

THE COURTS

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 200]

Proposed Amendment to Rule 202 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices

Introduction

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa. R.C.P.D.J. No. 202 to define the word "verified" as used in the rules, and to make other technical amendments to this rule. The Committee has not submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the official Committee Notes to the rules. The Supreme Court does not adopt the Committee's Notes or the contents of the explanatory Reports.

The text of the proposed changes precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

Michael F. Krimmel, Counsel
Supreme Court of Pennsylvania
Minor Court Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055

or e-mail to: minorcourt.rules@supreme.court.state.pa.us
no later than Wednesday, November 14, 2001.

By the Minor Court Rules Committee

FRED A. PIERANTONI, III
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 200. RULES OF CONSTRUCTION; GENERAL PROVISIONS

Rule 202. Definitions.

As used in these rules, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise or the particular word or phrase is expressly defined in the chapter in which the particular rule is included:

[(1) *District justice*—The district justice, before whom the action or proceeding is pending.

(2) *Sheriff*—Includes a deputy sheriff.

(3) *Constable*—Includes a deputy constable.

(4) *Prothonotary*—Includes any officer exercising the powers and performing the duties of the office of prothonotary as set forth in the Judicial Code, and includes the analogous officer in those counties which do not have a prothonotary.]

(1) *Constable*—A certified constable or a certified deputy constable.

(2) *District justice*—The district justice before whom the action or proceeding is pending.

(3) *Prothonotary*—Any officer exercising the powers and performing the duties of the office of prothonotary as set forth in the Judicial Code, and includes the analogous officer in those counties which do not have a prothonotary.

(4) *Sheriff*—A deputy sheriff.

(5) *Verified*—When used in reference to a written statement of fact by the signer, means supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Official Note

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Amended April 25, 1979, effective in 30 days, June 30, 1982, effective 30 days after July 17, 1982; amended effective Dec. 1, 1983; amended July 16, 2001, effective August 1, 2001; amended _____, effective _____.

REPORT

Proposed Amendment to Pa. R.C.P.D.J. No. 202

Amendment to Rule 202 to define the word "verified" as used in the rules

The Committee undertook a review of Rule 202 when it discovered that the word "verified" was used in the rules but was not defined. Upon review of the three instances where the word currently is used in the rules, the Committee determined that it should be defined in Rule 202 (Definitions). The Committee proposes that the same definition for "verified" as is used in Pa.R.C.P. No. 76 be adopted in Pa. R.C.P.D.J. No. 202.

In conjunction with the proposed amendment to the rule described above, the Committee also recognized the need for two technical amendments to this rule. First, the Committee proposes that the introductory language in the rule be amended to more closely mirror that in Pa.R.C.P. No. 76 so as to more clearly state how terms in the rules are to be defined and construed. Also, the Committee proposes that the rule be restructured to remove the numbered list of definitions and to list the definitions in alphabetical order. The Committee believes that this technical change will present the list of defined terms in a more logical order and will better facilitate future additions to or deletions from the list.

[Pa.B. Doc. No. 01-1881. Filed for public inspection October 19, 2001, 9:00 a.m.]

PART I. GENERAL
[246 PA. CODE CH. 200]

Proposed Amendment to Rule 206 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices

Introduction

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa. R.C.P.D.J. No. 206 to clarify that a party who has been allowed to proceed in forma pauperis pursuant to Rule 206 is not required to pay service costs, and to make other technical or "housekeeping" amendments to this rule. The Committee has not submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the official Committee Notes to the rules. The Supreme Court does not adopt the Committee's Notes or the contents of the explanatory Reports.

The text of the proposed changes precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

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Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

**CHAPTER 200. RULES OF CONSTRUCTION;
 GENERAL PROVISIONS**

Rule 206. Fees. Costs.

* * * * *

B. Except as otherwise provided by subdivision C of this rule, the prevailing party in district justice proceedings shall be entitled to recover his **or her** taxable costs from the unsuccessful **[litigant] party**. Such costs shall consist of all filing, **personal** service, witness, and execution costs or fees authorized by **[law] Act of Assembly** or general rule and paid by the prevailing party.

