

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Order Amending Rules 1910.16-4, 1910.16-6 and 1910.17; No. 430 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 17th day of May, 2005, Rules 1910.16-4, 1910.16-6 and 1910.17 of the Pennsylvania Rules of Civil Procedure 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 1910.16-4. Support Guidelines. Calculation of Support Obligation. Formula.

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(e) *Support Obligations When Custodial Parent Owes Spousal Support.* Where children are residing with the spouse obligated to pay spousal support or **alimony pendente lite** (custodial parent) and the other spouse (non-custodial parent) has a legal obligation to support these children, the guideline amount of spousal support or **alimony pendente lite** shall be determined by offsetting the non-custodial parent's obligation for support of the children and the custodial parent's obligation of spousal support or **alimony pendente lite**, and awarding the net difference **either** to the non-custodial parent as spousal support/**alimony pendente lite** or to the **custodial parent as child support as the circumstances warrant.**

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

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(b) *Health Insurance Premiums.*

(1) A party's payment of a premium to provide health insurance coverage on behalf of the other party or the children shall be allocated between the parties in proportion to their net incomes, including the portion of the premium attributable to the party who is paying it, **as long as a statutory duty of support is owed to the party who is paying the premium.** If the obligor is paying the premium, then the obligee's share is deducted from the obligor's basic support obligation. If the obligee is paying the premium, then the obligor's share is added to his or her basic support obligation. Employer-paid premiums are not subject to allocation.

(2) When the health insurance covers a party to whom no statutory duty of support is owed or other persons who are not parties to the support action or

children who are not the subjects of the support action, the portion of the premium attributable to them must be excluded from allocation. In the event this portion is not known or cannot be verified, it shall be calculated as follows. First, determine the cost per person by dividing the total cost of the premium by the number of persons covered under the policy. Second, multiply the cost per person by the number of persons who are not **owed a statutory duty of support, or are not parties to, or the subject of the support action.** The resulting amount is excluded from allocation.

[For example, if] *Example 1.* If the parties are separated, but not divorced, and Husband pays \$200 per month [for] toward the cost of a health insurance policy provided through his employer which covers himself, Wife, the parties' child, and two additional children from a previous marriage, the portion of the premium attributable to the additional two children, if not otherwise verifiable or known with reasonable ease and certainty, is calculated by dividing \$200 by five persons and then multiplying the resulting amount of \$40 per person by the two additional children, for a total \$80 to be excluded from allocation. Deduct this amount from the total cost of the premium to arrive at the portion of the premium to be allocated between the parties—\$120. Since Husband is paying the premium, and spouses have a statutory duty to support one another pursuant to 23 Pa.C.S.A. § 4321, Wife's percentage share of the \$120 is deducted from Husband's support obligation. If Wife had been providing the coverage, then Husband's percentage share would be added to his basic support obligation.

Example 2. If the parties are divorced and Father pays \$200 per month toward the cost of a health insurance policy provided through his employer which covers himself, the parties' child and two additional children from a previous marriage, the portion of the premium attributable to Father and the two additional children will not be allocated between the parties. Thus, using the same calculations in Example 1, the amount of the premium attributable to Father and the two other children is \$120 (\$40 per person multiplied by three) and that amount is deducted from the total cost of the premium, leaving \$80 (\$200 - \$120=\$80) to be allocated between the parties.

(3) Pursuant to 23 Pa.C.S.A. § 4326, the non-custodial parent bears the initial responsibility of providing health care coverage for the children if it is available at a reasonable cost on an employment-related or other group basis.

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Official Note: Subdivision (b) of this [Rule] rule does not apply to Medical Assistance. See 23 Pa.C.S.A. § 4326(l). The 2005 amendments to Rule 1910.16-6(b)(1) and (2) clarify that the portion of the insurance premium covering the party carrying the insurance cannot be allocated between the parties if there is no statutory duty of support owed to that party by the other party. See *Maher v. Maher*, 575 Pa. 181, 835 A.2d 1281 (2003) and 23 Pa.C.S.A. § 4321.

(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. **Notwithstanding the prior sentence, there shall be no apportionment of unreimbursed medical expenses incurred by a party who is not owed a statutory duty of support by the other party.** 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.

* * * * *

[Explanatory Comment—2003

Subdivision (b)(2) has been amended to clarify that in calculating the amount of the health care premium to be allocated between the parties, subdivision (b)(1) requires the inclusion of that portion of the health insurance premium covering the party who is paying the premium, but not the portion of the premium attributable to non-parties and children who are not the subjects of the support order.]

