

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

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

Proposed Amendment to Rule of Disciplinary Enforcement 514

Notice is hereby given that the Pennsylvania Lawyers Fund for Client Security (the "Fund") is considering submitting proposed changes to the Supreme Court of Pennsylvania to amend the Pennsylvania Rules of Disciplinary Enforcement as set forth in Annex A. Some concern has been expressed regarding the number of claims being filed with the Fund as well as the dollar value of the alleged losses being claimed. Additionally, some concern has been expressed that certain business entities should be excluded from recovery from the Fund. Opinions have been expressed that the Fund is not intended to be an insurance program for businesses and corporations. Business entities, through their owners or board members should monitor the business' exposure to attorney malfeasance and to take appropriate steps to prevent and minimize such damages.

Interested persons are invited to submit written comments regarding the proposed amendments to the Executive Director, Pennsylvania Lawyers Fund for Client Security, P.O. Box 62585, Harrisburg, PA 17106, by facsimile to 717-231-9511 or by email to admin@palawfund.com on or before September 24, 2013.

By *Pennsylvania Lawyers Fund for Client Security*

KATHRYN J. PEIFER, Esq.,
Executive Director

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 E. PENNSYLVANIA LAWYERS FUND FOR CLIENT SECURITY

DISHONEST CONDUCT OF ATTORNEY

Rule 514. Reimbursable losses.

(a) *General rule.* For the purposes of this subchapter, reimbursable losses consist of those losses of money, property or other things of value which meet all of the following requirements:

* * * * *

(4) The loss was not incurred by:

(i) the spouse or other close relative, partner, associate, employer or employee of the Covered Attorney, or a business entity controlled by the Covered Attorney, or any entity controlled by any of the foregoing;

(ii) an insurer, surety or bonding agency or company, or any entity controlled by any of the foregoing;

(iii) any government unit;

(iv) any financial institution that may recover under a "banker's blanket bond" or similar commonly available insurance or surety contract; [or]

(v) a business organization having twenty or more employees; or

(vi) an individual or business entity suffering a loss arising from personal or business investments not arising in the course of the client-attorney relationship.

(5) In cases of extreme hardship or special and unusual circumstances, and subject to the provisions of paragraph (b), the Board may, in its discretion, and consistent with the purpose of the Fund, recognize a claim which would otherwise be excluded under this subchapter.

* * * * *

(b) *Maximum recovery.* The maximum amount which may be disbursed from the Fund to any one Claimant with respect to the Dishonest Conduct of any one Covered Attorney shall be \$100,000. **The maximum amount which may be disbursed from the Fund as a result of any one Covered Attorney shall be \$1,000,000. The Board may petition the Supreme Court of Pennsylvania to exceed the \$1,000,000 maximum when the Board determines, in the exercise of its discretion, that exceeding the maximum is necessary to adequately compensate all victims of the Dishonest Conduct of the Covered Attorney and exceeding the maximum will not unduly burden the Fund.**

* * * * *

[Pa.B. Doc. No. 13-1605. Filed for public inspection August 30, 2013, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CHS. 200 AND 400]

Order Amending Rules 209, 403 and 410 of the Minor Court Civil Rules; No. 361 Magisterial Rules Doc.

Order

Per Curiam

And Now, this 14th day of August, 2013, upon the recommendation of the Minor Court Rules Committee; the proposal having been published for public comment before adoption at 43 Pa.B. 8 (January 5, 2013):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 209, 403 and 410 of the Minor Court Civil Rules are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in 30 days on September 13, 2013.

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 200. RULES OF CONSTRUCTION; GENERAL PROVISIONS

Rule 209. Continuances **and** Stays.

* * * * *

E. Continuances **and** stays shall be granted in compliance with federal or state law, such as the [**Service-members**] **Servicemembers** Civil Relief Act., 50 App. [**U.S.C.A.**] U.S.C. § 501 et seq.

* * * * *

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

Rule 403. Issuance and Reissuance of Order of Execution.

A. Upon the filing of the request form, the magisterial district judge shall note on the form the time and date of its filing and shall issue the order of execution thereon. The magisterial district judge shall deliver the order of execution for service and execution to the sheriff of, or any certified constable in, the county in which the office of the magisterial district judge issuing the order is situated. If this service is not available to the magisterial district judge, service may be made by any certified constable of the Commonwealth.

B. (1) Upon written request filed by the plaintiff within five years from the date of entry of the judgment, an order of execution shall be reissued at any time, and any number of times.