C. Taxable costs on appeal or certiorari shall be paid by the unsuccessful party, and a plaintiff who appeals shall be considered an unsuccessful party if he **or she** does not obtain on appeal a judgment more favorable than that **[which he]** obtained in the district justice proceeding. A defendant who prevails on certiorari proceedings brought by **[him] the defendant** or who obtains a **favorable** judgment **[in his favor]** upon appeal by either party shall not be liable for costs incurred by the plaintiff in the preceding district justice proceeding and may recover his **or her** taxable costs in that proceeding from the plaintiff. A plaintiff who is

unsuccessful in the district justice proceeding may recover his **or her** taxable costs in that proceeding from the defendant if **[he] the plaintiff** is successful on appeal, and in that event the defendant may not recover his **or her** costs in the district justice proceeding from the plaintiff.

* * * * *

Official Note

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["Service"] Under subdivision B, "personal service . . . costs or fees" refer only to personal service since mail costs are to be borne by the plaintiff in all cases in accordance with Section 1725.1 of the Judicial Code, 42 Pa.C.S. § 1725.1.

This rule does not provide for the assessment of filing fees against an unsuccessful plaintiff who has been permitted to proceed in forma pauperis and who remains indigent. See Brady v. Ford, 679 A.2d 837 (Pa. Super. Ct. 1996).

For special provisions governing **[proceedings in forma pauperis, see Section]** actions pursuant to the Protection From Abuse Act, see Sections 6106(b) and (c) of the Domestic Relations Code, 23 Pa.C.S. **[Section] §§ 6106(b) and (c).**

E. Proceedings In Forma Pauperis

* * * * *

(ii) Except as provided by **[subdivision] subparagraph (iii)**, the party shall file a petition and affidavit in the form prescribed by **[subdivision] subparagraph (vi)**. The petition may not be filed prior to the commencement of the action, which action shall be accepted in the first instance, without the payment of a filing fee.

Except as prescribed by **[subdivision] subparagraph (iii)**, the District Justice shall act promptly upon the petition and shall enter an order within five days from the date of the filing of the petition. If the petition is denied, in whole or in part, the District Justice shall briefly state the reasons therefor. In this case the unsuccessful petitioner may proceed no further so long as such fee remains unpaid.

(iii) If the party is represented by an attorney, the District Justice shall allow the party to proceed in forma pauperis upon the filing of a praecipe which contains a certification by the attorney that he **or she** is providing free legal service to the party and **[that he]** believes the party is unable to pay the costs.

(iv) A party permitted to proceed in forma pauperis shall not be required to pay **[the filing] any cost or fee** imposed or authorized by Act of Assembly or general rule **which is payable to any court or any public officer or employee**. Such party shall be informed of the option to serve the complaint by mail in the manner permitted by **[the Rules of Civil Procedure Governing Actions And Proceedings Before District Justices] these rules.**

* * * * *

[Comment] Note

This Rule substantially follows Pa.R.C.P. No. 240. **Under subparagraph E(iv), "any cost or fee" includes all filing, service, witness, and execution costs or fees.**

Adopted April 25, 1979, effective in 30 days. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective Sept. 18, 1990; amended March 27, 1992, effective June 25, 1992 [**The March 27, 1992, Order provided in part: "In promulgating this Order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those rules which affect the Project will become effective as the District Justice offices are brought online."**] amended _____, effective _____.

REPORT

Proposed Amendment to Pa.R.C.P.D.J. No. 206

Amendment to Rule 206 to clarify that a party who has been allowed to proceed in forma pauperis pursuant to Title 206 is not required to pay service costs

I. Background

The Committee undertook a review of Rule 206 in response to an inquiry from the Administrative Office in Pennsylvania Courts (AOPC). The AOPC asked the Committee to review the issue of whether a party who has been allowed to proceed in forma pauperis as provided by Rule 206 is required to pay constable (service) costs. The AOPC noted that Rule 206E provides that a party who is unable to pay the costs of litigation shall be entitled to proceed in formal pauperis and that the rule further provides that a party permitted to proceed in forma pauperis shall not be required to pay the filing fee imposed or authorized by Act of Assembly or general rule. The AOPC further noted that Rule 206 is silent as to whether payment of service costs is required by a party proceeding in forma pauperis. Upon review of the rule, the Committee notes that the Note to Rule 206 states that the rule "substantially follows Pa.R.C.P. No. 240," which appears to specifically exempt all costs and fees. Pa.R.C.P. No. 240(f)(1) provides that "a party permitted to proceed in forma pauperis shall not be required to pay any costs or fee imposed or authorized by Act of Assembly or general rule which is payable to any court or prothonotary or any public officer or employee."

