

# THE COURTS

## Title 210—APPELLATE PROCEDURE

[ 210 PA. CODE CH. 21 ]

Order Adopting Amendments to Pa.R.A.P. 2111; No. 188 Appellate Procedural Rules; Doc. No. 1

### Order

*Per Curiam:*

And Now, this 5th day of June, 2008, upon the recommendation of the Appellate Court Procedural Rules Committee, it having been determined that the proposed amendment does not need to be published as it is perfunctory in nature and immediate action is otherwise required in the interest of justice pursuant to Pa.R.J.A. 103(a)(3):

*It Is Ordered*, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that Pennsylvania Rule of Appellate Procedure 2111 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), shall be effective 30 days after adoption, and shall be applicable to briefs filed after the effective date.

### Annex A

#### TITLE 210. APPELLATE PROCEDURE

#### PART I. RULES OF APPELLATE PROCEDURE

#### CHAPTER 21. BRIEFS AND REPRODUCED RECORD

#### CONTENT OF BRIEFS

#### Rule 2111. Brief of the Appellant.

(a) *General rule.*—The brief of the appellant, except as otherwise prescribed by these rules, shall consist of the following matters, separately and distinctly entitled and in the following order:

\* \* \* \* \*

**(7) Statement of the reasons to allow an appeal to challenge the discretionary aspects of a sentence, if applicable.**

**[ (7) ] (8)** Argument for appellant.

**[ (8) ] (9)** A short conclusion stating the precise relief sought.

**[ (9) ] (10)** The opinions and pleadings specified in Subdivisions (b) and (c) of this rule.

**[ (10) ] (11)** In the Superior Court, a copy of the statement of errors complained of on appeal, filed with the trial court pursuant to Rule 1925(b), or an averment that no order requiring a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) was entered.

\* \* \* \* \*

*Official Note:* The 1999 amendment requires a statement of the scope and standard of review. “ ‘Scope of review’ refers to ‘the confines within which an appellate court must conduct its examination.’ (Citation omitted.) In other words, it refers to the matters (or ‘what’) the appellate court is permitted to examine. In contrast,

‘standard of review’ refers to the manner in which (or ‘how’) that examination is conducted.” *Morrison v. Commonwealth, Dept. of Public Welfare*, 538 Pa. 122, 131, 646 A.2d 565, 570 (1994). This amendment incorporates the prior practice of the Superior Court pursuant to Pa.R.A.P. 3518 which required such statements. Accordingly, Rule 3518 has been rescinded as its requirement is now subsumed under paragraph (a)(2) of this Rule.

**Pa.R.A.P. 2119(f) requires a separate statement of reasons that an appellate court should allow an appeal to challenge the discretionary aspects of a sentence. The 2008 amendments recognize that, while Pa.R.A.P. 2119(f) does not apply to all appeals, an appellant must include the reasons for allowance of appeal as a separate enumerated section immediately before the Argument section if he or she desires to challenge the discretionary aspects of a sentence.**

[Pa.B. Doc. No. 08-1138. Filed for public inspection June 20, 2008, 9:00 a.m.]

## Title 246—MINOR COURT CIVIL RULES

### PART I. GENERAL

[ 246 PA. CODE CH. 500 ]

Amendment of Note to Rule 509 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges; No. 244 Magisterial Rules; Doc. No. 1

### Order

*Per Curiam:*

And Now, this 9th day of June, 2008, upon recommendation of the Minor Court Rules Committee, the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interest of justice and efficient administration, 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 the Note to Rule 509 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges be, and hereby is, amended to read as follows.

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

### Annex A

#### TITLE 246. MINOR COURT CIVIL RULES

#### PART I. GENERAL

#### CHAPTER 500. ACTIONS FOR THE RECOVERY OF POSSESSION OF REAL PROPERTY

#### Rule 509. Amendments to Complaint.

\* \* \* \* \*

**Official Note:** This rule is the same as Rule 316 of the [ trespass and assumpsit ] civil rules.

Adopted Oct. 15, 1969, effective Jan. 1, 1970. Amended June 30, 1982, effective 30 days after July 17, 1982. **Adopted June 9, 2008, immediately effective.**

### FINAL REPORT<sup>1</sup>

#### ***Amendment to the Note to Rule 509 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District***

On June 9, 2008, effective immediately, upon recommendation of the Minor Court Rules Committee,<sup>2</sup> the Supreme Court of Pennsylvania approved an amendment to the Note to Rule 509 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges.<sup>3</sup>

#### I. *Background*

On its own initiative, the Minor Court Rules Committee (the Committee) recommended a change to the Note to Rule 509. The current language provides: "This rule is the same as Rule 316 of the *trespass and assumpsit* rules." (emphasis added).

