

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 17]

Proposed Amendment of Pa.R.A.P. 1737

The Appellate Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 1737 for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will not constitute a part of the rules and will not be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Appellate Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: (717) 231-9551
appellaterules@pacourts.us

All communications in reference to the proposal should be received by December 1, 2015. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Appellate Court
Procedural Rules Committee*

HONORABLE RENÉE COHN JUBELIRER,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 17. EFFECT OF APPEALS; SUPERSEDEAS AND STAYS

STAY OR INJUNCTION IN CIVIL MATTERS

Rule 1737. [**Objections to Security**] **Modification of Terms of *Supersedeas*.**

(a) The [**lower**] trial court or the appellate court, may at any time, upon application of any party and after notice and opportunity for hearing[, **upon cause shown**]:

(1) [**Require**] **require** security of a party otherwise exempt from the requirement of filing security[, **or**

increase, decrease or eliminate the amount of any security which has been or is to be filed.] upon cause shown;

(2) [**Strike**] **strike** off security improperly filed[.];

(3) [**Permit**] **permit** the substitution of surety and enter an exoneration of the former surety[.] ; **or**

(4) **increase, decrease, or otherwise alter the amount or type of any security that has been or is to be filed by a party, upon cause shown for the modification.**

(b) **The parties may at any time stipulate to the type or amount of security and, upon filing, such a written stipulation will act to set the terms of a *supersedeas* of the judgment to the same extent as would an order of the court.**

Official Note: The amount of automatic *supersedeas* of money judgments has been set at 120 percent of the verdict, and in most instances that amount will assure payment of a judgment and interest accrued during an appeal without imposing undue hardship on an appellant. See Pa.R.A.P. 1731. There may be circumstances, however, in which it would be appropriate for a court or the parties by agreement to modify the default approach to security, particularly given that Pa.R.A.P. 2771 provides for the premium paid for the cost of *supersedeas* bonds or other appellate bonds to be taxable as a cost on appeal.

A party may seek appellate review of an order resolving an application under this rule. See Pa.R.A.P. 1732 and Pa.R.A.P. 3315.

EXPLANATORY COMMENT

There are four rules that in the first instance govern the setting of *supersedeas* or a stay of a trial court order during appeal: Pa.R.A.P. 1731, which sets the standard *supersedeas* amount of a money judgment at 120 percent of the verdict; Pa.R.A.P. 1732 and 1733, which together govern the setting of terms for superseding non-monetary relief during appeal; and Pa.R.A.P. 1736, which identifies those entities that are typically exempt from posting security on appeal. Other rules, such as Pa.R.A.P. 1734 and 1738, focus on the form or type of security.

By its terms, Pa.R.A.P. 1737 currently addresses objections under Pa.R.A.P. 1731 and 1736, and also provides a mechanism for correcting errors or updating sureties under Pa.R.A.P. 1734. The Committee believes that the rule may not be explicit enough about the options that are available to litigants to modify the terms of *supersedeas* of money judgments, such as for parties to agree to modify (including by eliminating) security; for an appellant to request alternatives other than the amount of security, such as payment of the 120 percent in two or more installments; and for an appellant to appeal a denial of a motion to adjust security. Accordingly, the Committee proposes to amend the title of the rule from “Objections to Security” to “Modification of Terms of *Supersedeas*” and to provide greater detail about the parties’ and trial court’s flexibility in both the rule and the note.

In addition, the current rule requires “cause shown” for all of the objections, and the Committee does not believe there is a reason to require “cause” for a person to

substitute sureties or strike off improperly filed security. Accordingly, the Committee proposes to incorporate "cause shown" only in those provisions that warrant such a burden.

In drafting this proposal, the Committee recognized that there are very few published decisions addressing the modification of *supersedeas*, and it looks forward to hearing from the bench and bar whether the proposed amendment will adequately address the circumstances that are encountered with adjustments to *supersedeas* of money judgments.

[Pa.B. Doc. No. 15-1791. Filed for public inspection October 9, 2015, 9:00 a.m.]

Title 255—LOCAL COURT RULES

LEHIGH COUNTY

Rule 230.2 Termination of Inactive Cases; No. 2015-J-61

Administrative Order

And Now, this 10th day of September 2015, *It Is Hereby Ordered That* Lehigh County Rule 230.2, Termination of Inactive Cases, authorizing the termination of Civil and Family Court cases when there has been no activity on the docket for a period of two (2) or more years, be and the same is hereby *Adopted*, effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

It Is Further Ordered That the Court Administrator of Lehigh County shall file: one (1) certified copy of this Order and the Lehigh County Rule authorizing the termination of Inactive Civil and Family Court Cases with the Administrative Office of Pennsylvania Courts; two (2) certified copies and a computer diskette or CD-ROM copy that complies with the requirement of 1 Pa. Code Section 13.11(b) with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; and one (1) certified copy with the Civil Procedural Rules Committee.