Rule 1910.17. Support Order. Effective Date. Change of Circumstances. Copies of Order.

(a) An order of support shall be effective from the date of the filing of the complaint or petition for modification unless the order specifies otherwise. **However, a modification of an existing support order may be retroactive to a date preceding the date of filing if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation of another party or other compelling reason and if the petitioner, when no longer precluded, promptly filed a petition.**

Official Note: Subdivision (a) was amended in 2005 to include the statutory provision at 23 Pa.C.S.A. § 4352(e) that authorizes the court to enter a modified order that is effective to a date prior to the date on which the petition for modification was filed in certain circumstances. To the effect that the holding in *Kelleher v. Bush*, 832 A.2d 483 (Pa. Super. Ct. 2003), is inconsistent, it is superseded. See 23 Pa.C.S.A. § 4352(e) for additional provisions.

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[Pa.B. Doc. No. 05-1075. Filed for public inspection June 3, 2005, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 7]

Order Amending Rule 705; No. 320 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the May 18, 2005 amendments to Rule of Criminal Procedure 705. These amendments 1) require the sentencing judge to state the date a sentence to imprisonment is to commence, and 2) clarify that, if the sentence is to run concurrently with any other sentence, the sentence commences on the date of imposition unless otherwise ordered by the judge. These changes fill in the gaps in procedures created in

1996 when then-paragraphs (b) and (c) of the rule (then-Rule 1406) were deleted. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 18th day of May, 2005, upon the recommendation of the Criminal Procedural Rules Committee, the proposal having been published before adoption at 33 Pa.B. 6412 (December 27, 2003), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 835), 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 Rule of Criminal Procedure 705 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective August 1, 2005.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART A. Sentencing Procedures

Rule 705. Imposition of Sentence.

(A) **When imposing a sentence to imprisonment, the judge shall state the date the sentence is to commence.**

(B) **[Whenever]** When more than one sentence is imposed at the same time on a defendant, or **[whenever]** when a sentence is imposed on a defendant who is sentenced for another offense, the judge shall state whether the sentences shall run concurrently or consecutively. **If the sentence is to run concurrently, the sentence shall commence from the date of imposition unless otherwise ordered by the judge.**

Comment

[In] This rule was amended in 1996 [, paragraph (a) was amended and paragraph (c) was deleted] to eliminate language that created a presumption that certain sentences run concurrently unless the judge states otherwise, **and by deleting former paragraph (b) as unnecessary.** The rule now requires the judge to state whether sentences run concurrently or consecutively. **[Paragraph (b) was deleted as unnecessary.]**

The 2005 amendments adding new paragraph (A) and adding language to paragraph (B) clarify the procedures for determining the date of commencement of sentences of imprisonment.

The computation of sentences and credit for time served also are **[governed by]** addressed in the Sentencing Code. See 42 Pa.C.S. §§ 9760 and 9761.

Official Note: Rule 1406 adopted July 23, 1973, effective 90 days hence; amended March 21, 1975, effective March 31, 1975; amended November 7, 1996, effective January 1, 1997; renumbered Rule 705 and Comment revised March 1, 2000, effective April 1, 2001; **amended May 18, 2005, effective August 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the amendments concerning date of commencement of sentence published with the Court's Order at 35 Pa.B. 3218 (June 4, 2005).

FINAL REPORT¹

Amendments to Pa.R.Crim.P. 705

Date of Commencement of Sentence

On May 18, 2005, effective August 1, 2005, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule of Criminal Procedure 705. These rule changes 1) require the sentencing judge to state the date a sentence to imprisonment is to commence, and 2) clarify that, if the sentence is to run concurrently with any other sentence, the sentence commences on the date of imposition unless otherwise ordered by the judge. These changes fill in the gaps in procedures created in 1996 when then-paragraphs (b) and (c) of the rule (then-Rule 1406²) were deleted.