After review and discussion, the Committee agreed that Rule 206 is inconsistent with Pa.R.C.P. No. 240 in that Rule 206 refers only to filing fees and is silent as to the payment of service costs by parties who are permitted to proceed in forma pauperis. Further, the Committee agreed that it is well settled that such parties should not be required to pay service costs. Accordingly, the Committee proposes that Rule 206 be amended to make this clarification and to more closely mirror Pa.R.C.P. No. 240.

In conjunction with the proposed amendment to the rule described above, the Committee also recognized the need for several technical or "housekeeping" amendments to this rule.

II. Discussion of Rule Changes

First, as noted above, the Committee proposes that rule 206E(iv) be amended to closely resemble Pa.R.C.P. No. 240(f)(1) thereby clarifying that a party permitted to proceed in forma pauperis shall not be required to pay "any cost or fee" including filing, service, witness, and execution costs or fees.

Also, the Committee proposes a revision to the Note to clarify that the rule does not provide for the assessment of filing fees against an unsuccessful plaintiff who has been permitted to proceed in forma pauperis and who

remains indigent. As authority for this, the Committee proposes to add a reference to *Brady v. Ford*, 679 A.2d 837 (Pa. Super. Ct. 1996).

Finally, in conjunction with the proposed amendments and revisions described above, the Committee also recognized the need for minor changes to the rule and its Note to make other minor clarifications, to address gender neutrality issues, to correct citation form, and to conform with modern drafting style.

[Pa.B. Doc. No. 01-1882. Filed for public inspection October 19, 2001, 9:00 a.m.]

PART I. GENERAL

[246 PA. CODE CH. 300]

Proposed Amendment to Rule 305 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa. R.C.P.D.J. No. 305 to remove from the rule the implication that parties can obtain legal advice from district justices or court staff, and to make other technical or "housekeeping" amendments to this rule. The Committee has not submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the official Committee Notes to the rules. The Supreme Court does not adopt the Committee's Notes or the contents of the explanatory Reports.

The text of the proposed changes precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

Michael F. Krimmel, Counsel
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no later than Wednesday, November 14, 2001.

By the Minor Court Rules Committee

FRED A. PIERANTONI, III,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 300. CIVIL ACTION

Rule 305. Setting the Date for Hearing; Delivery for Service.

The district justice, at the time the complaint is filed, shall:

(1) Set a hearing date which shall be not less than [**twelve (12)**] 12 or more than [**sixty (60)**] 60 days from the date the complaint is filed.

(2) Insert the hearing time and date and the address of **[his magisterial office] the district justice court** in the complaint form.

(3) Deliver a copy of the complaint form with hearing time and date thereon to the plaintiff **[or his agent]**.

(4) Deliver a copy of the complaint form with hearing time and date thereon for service on the defendant as hereinafter set forth, which copy shall contain the following notice:

* * * * *

(b) If you have a claim against the plaintiff which is within district justice jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five **[(5)]** days before the date set for the hearing. **[If you have a claim against the plaintiff which is not within district justice jurisdiction, you may request information from this office as to the procedures you may follow.]**

(c) **[You must appear at the hearing and present your defense.] YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT [WILL] MAY BE ENTERED AGAINST YOU BY DEFAULT.**

Official Note

The **[sixty] 60** day limitation in subdivision (1) of this rule was considered to provide sufficient time in which to effect service under the requirement of Rule 307 that service be made at least ten days before the hearing. See Rule 314E as to reinstatement of complaints **dismissed because of lack of service. [It is contemplated that the]** The copies required in subdivisions (3) and (4) **[will be]** are provided by the District Justice Automated System **[or "snap out" forms]**. Giving the notice mentioned in subdivision (4)(a) is necessary if the defendant is to obtain judgment under Rule 319A because of the plaintiff's failure to appear. Subdivision (4)(b) gives notice of the right to file a cross-claim within district justice jurisdiction. The procedure for filing such a claim is set forth in Rule 315, and the **[note] Note** to that rule indicates possible procedures as to counterclaims not within district justice jurisdiction. Subdivision (4)(c) provides for a warning concerning a default judgment, which may be rendered under Rule 319B.