By the Court

EDWARD D. REIBMAN,
President Judge

Leh.R.C.P. 230.2. Termination of Inactive Cases.

(a) This Local Rule shall be applicable to all Civil and Family Court cases, with the exception of Custody and Orphan's Court cases.

(b) The Court may initiate proceedings to terminate cases in which there has been no activity on the docket for a period of two (2) years or more.

(c) The Clerk of Judicial Records shall serve notices of case termination to counsel of record and any unrepresented party at the last address of record thirty (30) days prior to the date of the proposed termination. The notice shall contain the date of the proposed termination and the procedure to avoid termination.

(d) The notice shall be served pursuant to Pa.R.C.P. 205.4(g)(1). If the mailed notice is returned from the U.S. Post Office with a new address, the Clerk of Judicial Records shall re-mail the notice to the new address and enter the new address in the docket.

(e) The notice of proposed termination shall be in substantially the following form:

(Caption)

NOTICE OF PROPOSED TERMINATION OF COURT CASE

The court intends to terminate this case without further notice because the docket shows no activity in the case for at least two (2) years.

You may stop the court from terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the Clerk of Judicial Records at CLERK OF JUDICIAL RECORDS, LEHIGH COUNTY COURTHOUSE, 455 WEST HAMILTON STREET, ALLENTOWN PA 18101, on or before (DATE) _____.

IF YOU FAIL TO FILE THE REQUIRED STATEMENT OF INTENTION TO PROCEED, THE CASE WILL BE TERMINATED BY THE CLERK WITHOUT FURTHER NOTICE.

BY THE COURT:

Date of this Notice Clerk of Judicial Records

(f) If a party wishes the case to remain open, he or she must return a completed Statement of Intention to Proceed to the Clerk of Judicial Records by the date set forth in the Notice of Proposed Termination of Court Case. The Statement of Intention to Proceed shall be in the following form:

(Caption)

Statement of Intention to Proceed

To The Court:

_____ intends to proceed with the above-captioned case.

Date: _____

Signature of Party or Attorney of Record for _____

(g) If a Statement of Intention to Proceed has not been filed within the required time period, the Clerk of Judicial Records shall enter an order terminating the case for failure to prosecute.

(h) If a case has been terminated pursuant to this rule, an aggrieved party may petition the Court to have the case reinstated.

(1) If the petition to reinstate the case is filed within sixty (60) days of the filing of the order terminating the case, the Court shall grant the petition and reinstate the case.

(2) If the petition to reinstate the case is filed more than sixty (60) days after the filing of the order terminating the case, the court shall grant the petition and reinstate the case upon a showing that:

(i) the petition was timely filed following the entry of the order terminating the case; and

(ii) there is a reasonable explanation or legitimate excuse for the failure to have filed:

(a) the Statement of Intention to Proceed prior to the entry of the order terminating the case; and

(b) the petition to reinstate the case within sixty (60) days after the entry of the order terminating the case.

(i). Any case which is reinstated pursuant to paragraph (h) shall be subject to termination with prejudice upon a subsequent termination. No subsequent reinstatements will be granted.

[Pa.B. Doc. No. 15-1792. Filed for public inspection October 9, 2015, 9:00 a.m.]

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LYCOMING COUNTY

**Amendments to the Rules of Criminal Procedure;
Doc. No. 15-00006**

Order

And Now, this 21st day of September, 2015, it is hereby *Ordered and Directed* as follows:

1. Lycoming County Rule of Criminal Procedure L107A is hereby rescinded.

2. New Lycoming County Rule of Criminal Procedure L507 is hereby promulgated, as set forth as follows.

3. The Prothonotary is directed to:

a. File one (1) certified copy of this order with the Administrative Office of the Pennsylvania Courts.

b. Forward two (2) certified copies of this order and a computer disk containing the text of the local rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

c. Forward one (1) copy of this order to the chairman of the Lycoming County Customs and Rules Committee.

4. The District Court Administrator shall publish a copy of new rule L507 on the Unified Judicial System's web site.

5. The revisions shall become effective 30 days after the publication of this order in the *Pennsylvania Bulletin*.

By the Court

NANCY L. BUTTS,
President Judge

L507. Approval of Complaints and Arrest Warrant Affidavits by the Attorney for the Commonwealth.

The District Attorney of Lycoming County, having filed a certification pursuant to Pa.R.Crim.P. 507, criminal complaints and arrest warrant affidavits for all felony charges and any offenses requiring registration pursuant to 42 Pa.C.S. § 9799.14 shall not hereafter be accepted by any judicial officer unless the complaint and affidavit have the approval of an attorney for the Commonwealth prior to filing.