(2) If an order of execution is superseded by an appeal, writ of certiorari, supersedeas, or a stay pursuant to a bankruptcy proceeding **or other federal or state law**, and

(a) the appeal, writ of [**certorari**] **certiorari**, or supersedeas is stricken, dismissed, or otherwise terminated; or

(b) the bankruptcy **or other** stay is lifted; and

(c) the plaintiff wishes to proceed with the order of execution,

the plaintiff must file with the magisterial district judge a written request for reissuance of the order of execution in accordance with subparagraph (1).

C. A written request for reissuance of the order of execution filed pursuant to subparagraph B(2) must be accompanied by a copy of the court order or other documentation striking, dismissing, or terminating the appeal, writ of [**certorari**] **certiorari**, or supersedeas, or lifting the bankruptcy **or other** stay.

Official Note: Under subdivision A, the order may be executed by the sheriff of the county in which the office of the issuing magisterial district judge is situated, as well as by any certified constable in that county.

If payment of the judgment was ordered to be made in installments under Rule 323, the magisterial district judge should not issue an order of execution on the judgment unless it appears that there was a default in the installment payments.

Subdivision B will permit the reissuance of an order of execution upon written request of the plaintiff timely filed. Compare Pa.R.C.P. No. 3106(b). The written request for reissuance may be in any form and may consist of a notation on the permanent copy of the request for order of execution form, "Reissuance of order of execution requested," subscribed by the plaintiff. The magisterial district judge shall mark all copies of the reissued order of execution, "Reissued. Request for reissuance filed _____ (time and date)." A new form may be used upon reissuance, those portions retained from the original being exact copies although signatures may be typed or printed with the mark "/s/." There are no filing costs for reissuing an order of execution, for the reissuance is merely a continuation of the original proceeding. However, there may be additional server costs for service of the reissued order of execution.

The magisterial district court shall enter stays in compliance with federal or state law, such as the Servicemembers Civil Relief Act., 50 App. U.S.C. § 501 et seq.

Rule 410. 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 a bond with the magisterial district court by any person or party in interest, with security approved by 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, naming the Commonwealth of Pennsylvania as the obligee, and conditioned to pay the amount due within 90 days of the entry of the bond, unless the time for payment is extended by the magisterial district judge.

(3) Upon request of the defendant or party in interest to the magisterial district court made in compliance with federal or state law.

(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). Other rules in this chapter may also provide for a stay in specific circumstances covered by those rules. **The magisterial district court shall enter stays in compliance with federal or state law, such as the Servicemembers Civil Relief Act., 50 App. U.S.C. § 501 et seq.**

[Pa.B. Doc. No. 13-1606. Filed for public inspection August 30, 2013, 9:00 a.m.]

PART I. GENERAL

[246 PA. CODE CH. 1000]

Order Amending Rules 1008 and 1013 of the Minor Court Civil Rules; No. 362; Magisterial Rules Doc.

Order

Per Curiam

And Now, this 16th day of August, 2013, upon the recommendation of the Minor Court Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1008 and 1013 of the Minor Court Civil Rules are amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective September 15, 2013.

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 1000. APPEALS

APPEAL

Rule 1008. Appeal as Supersedeas.

* * * * *

C. Indigent Tenants

* * * * *

(3)(a) If the rent has already been paid to the landlord in the month in which the notice of appeal is filed, the tenant shall pay into an escrow account with the prothonotary the monthly rent [**as it becomes due under the lease for the months subsequent to the filing of the notice of appeal**] in thirty (30) day intervals from the date the notice of appeal was filed; or

* * * * *

CERTIORARI

Rule 1013. Writ of Certiorari as Supersedeas.

* * * * *

C. Indigent Tenants

* * * * *

(3)(a) If the rent has already been paid to the landlord in the month in which the praecipe is filed, the tenant shall pay into an escrow account with the prothonotary the monthly rent [**as it becomes due under the lease for the months subsequent to the filing of the praecipe**] in thirty (30) day intervals from the date the praecipe was filed; or

* * * * *

FINAL REPORT

Recommendation 1-2013, Minor Court Rules Committee Amendments to Rules 1008 and 1013 of the Minor Court Civil Rules

Exceptions for Indigent Residential Tenants in Appeals

On August 16, 2013, effective September 15, 2013, upon recommendation of the Minor Court Rules Committee¹, the Supreme Court of Pennsylvania approved amendments to Rules 1008 and 1013 of the Minor Court Civil Rules.²

I. Background and Discussion

The Minor Court Rules Committee (the “Committee”) recommended amendments to the rules of procedure governing exceptions for indigent tenants in appeals from judgments of magisterial district courts. The goal of these rule changes is to amend the rules for depositing sums of rent to secure a supersedeas by low income tenants appealing judgments for possession and filing praecipes for writs of certiorari. Moreover, these rule changes promote consistency between the rules and the Supplemental Instructions for Obtaining a Stay of Eviction³ (“Supplemental Instructions”).

