

IN THE SUPREME COURT OF PENNSYLVANIA

IN RE:

ORDER AMENDING RULE 206
OF THE RULES OF CONDUCT,
OFFICE STANDARDS AND
CIVIL PROCEDURE FOR
DISTRICT JUSTICES

:
: No. 138
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: Magisterial Docket No. 1
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: Book No. 2
:
:

ORDER

PER CURIAM:

AND NOW, this 25th day of November, 2002, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at 31 Pa.B. 5793 (October 20, 2001), 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 206 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices is amended in the attached form.

This **ORDER** shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2003.

NOTE: New material is **bold** and underlined.
Deleted material is **bold** and [**bracketed**].

Rule 206. [FEES.] Costs; [and] Proceedings In Forma Pauperis.

A. Except as otherwise provided by law, the [fees] **costs** for filing and service of the complaint shall be paid at the time of filing.

B. Except as otherwise provided by subdivision C of this rule, the prevailing party in district justice proceedings shall be entitled to recover [his] 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] taxable costs in that proceeding from the plaintiff. A plaintiff who is unsuccessful in the district justice proceeding may recover [his] 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] costs in the district justice proceeding from the plaintiff.

* * * * *

Note

“Execution” costs [or fees] include those for executing an order for possession. The items constituting taxable costs in appeal or certiorari proceedings will be governed by law or general rule applicable in the court of common pleas.

[“Service] **Under subdivision B, “personal service . . . costs” [or fees” refer] refers** 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 costs against an unsuccessful plaintiff who has been permitted to proceed in forma pauperis and who remains indigent. See *Brady v. Ford*, 451 Pa. Super. 363, 679 A.2d 837 (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

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(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**] **costs**.

Except as prescribed by [**subdivision**] **subparagraph** (iii), the District Justice shall act promptly upon the petition and shall enter [**an order**] **a determination** 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**] **The** unsuccessful petitioner may proceed no further so long as such [**fee remains**] **costs remain** 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**] **the attorney** 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 fee**] **any costs** imposed or authorized by Act of Assembly or general rule **which are payable to any court or any public officer or employee**.

[**Such**] **The district justice shall inform a** party **permitted to proceed in forma pauperis** [**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**.

A party permitted to proceed in forma pauperis has a continuing obligation to inform the court of improvement in the party's financial circumstances which will enable the party to pay costs.

(v) If there is a monetary recovery by judgment or settlement in favor of the party permitted to proceed in forma pauperis, the exonerated [**fees**] **costs** shall be taxed as costs and paid to the District Justice by the party paying the monetary recovery. In no event shall the exonerated [**fee**] **costs** be paid to the indigent party.

(vi) The petition for leave to proceed in forma pauperis and affidavit shall be substantially in the following form:

{Caption}

Petition

I hereby request that I be permitted to proceed in forma pauperis (without payment of the filing [**fee**] **and service costs**). In support of this I state the following:

1. I am the plaintiff in the above matter and because of my financial condition am unable to pay the [**fee**] **costs** for filing **and service of** this action.

2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.

3. I represent that the information below relating to my ability to pay the [**fees and**] costs is true and correct:

* * * * *

[Comment] Note

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

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 on-line.”]; **amended November 25, 2002, effective January 1, 2003.**