Note: The District Attorney's certification was filed on March 12, 2015 with the Clerk of the Courts of Lycoming County, to docket number MD-109-2015.

[Pa.B. Doc. No. 15-1793. Filed for public inspection October 9, 2015, 9:00 a.m.]

LYCOMING COUNTY

**Amendments to the Rules of Criminal Procedure;
Doc. No. 15-00006**

Order

And Now, this 21st day of September, 2015, it is hereby *Ordered and Directed* as follows:

1. Lycoming County Rules of Criminal Procedure L140, L141, L142, L143, L200, L301, L303, L316, L1401, L1409, L2002A and L4006 are hereby rescinded.

2. New Lycoming County Rules of Criminal Procedure L122, L202, L525, L540, L578 and L700 are hereby promulgated, as set forth on the following.

3. The Prothonotary is directed to:

a. File one (1) certified copy of this order with the Administrative Office of the Pennsylvania Courts.

b. Forward two (2) certified copies of this order and a computer disk containing the text of the local rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

c. Forward one (1) copy of this order to the chairman of the Lycoming County Customs and Rules Committee.

4. The District Court Administrator shall publish a copy of the new rules on the Unified Judicial System's web site.

5. The revisions shall become effective 30 days after the publication of this order in the *Pennsylvania Bulletin*.

By the Court

NANCY L. BUTTS,
President Judge

L122. Assignment of Counsel.

A. Applications for assignment of a public defender shall be submitted to the public defender's office. Applications shall be approved or rejected in accordance with specific written standards established by the court, which shall be available for inspection in the public defender's office. The application will be approved or rejected by the chief public defender, and in the event of rejection the defendant will be advised of the right to appeal to the court.

B. Nothing herein contained shall prevent the court, after notice and hearing, from revoking an appointment of counsel due to the non-indigency of the defendant, but in no event shall a revocation be made when the effect thereof would require a continuance of the trial of the case.

L202. Approval of Search Warrant Applications by Attorney for the Commonwealth.

The District Attorney of Lycoming County having filed a certification pursuant to Pa.R.Crim.P. 202, search warrants in all circumstances shall not hereafter be issued by any judicial officer unless the search warrant application has the approval of an attorney for the Commonwealth prior to filing.

L525. Bail.

A. The person for whom bail has been set, or a private third party surety, shall, with the approval of the court or issuing authority, execute a bail bond and deposit with the clerk of courts or issuing authority, a sum of money equal to ten percent (10%) of the bail, but in no event shall such deposit be less than fifty (\$50.00) dollars.

Corporate sureties are expressly prohibited from posting the deposit for bail set under this section.

B. In all court cases, except ROR or nominal bail, an administrative fee shall be paid to the clerk of courts at the time the bail bond is executed. In ROR and nominal bail, an administrative fee shall be added to the bail amount in the event of a default. The administrative fee shall be considered as earned at the time the bail undertaking is executed.

C. In all cases where there has been a non-appearance before a magistrate and a bail bond has been executed, the bail bond shall be immediately transmitted to the clerk of courts along with a written statement of the details concerning the defendant's non-appearance and an order declaring the forfeiture of bail.

D. Judgment shall be entered immediately, under the direction of the prothonotary and clerk of court in all bail situations except ROR, nominal bail and full cash bail, unless the issuing authority or court directs that judgment be entered in these instances.

E. When the conditions of a bail bond have been performed and the defendant has been discharged from all obligations in the cause, upon an appropriate order of court, the clerk of court shall return to the accused, unless the court orders otherwise, the entire amount of cash bail deposited, less any unpaid administrative costs. In the event that judgment has been entered on any bail bond, upon receiving an order that the defendant has been discharged from all obligations, the clerk of courts shall mark the judgment satisfied on the record.

F. If the defendant does not comply with the conditions of the bail bond, the court shall enter an order pursuant to Pa.R.Crim.P. 536 and notice of such order of forfeiture shall be mailed forthwith by certified mail to the defendant at his last known address.

G. If the court orders the defendant to pay a fine and costs of prosecution, the balance of any cash bail deposited by the defendant may be applied to the payment of said fine and costs, as ordered by the court. Where a third party surety has posted a deposit, the deposit may be applied to the payment of fine and costs upon the written authorization of third party surety.

H. Upon authorization in writing of any party who posted a cash deposit, the court may order whatever amount is repayable from such deposit to be paid to the defendant's attorney of record.

I. Any cash deposits not claimed within one year from the notice of full and final disposition of the case shall be deemed as fees and shall be forfeited to the court. Notice of such proposed forfeitures shall be sent to the accused, the surety, if any, and the attorney of record.

J. When a defendant has failed to comply with the rules and regulations of the bail bond, or any additional conditions of his release, he may be brought before the court to determine if additional bail shall be set in his case.