The Note to Rule 301 explains that the outdated terms "trespass" and "assumpsit" were replaced by a more universal and modern phrase—"civil action." ("Civil action includes actions formerly denominated 'assumpsit' or 'trespass.'") Since "civil action" replaced "assumpsit" and "trespass," the Committee has routinely recommended that the Court replace the older terms wherever they appear and substitute the more modern phrase.

#### II. *Approved Rule Change*

Accordingly, the Committee proposed that the Note to Rule 509 be amended to delete the words "trespass" and "assumpsit" and replace them with "civil."

The Committee believes this amendment to be of a perfunctory nature. Therefore, the Committee respectfully recommended that the Court adopt this recommendation in accordance with Pa.R.J.A. No. 103(a)(3), without prior publication for public comment.

[Pa.B. Doc. No. 08-1139. Filed for public inspection June 20, 2008, 9:00 a.m.]

### PART I. GENERAL

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

**Order Amending Rules 410, 412 and 418 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges; No. 245 Magisterial Rules; Doc. No. 1**

#### **Order**

*Per Curiam:*

*And Now*, this 9th day of June, 2008, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at Volume 35, *Pennsylvania Bulletin*, page 245 (January 8, 2005), and a Final Report to be published with this *Order*:

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

<sup>2</sup> Minor Court Rules Committee Recommendation 6-2008.

<sup>3</sup> Supreme Court of Pennsylvania Order No. 244, Magisterial Docket No. 1 (June 9, 2008).

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pa.R.C.P.M.D.J. Nos. 410, 412 and 418 be, and hereby are, amended to read as follows.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2009.

#### Annex A

### TITLE 246. MINOR COURT CIVIL RULES

#### PART I. GENERAL

#### CHAPTER 400. ENFORCEMENT OF JUDGMENTS RENDERED BY MAGISTERIAL DISTRICT JUDGES FOR THE PAYMENT OF MONEY

Rule 410. [ **Bond for** ] Stay of Execution **Generally**.

(A) Execution shall be stayed as to the property of the defendant upon the occurrence of any of the following:

(1) Upon written request of the plaintiff to the magisterial district court.

(2) Upon the entry of [ **If the defendant, or any person or party in interest, enters** ] a bond with the magisterial district [ **judge** ] court by any person or party in interest, with security approved by [ **him** ] the magisterial district judge, in the amount of the plaintiff's judgment, including probable interest and costs, or in such lesser amount as the magisterial district judge may direct, [ **the magisterial district judge shall stay execution as to the property of the defendant. The bond shall name** ] naming the Commonwealth of Pennsylvania as the obligee, and [ **shall be** ] conditioned to pay the amount due within [ **ninety (90)** ] 90 days of the entry of the bond, unless the time for payment is extended by the magisterial district judge. [ **This rule does not apply to judgments obtained for wages for manual labor.** ]

(B) When execution is stayed pursuant to this rule, the stay may not be lifted without written order of the magisterial district judge.

(C) After a stay is lifted, execution may proceed without reissuance of the order of execution.

*Official Note:* Compare Pa.R.C.P. No. 3121(a) [ (2) ]. Other rules in this chapter may also provide for a stay in specific circumstances covered by those rules.

#### **Rule 412. Notice of Sale.**

[ **A.** ] (A)(1) The executing officer shall give notice of the sale of personal property at least six days prior to the sale [ **by handbills posted in the office of the magisterial district judge from which the order of execution issued, at the place of sale and, if different from the place of sale, at the place of levy and by mailing a copy of the handbill to the defendant at his last known address and to the plaintiff** ] .

(2) The executing officer shall give notice of the sale in the following manner:

(a) By handbill posted in the magisterial district court from which the order of execution issued and, if different from the court from which the order issued, in the magisterial district court in the magisterial district in which the place of the sale is located.

(b) By handbill posted at the place of sale and, if different from the place of sale, at the place of levy.

(c) By mailing a copy of the handbill to the plaintiff and to the defendant at his or her last known address.