Rule 1008 was the past subject of constitutional challenges by legal services organizations. Subsequently, the Court instructed the Committee to draft changes to the rules similar to changes made by the Philadelphia Municipal Court following litigation in the federal district court case *Pleasant v. Evers*, 1998 WL 205431 (E.D. Pa. April 24, 1998), C.A. NO. 97-4124 (Ludwig, J.). The changes to Rules 1008 and 1013, adopted by the Court on April 15, 2008, allow an indigent tenant to appeal and/or file a praecipe for writ of certiorari while still maintaining his or her housing. The indigent tenant is required to pay a sum of money, but it is a lesser sum of money than a non-indigent tenant, who would pay three times the monthly rent or the rent determined to be in arrears by the magisterial district judge.

Presently, the solicitor for a county prothonotary contacted the Committee to report a discrepancy between Rules 1008 and 1013, and the Supplemental Instructions. Specifically, the solicitor noted that Rules 1008C(3)(a) and 1013C(3)(a) required a tenant who had already paid rent in the month in which the appeal or praecipe was filed to “pay into an escrow account with the prothonotary the monthly rent as it becomes due under the lease for the months subsequent to the filing of the [appeal or praecipe].” (Emphasis added.) In contrast, the Supplemental Instructions, made available to tenants online and at the prothonotary’s office, directed a tenant in the same circumstance to “pay your monthly rent on an ongoing basis into an escrow account with the prothonotary in thirty (30) day intervals from the date the notice of appeal or praecipe was filed until the time of trial.”

In determining whether to conform the Supplemental Instructions to the rules or vice versa, the Committee agreed that calculating the date for future rent payments by using the date the notice of appeal or praecipe was filed, instead of the date rent comes due under the lease, would create greater certainty for the parties. As the magisterial district courts are not courts of record, there is no record evidence of the due date of rent. Using the

¹ Minor Court Rules Committee Recommendation 1-2013.
² Supreme Court of Pennsylvania Order No. 362, Magisterial Docket (August 16, 2013).
³ The Supplemental Instructions can be found on the website of the Administrative Office of Pennsylvania Courts at www.pacourts.us.

date of appeal or praecipe filing as the trigger for calculating future rent payments ensures the use of a date certain that is recorded by the prothonotary, and, therefore, eliminates uncertainty as to when a payment to escrow is due.

II. *Approved Rule Changes*

To address the issues discussed above, the Committee proposed amending Rules 1008C(3)(a) and 1013C(3)(a) to delete the requirement that rent be paid into an escrow account “as it becomes due under the lease for the months subsequent to the filing of the [appeal or praecipe],” and, instead, require the payment of rent into escrow “in thirty (30) day intervals from the date the [notice of appeal or praecipe] was filed.” This change brings consistency to Rules 1008 and 1013, and the Supplemental Instructions.

[Pa.B. Doc. No. 13-1607. Filed for public inspection August 30, 2013, 9:00 a.m.]

Title 255—LOCAL COURT RULES

LACKAWANNA COUNTY

Adult Probation Drug Test Fees; 2013-CV-1

Administrative Order

Now, this 7th day of August, 2013, effective 30 days following publication in the *Pennsylvania Bulletin*, the Adult Probation and Parole Department will impose a \$150.00 annual fee for those ordered by the courts to undergo one or more Drug Tests. This order supersedes Court Order 2011-Misc-501. The Clerk of Judicial Records

shall collect this fee as part of Court fees levied on defendants and the Lackawanna County Treasurer shall establish and administer a separate Lackawanna County Adult Probation Drug Test Fund, consisting of those funds received from this Drug Test Fee.

It is further ordered that, in accordance with Pa.R.C.P. 239, this District Court Administrator of Lackawanna County, Pennsylvania, shall:

(a) File seven (7) certified copies hereof with the Administrative Office of Pennsylvania Courts;

(b) Distribute two (2) certified copies hereof to the Legislative Reference Bureau for Publication on the *Pennsylvania Bulletin*;

(c) File one (1) certified copy hereof with the Criminal Rules Committee;

(d) Cause a copy hereof to be published one (1) time in the *Lackawanna Jurist* at the expense of the County of Lackawanna; and

(e) Supervise and distribute hereof to all Judges of this Court.

It is Further Ordered that copies of this Order are directed to: the Court of Common Pleas; the District Court Administrator; the Lackawanna County District Attorney’s Office; the Lackawanna County Public Defender’s Office; the Lackawanna County Clerk of Judicial Records Office; the Lackawanna County Adult Probation and Parole Office; and the Lackawanna County Treasurer’s Office.

By the Court

THOMAS J. MUNLEY,
President Judge

[Pa.B. Doc. No. 13-1608. Filed for public inspection August 30, 2013, 9:00 a.m.]