Background

Since the 1996 amendments to Rule 705, the Committee has received some correspondence concerning the procedural gaps created by those amendments. The correspondence pointed out that, notwithstanding the Committee's explanatory *Final Report* language to the contrary,³ "there is no statute or Rule providing that sentences ordered to run concurrently with sentences imposed on a prior date must run from the date of imposition," and this gap is causing confusion for members of the bench and bar, and the defendants who are sentenced. The Committee was asked to consider adding to the rule language similar to the language deleted in 1996, which had provided "a sentence to imprisonment shall be deemed to commence and shall be computed from the date of commitment for the offense or offenses for which such sentence is imposed, which date shall be specified by the judge."⁴

The Committee reviewed the relevant sections of the Sentencing Code, 42 Pa.C.S. §§ 9760 and 9761, and Chapter 7 of the Criminal Rules, confirming the correspondents' premise that, with the 1996 amendments to Rule 705, there no longer are provisions specifically providing for the date of commencement of sentence or that a sentence ordered to run concurrently with a sentence or sentences imposed on a prior date must run from the date of imposition. We also perused the case law, finding little guidance other than references to the provisions of former Rule 1406 and the predecessor to the Sentencing Code provisions, 19 P. S. 894,⁵ that had filled the void now under consideration. In view of the correspondence and our research, and after lengthy discussions about the evolution of Rule 705 and the recurring issues, the Committee concluded an amendment to Rule 705 requiring the judge to state the date the sentence is to commence and providing guidance concerning the commencement of concurrent sentences would be helpful to the bench, bar, and defendants.

Discussion of Changes to Rule 705

¹ The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

² Rule 1406 was renumbered Rule 705 as part of the Court's March 1, 2000 Order reorganizing and renumbering the Criminal Rules.

³ See Committee's Final Report, 26 Pa.B. 5694 (November 23, 1996), explaining the 1996 changes to Rule 705.

⁴ The correspondence also requested the rule provide that the judge should address the defendant receiving credit for time served. As a practical matter, however, the information concerning the defendant's time served is not always available to the judge at the time of sentencing.

⁵ 19 P. S. § 894 was repealed as part of the Judiciary Act Repealer Act and replaced by 18 Pa.C.S. § 1360, which subsequently was transferred to 42 Pa.C.S. § 9760.

During our discussions of how to address the issues raised in the correspondence, the Committee first considered changing Rule 705 by adding language that if a sentence imposed is concurrent with another of the defendant's sentences, the sentence shall commence from the date of imposition. We noted, however, that the language concerning commencement of sentences that had been in the rule prior to the 1996 changes addressed all sentences, not only concurrent sentences. The broader application in the former Rule 1406(b) provision made sense to the members. Accordingly, new paragraph (A) requires the judge to state the date a sentence to imprisonment commences. Because new paragraph (A) addresses the date of imposition of sentence, the current Rule 705 provisions requiring the judge to state whether the sentences run concurrently or consecutively have been moved to new paragraph (B). Paragraph (B) also clarifies that the date of commencement of sentence when the sentence is to be concurrent ordinarily is the date of imposition, unless the judge orders a different date for commencement of the sentence.

[Pa.B. Doc. No. 05-1076. Filed for public inspection June 3, 2005, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 400]

Order Renaming Chapter 400 and Adopting New Rule 401.1 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges; No. 219 Magisterial Doc. No. 1

The Minor Court Rules Committee has prepared a Final Report explaining the Supreme Court of Pennsylvania's Order renaming Chapter 400 and adopting new Rule 401.1 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges, effective July 1, 2006. These rule changes provide a procedural mechanism for the assignment of judgments in the magisterial district courts. The Final Report follows the Court's Order.

Order

Per Curiam:

And Now, this 17th day of May, 2005, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at Volume 34, *Pennsylvania Bulletin*, page 4022 (July 31, 2004), 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 Chapter 400 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges be, and hereby is, renamed, and new Pa.R.C.P.M.D.J. No. 401.1 be, and hereby is, adopted, 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, 2006.

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 400. [EXECUTION OF JUDGMENTS FOR THE PAYMENT OF MONEY] ENFORCEMENT OF JUDGMENTS RENDERED BY MAGISTERIAL DISTRICT JUDGES FOR THE PAYMENT OF MONEY

Rule 401.1. Assignment of Judgment; Parties.

If the judgment has been assigned, upon request of the real party in interest the magisterial district judge shall:

(1) Cause a docket entry to be made indicating the assignment and the name of the original plaintiff and the name of the real party in interest.

(2) Issue an amended notice of judgment indicating the assignment and the name of the original plaintiff and the name of the real party in interest.

Official Note: The real party in interest (assignee) must produce an assignment of judgment on a form prescribed in accordance with Rule 212, properly executed by the original plaintiff (assignor), before the magisterial district judge notes the assignment on the docket or issues an amended notice of judgment.