[ B. ] (B) The notice of sale shall include a notice that all claims to the property must be filed before sale in the [ office of the ] magisterial district [ judge ] court from which the order of execution issued and that all claims to the proceeds must be filed in that [ office ] court before distribution; that a proposed schedule of distribution will be filed in that [ office ] court on a date specified not later than five [ (5) ] days after the sale; and that distribution will be made in accordance with the proposed schedule unless exceptions are filed in that court within ten [ (10) ] days thereafter. No further notice of the filing of the schedule of distribution need be given.

[ C. ] (C) If a new date for sale is set, new notice shall be given as prescribed in [ subdivisions A and B ] paragraphs (A) and (B) of this rule.

*Official Note.* Compare Pa.R.C.P. No. 3128. See Section 8151 of the Judicial Code, [ § 8151, ] 42 Pa.C.S. § 8151, [ added by § 10(96) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53, ] as to giving notice to the Department of Revenue [ , at least twenty days prior to sale, a report or return concerning the property to be sold, unless exempted by regulation ].

**Rule 418. Abandonment of Levy for Inability to Hold Sale.**

[ The ] (A) Except as otherwise provided in paragraph (B), the officer executing the order shall abandon the levy if sale of the property levied upon is not held within [ six (6) ] three months after the levy.

(B) Periods during which sale is stayed under any provision of these rules shall be excluded in computing [ such six months ] the three month period provided in paragraph (A), but in all cases the officer executing the order shall abandon the levy if sale of the property levied upon is not held within six months.

*Official Note.* Compare Pa.R.C.P. No. 3120(2). This rule requires the executing officer to abandon the levy if sale is not held within [ six ] three months, [ with the exclusion mentioned, instead of merely permitting him to do so as under the cited rule ] excluding time periods when the execution may be stayed, but in all cases the levy must be abandoned if the sale is not held within six months of the levy. It was considered that the particular execution proceedings should terminate under these circumstances.

**FINAL REPORT<sup>1</sup>**

**Amendments to Pa.R.C.P.M.D.J. Nos. 410, 412 and 418**

TECHNICAL AMENDMENTS CONCERNING EXECUTION OF JUDGMENTS FOR MONEY; STAY OF EXECUTION; ABANDONMENT OF LEVY

I. Introduction

On June 9, 2008, effective January 1, 2009, upon recommendation of the Minor Court Rules Committee,<sup>2</sup> the Supreme Court of Pennsylvania approved amendments to Rules 410, 412 and 418 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges.<sup>3</sup>

II. Discussion and Rule Changes

The Minor Court Rules Committee ("the Committee") proposed technical amendments to Rules 410, 412, and 418 of the Rules of Conduct, Office Standards, and Civil Procedure for Magisterial District Judges to address three separate issues concerning the execution of judgments for money.

A. Rules 410 and 418

The Committee reviewed Pa.R.C.P.M.D.J. No. 410 in response to an inquiry from a constable who asked if execution of a money judgment could be stayed upon request of the plaintiff. The Committee noted that the magisterial district court rules governing execution of money judgments do make provision for a stay of execution in certain circumstances,<sup>4</sup> but not specifically at the request of the plaintiff. The Committee further noted that the Rules of Civil Procedure governing actions in the courts of record do provide for a stay of execution "upon written direction of the plaintiff."<sup>5</sup>

The Committee believed it advisable to incorporate a provision into the magisterial district court rules to allow for stay upon request of the plaintiff. The Committee reasoned that post-judgment settlement negotiations may affect a plaintiff's desire to move forward with execution once commenced, and believed that a plaintiff should have the ability to request a stay of execution. This proposed rule would differ from Pa.R.C.P. No. 3121(a)(1) in that it would provide for a stay of execution upon written request of the plaintiff to the magisterial district judge. The requirement that the plaintiff make the request to the court would enable the magisterial district judge to make a judicial determination as to whether the stay should be granted and provide more certainty as to when the stay takes effect.

Accordingly, the Committee proposed that Rule 410 be amended to provide for the stay of execution upon written request of the plaintiff to the magisterial district court. To accomplish this, the Committee proposed that Rule 410 be tabulated into three paragraphs. Paragraph (A) contains the provisions as to when execution shall be stayed, including the new provision regarding a stay at the request of the plaintiff. Within paragraph (A), the Committee proposed that the provision regarding the inapplicability of the rule to judgments obtained for wages for

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

<sup>2</sup> Minor Court Rules Committee Recommendation 2-2006.