K. In all cases where the accused's case is disposed of through a verdict of not guilty, or a dismissal, through nolle prosequere, or otherwise, the administrative costs provided for in this rule shall be returned to the accused. These costs shall then be placed on the county.

L. If the accused asserts an inability to pay the administrative fee set forth in this rule, the matter shall be handled by the issuing authority through the filing of a petition to proceed in forma pauperis.

L540. Preliminary Arraignment.

In advising the defendant of the right to choose counsel and of the right to be assigned counsel, the issuing authority shall specifically describe the procedure to be followed in applying for assignment of counsel and shall have public defender application forms available.

L578. Continuances.

All requests for continuances shall be on forms provided by the court administrator.

L700. Sentencing Judge.

The sentence on a plea of guilty or nolo contendere may be imposed by a judge other than the judge who received the plea of guilty or nolo contendere. In such event, the defendant must be so notified at the time of entering the plea.

[Pa.B. Doc. No. 15-1794. Filed for public inspection October 9, 2015, 9:00 a.m.]

WESTMORELAND COUNTY

Rescinding Orphans' Court Rule WO407(b)(1); No. 3 of 2015

And Now, this 17th day of September, 2015, it is *Hereby Ordered* that Westmoreland County Rule of Orphans' Court Procedure WO407(b)(1) is rescinded, and new Rule WO407(b)(1) is adopted. This change is effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

RICHARD E. McCORMICK, Jr.,
President Judge

Rule WO407. Small Estates.

(b) Personalty and realty.

(1) When any person domiciled in Westmoreland County, Pennsylvania, dies owning real and personal property of a gross value not exceeding \$50,000, the personal representative, after the expiration of 1 year from the date of the first complete advertisement of the grant of letters, may present a petition to the court seeking approval of the representative's administration of the estate, requesting distribution of the estate assets, and further requesting discharge of the representative.

(2) The petition shall set forth the information required in WO406(a). In addition, the petition shall include in the appropriate paragraph:

(A) the items of real property owned by decedent and their value at the date of death;

(B) whether the decedent died intestate as to any real property;

(C) as an exhibit, an account showing the administration and any distribution theretofore made of the estate;

(3) Upon presentation of the petition, the court shall direct 10 days' written notice to be given to all parties in interest who have not consented thereto that unless exceptions are filed to said petition and the account annexed, within 30 days of the date of the filing thereof, the court will confirm said account, make distribution as requested, and may discharge the petitioner and any surety from future liability.

(4) Any final order shall provide that it will not become absolute for 10 days.

Cross References:

See 20 Pa.C.S.A. § 3531. When a family exemption is claimed out of real estate, a petition must be presented under 20 Pa.C.S.A. § 3123, and WO401, unless all parties in interest agree in writing to the valuation at which such real estate is to be awarded. See Supreme Court Orphans' Court Rule 12.1.

Adopted February 1, 1996, effective May 1, 1996, renumbered from Rule WO406, effective March 30, 1998. Revised December 3, 2003, effective January 19, 2004. Rule WO407(a)(2)(G) and Rule WO7(a)(5) rescinded November 4, 2005; New Rule WO407(a)(2)(G) adopted November 4, 2005, effective December 25, 2005. Introductory paragraph of Rule WO407(a)(1) rescinded April 28, 2014; New introductory paragraph of Rule WO401(a)(1) adopted April 28, 2014, effective June 9, 2014. Rule WO407(b)(1) rescinded , 2015; New Rule WO407(b)(1) adopted , 2015, effective , 2015.

[Pa.B. Doc. No. 15-1795. Filed for public inspection October 9, 2015, 9:00 a.m.]

WESTMORELAND COUNTY

**Rescinding Rule of Judicial Administration WJ103;
No. 3 of 2015**

And Now, this 23rd day of September, 2015, it is *Hereby Ordered* that Westmoreland County Rule of Judicial Administration WJ103 is rescinded, and new Rule WJ103 is adopted. This change is effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

RICHARD E. McCORMICK, Jr.,
President Judge

Rule WJ103. Official Publisher of Local Rules.

The Westmoreland County Court Administrator is the official publisher of the Westmoreland County Rules of Court.

Adopted December 16, 1993, effective April 1, 1994. Rule WJ103 rescinded , 2015; New Rule WJ103 adopted , 2015, effective , 2015.

[Pa.B. Doc. No. 15-1796. Filed for public inspection October 9, 2015, 9:00 a.m.]

**DISCIPLINARY BOARD OF
THE SUPREME COURT**

Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated September 24, 2015, Mhkeeba Leshare Pate (# 95091) has been Suspended from the practice of law in this Commonwealth for a period of two years, to take effect October 24, 2015. This reciprocal suspension is based on a two year suspension that was imposed in the State of Washington. 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,

Secretary

*The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 15-1797. Filed for public inspection October 9, 2015, 9:00 a.m.]