When an assignment is entered on the docket pursuant to this rule, the real party in interest becomes the plaintiff as defined in Rule 401, and the original plaintiff shall have no further rights with respect to the judgment.

If the judgment is assigned while there is an outstanding order of execution, the real party in interest should notify the executing officer who is holding the order to assure that any proceeds are distributed properly.

If the judgment has been entered in the court of common pleas the magisterial district judge may not take any action pursuant to this rule. See Rule 402D(4).

FINAL REPORT¹**Renaming Chapter 400 and Adopting New Rule 401.1 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges****Enforcement of Judgments; Assignment of Judgments; Parties**

On May 17, 2005, effective July 1, 2006, upon recommendation of the Minor Court Rules Committee,² the Supreme Court of Pennsylvania renamed Chapter 400 and adopted new Rule 401.1 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges.³

I. Background

The Minor Court Rules Committee (hereinafter the Committee) considered issues relating to the assignment of civil judgments after the Committee learned that some magisterial district judges are receiving notices that judgments have been assigned along with requests for the issuance of amended notices of judgment. The Committee learned that in some areas of the Commonwealth it is becoming common for "judgment enforcement" businesses to purchase civil judgments from plaintiffs who are having difficulty enforcing the judgments. Then, so as to avail themselves of enforcement procedures in an effort to collect the judgments, these businesses request that the

magisterial district judge note the assignment on the docket and issue an amended notice of judgment showing the assignee as the real party in interest.

The Committee determined that, although the assignment of common pleas level judgments is not an uncommon practice, it is much less common at the district court level. In addition, there is no procedural mechanism for a magisterial district judge to note the assignment of a judgment on the docket or to issue an amended notice of judgment reflecting the assignment and the name of the real party in interest. The Committee noted that the practice of assigning judgments is recognized in the Rules of Civil Procedure. Specifically, Rule 3026 (Parties) provides in part that "[i]f the judgment has been assigned or transferred, the caption shall contain the name of the original judgment plaintiff and the name of the real party in interest." Pa.R.C.P. No. 3026(b).

The Committee determined it would be helpful to district courts and parties if the rules of civil procedure for magisterial district judges would provide some guidance regarding assignments. Therefore, the Committee recommended a new Rule 401.1 to address assignments.

II. Discussion of Rule Changes

As noted above, to address the assignment of civil judgments at the district court level the Committee recommended a new Rule 401.1 entitled "Assignment of Judgment; Parties." The new rule is placed in Chapter 400 so as to be included with other rules relating to execution and enforcement of money judgments. The rule provides for a docket entry to indicate that a judgment has been assigned, as well as for the issuance of an amended notice of judgment reflecting the name of the original plaintiff (assignor) and the real party in interest (assignee).

The Official Note to the new rule makes clear that the assignee must produce an assignment of judgment, properly executed by the assignor, before the magisterial district judge notes the assignment on the docket or issues an amended notice of judgment. To ensure that the magisterial district judge receives accurate and complete information regarding the assignment, the Committee anticipates that the Administrative Office of Pennsylvania Courts (AOPC) will develop an acknowledgement form to be produced by the statewide district court computer system (MDJS),⁴ and that all assignments filed in the district courts would be filed using this form. In addition, the Official Note makes clear that if the judgment has been entered in the court of common pleas prior to the assignment, the magisterial district judge may not take any action.⁵

In addition to the new rule, the Committee also recommended that the title of Chapter 400 be changed to "ENFORCEMENT OF JUDGMENTS RENDERED BY MAGISTERIAL DISTRICT JUDGES FOR THE PAYMENT OF MONEY" to more accurately describe the rules in the chapter.

[Pa.B. Doc. No. 05-1077. Filed for public inspection June 3, 2005, 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 Report.

² Recommendation No. 4 Minor Court Rules 2004.

³ Supreme Court of Pennsylvania Order No. 219 Magisterial Docket No. 1 (May 17, 2005).

⁴ See Pa.R.C.P.D.J. No. 212 (Design of Forms). The July 1, 2006 effective date of this rule change was established to allow sufficient time for the AOPC to develop forms and to make other significant MDJS programming changes needed to implement the rule change.

⁵ See Pa.R.C.P.D.J. No. 402D (4) ("[O]nce the judgment is entered in the court of common pleas all further process must come from the court of common pleas and no further process may be issued by the magisterial district judge.")