<sup>3</sup> Supreme Court of Pennsylvania Order No. 245, Magisterial Docket No. 1 (June 9, 2008).

<sup>4</sup> See Pa.R.C.P.M.D.J. No. 410 (providing for stay of execution upon entry of bond), Pa.R.C.P.M.D.J. No. 413 (providing for stay of sale of property because of objection to levy or other property claim), and Pa.R.C.P.M.D.J. No. 420 (providing for relief in cases of property claims and disputes).

<sup>5</sup> Pa.R.C.P. No. 3121(a)(1).

manual labor be deleted. This provision was based on a prior law<sup>6</sup> that was repealed by the Judiciary Act Repealer Act,<sup>7</sup> and was not expressly codified in the Judicial Code (Title 42, Pennsylvania Consolidated Statutes).

New paragraphs (B) and (C) have been added to Rule 410 to provide that when execution is stayed under the rule the stay may not be lifted without written order of the magisterial district judge, and that when a stay is lifted execution may proceed without reissuance of the order of execution.

In the course of reviewing the Rule 410 stay provisions, the Committee reviewed the provisions in Rule 418 regarding the abandonment of a levy for inability to hold a sale. The existing rule provides that the levy shall be abandoned if a sale is not held within six months. The Committee was concerned, however, with the existing provision in the rule that periods during which the sale is stayed are excluded from the six month period. Specifically, the Committee was concerned that under the current provisions of the rule property could be subject to levy ad infinitum so long as a stay was issued and not lifted. This, of course, could impose a tremendous burden on the judgment debtor whose property is subject to the levy. The Committee noted that this situation could arise more easily if execution could be stayed simply by a request of the plaintiff as was proposed under Rule 410.

To address this problem, the Committee proposed that Rule 418 be divided into two paragraphs. New paragraph (A) provides that as a general rule the levy shall be abandoned if a sale is not held within three months. New paragraph (B) still excludes from the three-month period time during which the sale is stayed, but in all cases the executing officer would be required to abandon a levy if a sale is not held within six months. This new provision is intended put limits on the amount of time property can be subject to levy, and to enable the magisterial district judge to have more control over the length of time a stay is in effect.

#### B. Rule 412

The Committee reviewed Pa.R.C.P.M.D.J. No. 412 in response to an inquiry from a constable who suggested that an executing officer be required to post notice of a sale in the magisterial district court in the magisterial district in which the place of sale is located if different

from the court from which the order of execution issued.<sup>8</sup> It was suggested that this requirement would aid in informing an executing officer of other levies that may have been made upon the same property that is the subject of his or her levy and sale. This information is needed so that an executing officer will know if there is an existing levy by another executing officer that has priority over his or her levy.

The Committee agreed that such a notice requirement would be helpful. Accordingly, the Committee divided Rule 412A into two paragraphs. Paragraph (A)(1) contains the existing provision that notice of the sale be given at least six days prior to the sale. Paragraph (A)(2) contains the requirements as to how notice is to be given, including the new provision discussed above.

In addition, the Committee made other minor revisions to the rules and Notes to address gender neutrality issues and to enhance clarity.

[Pa.B. Doc. No. 08-1140. Filed for public inspection June 20, 2008, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that on June 5, 2008, under Rule 214(d)(2), Pa.R.D.E., the Supreme Court of Pennsylvania ordered that Reginald D. Greene be placed on temporary suspension from the practice of law, effective July 5, 2008. 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,  
*Secretary*  
*The Disciplinary Board of the*  
*Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 08-1141. Filed for public inspection June 20, 2008, 9:00 a.m.]

<sup>6</sup> The Act of May 14, 1874, P. L. 145, No. 79, § 1, 12 P. S. § 2207.

<sup>7</sup> The Act of April 28, 1978, P. L. 202, No. 53, § 2, 42 Pa.C.S. § 20002(a) [640] as affected by the Act of Oct. 5, 1980, P. L. 693, No. 142, § 324(b).

<sup>8</sup> Rule 412 already requires the posting of a handbill in the magisterial district court from which the order of execution issued. This rule change does not change that requirement, but requires that the notice be posted in a second magisterial district court if the place of sale is located in a different magisterial district.