Amended Oct. 17, 1975, effective in 90 days; June 30 1982, effective 30 days after July 17, 1982; March 27, 1992, effective June 25, 1992 **[The March 27, 1992, Order provided in part: "In promulgating this Order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line"]**; amended _____, effective _____.

REPORT

Proposed Amendment to Pa. R.C.P.D.J. No. 305

Amendment to Rule 305 To remove from the rule the implication that parties can obtain legal advice from district justices or court staff

I. Background

The Committee undertook a review of Rule 305 in response to a request from the Administrative Office of

Pennsylvania Courts (AOPC). The AOPC reported that it had received an inquiry from a district justice regarding the language on the Civil Action Hearing Notice, AOPC form 308-B-94. The last sentence in the third paragraph of the Notice to Defendant section of the form provides that if the defendant has "a claim against the plaintiff which is not within district justice jurisdiction, you [the defendant] may request information from this [district justice court] office as to the procedures you may follow." The district justice was concerned that this language, the inclusion of which is required by Rule 305(4)(b), implies that a party can obtain legal advice from district justices or court staff. Upon review of the Rule, the Committee agreed that such an implication does exist. Accordingly, the Committee proposes that Rule 305 be amended to remove from the rule the language that creates the implication that parties can obtain legal advice from district justices or court staff.

In conjunction with the proposed amendment to the rule described above, the Committee also recognized the need for several technical or "housekeeping" amendments to this rule.

II. Discussion of Rule Changes

First, as noted above, the Committee proposes that the last sentence in Rule 305(4)(b) be deleted entirely as it creates the implication that parties can obtain legal advice from district justices or court staff. The Committee determined that the sentence may create more confusion and problems than it solves, and therefore should be deleted from the rule and the Civil Action Hearing Notice form.

Also, the Committee is proposing that both sentences in the section of the Notice to Defendant as required by Rule 305(4)(c) be capitalized to make this important section of the notice stand out more prominently.

Finally, in conjunction with the proposed amendments to Rule 305 described above, the Committee also recognized the need for minor changes to the rule and its Note to make other minor clarifications, to address gender neutrality issues, and to conform with modern drafting style.

[Pa.B. Doc. No. 01-1883. Filed for public inspection October 19, 2001, 9:00 a.m.]

Title 25—LOCAL COURT RULES

CUMBERLAND COUNTY

Rules of the Court of Common Pleas; No. 96-1335 Civil Term

Order of Court

And Now, this 8th day of October, 2001, the following Rules of the Court of Common Pleas of Cumberland County, Pennsylvania, are hereby promulgated and adopted for use, effective October 8, 2001, or thirty (30) days after publication in the *Pennsylvania Bulletin*.

Pursuant to Pa.R.C.P. 239, the Court Administrator is directed to forward seven (7) certified copies of this order to the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a

diskette, formatted in Microsoft Word for Windows reflecting the text in the hard copy version, one (1) copy to the Supreme Court Civil Procedural Rules Committee and/or the Supreme Court Domestic Relations Committee, and one (1) copy to the *Cumberland Law Journal*.

By the Court

GEORGE E. HOFFER,
President Judge

Rule 1910.12. Conduct of Hearing: Exceptions.

- (a) Hearings shall be conducted by the Support Master.
- (b) The Support Master shall engage the services of a stenographer; however, the notes of testimony shall not be transcribed unless:
 - (1) required by the Support Master to prepare the report and recommendation to the Court, or
 - (2) ordered by the Court following the filing of exceptions.

(c) It shall be the responsibility of the party who first files exceptions to obtain an order directing that the notes of testimony be transcribed. The party filing the exceptions shall bear the cost of the original transcript. If both parties file exceptions, the cost of the original transcript shall be shared equally. Nothing herein shall prevent the Court from thereafter reallocating the costs of the transcript as part of a final order.

(d) When exceptions are filed, the Domestic Relations Office shall forthwith forward the cases to the Court Administrator who shall assign them to the Judges of the Court of Common Pleas on a rotating basis.

Note: In Cumberland County the "Hearing Officer" referred to in Rule 1910.12 Pa.R.C.P. is designated as the Support Master.

[Pa.B. Doc. No. 01-1884. Filed for public inspection October 19, 2001, 9:00 a.m.]