by a panel composed of three members of the Board who may approve or deny.

(f) **Private discipline.**—If a panel approves a Petition consenting to an informal admonition or private reprimand, with or without probation, the Board shall enter an appropriate order, and it shall arrange to have the attorney appear before Disciplinary Counsel for the purpose of receiving an informal admonition or before a designated panel of three members selected by the Board Chair for the purpose of receiving a private reprimand.

(g) **Public discipline.**—If a panel approves a Petition consenting to public censure or suspension, the Board shall file the recommendation of the panel and the Petition with the Supreme Court. If the Court grants the Petition, the Court shall enter an appropriate order disciplining the attorney on consent. The order and the Petition shall be a matter of public record in accordance with Enforcement Rule 402.

(h) **Denial of Petition.**—If either the panel of the Board or the Supreme Court denies a Petition, the members of the Board who participated on the reviewing panel shall not participate in further

consideration of the same matter. Any stayed proceedings shall resume as if the Petition had not been filed and neither the Petition nor the affidavit may be used against the attorney in any disciplinary proceeding or any other judicial proceeding.

(i) *Costs.*—The panel of the Board in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of the matter shall be paid by the attorney as a condition to the grant of the Petition. All expenses taxed under this subdivision shall be paid by the attorney before the imposition of discipline under subdivision (f) or (g).

[Pa.B. Doc. No. 04-2022. Filed for public inspection November 12, 2004, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 400]

Order Amending Rule 416 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices; No. 211 Magisterial Doc. No. 1

The Minor Court Rules Committee has prepared a Final Report explaining the amendments to Rule 416 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, effective January 1, 2005. These rule changes provide clarification regarding the distribution of proceeds of a sale. 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 26th day of October, 2004, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at Volume 33, *Pennsylvania Bulletin*, page 5076 (October 11, 2003), 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. 416 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 January 1, 2005.

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.

* * * * *

Official Note: Subdivision C makes clear that it is the responsibility of the executing officer to distribute the proceeds of the sale directly to the party or parties entitled to receive the proceeds. The executing officer should segregate from personal funds, hold in escrow, and ensure the safekeeping of any proceeds held prior to distribution.

Compare Pa.R.C.P. No. 3136(a), (b), (d)[;], and 3137(a). Subdivision D of this rule bases the determination of priorities on the diligence of the plaintiffs and recognizes that there may be more than one executing officer in some instances. It differs from Rule 3137(a) under which priorities are based on the time of delivery of the writs of execution to the sheriff, since it was thought that priorities should not depend upon the time of transmission of the order of execution from the district justice to the executing officer.

FINAL REPORT¹

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

Clarification Regarding Distribution of Proceeds of Sale

On October 26, 2004, effective January 1, 2005, upon recommendation of the Minor Court Rules Committee,² the Supreme Court of Pennsylvania amended Rule 416 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices.³

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

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. 2 Minor Court Rules 2004.

³ Supreme Court of Pennsylvania Order No. 211, Magisterial Docket No. 1, (October 26, 2004).

direct involvement in the execution process beyond the issuance of the order of execution and the determination of property claims and disputes, if any.⁴ Importantly, the Committee believes that there is no specific accounting mechanism in the district justice courts to properly receive, account for, and distribute the proceeds of a sale.

Accordingly, the Committee recommended that Rule 416C be amended to further clarify that the officer executing the order shall distribute the proceeds of the sale directly to the party or parties entitled to receive the proceeds. In addition, the Committee recommended wording in the Official Note to further clarify the executing officer's responsibilities, including segregating from personal funds, holding in escrow, and ensuring the safekeeping of any proceeds held prior to distribution. Finally, the Committee recommended minor technical or "house-keeping" amendments to the Rule to address gender neutrality and to conform to modern drafting style.

[Pa.B. Doc. No. 04-2023. Filed for public inspection November 12, 2004, 9:00 a.m.]

Title 255—LOCAL COURT RULES

SCHUYLKILL COUNTY

Recession of Orphans' Court Rules 3.2A(a) and 3.2B

Order of Court

And Now, this 1st day of November, 2004, at 9:00 a.m., the Court hereby approves and adopts the recession of Schuylkill County Orphans' Court Rules 3.2A(a) and 3.2B. The recession shall be effective immediately upon publication in the *Pennsylvania Bulletin*.

⁴ See generally Pa. R.C.P.D.J. Nos. 401—482 (relating to execution of judgments for the payment of money).

The Clerk of the Orphans' Court of Schuylkill County is *Ordered* and *Directed* to do the following:

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

2) File two (2) certified copies of this Order and Rules with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, together with a diskette reflecting the text in the hard copy version.

3) File one (1) certified copy of this Order and Rules with the Pennsylvania Orphans' Court Rules Committee.

4) Forward one (1) copy to the Schuylkill County Bar Association for publication in the *Schuylkill Legal Record*.

5) Forward one (1) copy to the Schuylkill County Register of Wills Office.

By the Court

WILLIAM E. BALDWIN,
President Judge

Rule 3.2A—Pleadings, Signature and Verification.

(a) Rescinded.

Rule 3.2B—Pleadings. Disposition. Issues of Fact or Law.

Rescinded.

[Pa.B. Doc. No. 04-2024. Filed for public inspection November 12, 2004, 9:00 a.m.]
