

FINAL REPORT¹

Amendments to Pa. R.C.P.D.J. Nos. 403, 515, 516, and 519

ISSUANCE AND REISSUANCE OF ORDER OF EXECUTION OR ORDER FOR POSSESSION AFTER SUPERSEDEAS IS TERMINATED OR STAY IS LIFTED; TIME LIMITS FOR REQUESTING ISSUANCE OR REISSUANCE OF ORDER FOR POSSESSION IN CASES ARISING FROM RESIDENTIAL LEASES

On April 5, 2002, effective July 1, 2002, upon recommendation of the Minor Court Rules Committee², the Supreme Court of Pennsylvania amended Rules 403, 515, 516, and 519 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices³.

I. Background

The Minor Court Rules Committee undertook a review of various issues related to the issuance and reissuance of orders of execution and orders for possession on its own initiative. The Committee wished to clarify the procedures for the reissuance of an order of execution or order for possession after a supersedeas is terminated or a stay is lifted. Further, the Committee wished to establish a time limit for a plaintiff to request the issuance or reissuance of an order for possession in cases arising from residential leases.

The Committee believed the amendments providing for the reissuance of an order of execution or order for possession after a supersedeas is terminated or a stay is lifted were necessary to make clear the Committee's position that a plaintiff must request a reissuance of the order of execution or order for possession and may not simply proceed with the previously issued order.

Further, the Committee believed it was necessary to amend the rules to impose a specific time limitation on the plaintiff to request the issuance or reissuance of an order for possession, in cases arising from residential leases, to prevent the plaintiff (landlord) from requesting and executing an order for possession at any time after judgment even though the plaintiff may have led the defendant (tenant) to believe that the defendant could remain in the leased premises under arrangements to pay the back rent. Rule

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

² Recommendation No. 4 Minor Court Rules 2001.

³ Supreme Court of Pennsylvania Order No. 135, Magisterial Docket No. 1, Book No. 2 (April 5, 2002).

518 (Satisfaction of Order By Payment of Rent and Costs) provides that "the defendant may, in a case for the recovery of possession solely because of failure to pay rent, satisfy the order for possession by paying ... the rent actually in arrears and the costs of the proceedings." Pa. R.C.P.D.J. No. 518. This "pay and stay" rule enables defendants to avoid eviction by paying back rent in full before the order for possession is executed. The Committee learned, however, that in many cases even if the defendant is unable to pay the full rent in arrears to avoid eviction, the plaintiff, having received a judgment from the district justice, allows the defendant to stay in the premises on the condition that the defendant pay the back rent in accordance with some payment plan. Because of the serious and sensitive issues surrounding one being evicted from one's home, the Committee recommended a time limit for the plaintiff to request the issuance or reissuance of an order for possession.

In conjunction with amendments to the rules regarding orders of execution and orders for possession, the Committee also recognized the need for several technical or "housekeeping" amendments to these rules.

Before the Committee recommended these amendments to the Supreme Court, the Committee published the proposal for public comment at 31 Pa.B. 4392 (August 11, 2001).

II. Discussion of Rule Changes

A. *Reissuance of Orders After Supersedeas Is Terminated or Stay Lifted*

1. Rule 403

The Committee recommended an amendment to Rule 403 (Issuance and Reissuance of Order of Execution) to add a subparagraph B(2) to provide for the reissuance of an order of execution upon the disposition of an appeal, writ of certiorari, or bankruptcy stay that had superseded or stayed the original order of execution.

The Committee recognized that in most cases an appeal or writ of certiorari will not operate as a supersedeas against an order of execution, because normally the appeal or writ will be filed before an order of execution may be issued because of the 30 day waiting period for requesting an order of execution prescribed by Rule 402A. However, the Committee believed it necessary to provide for this possibility because of the provision in Rule 1002 allowing for an appeal to be filed after the 30 day appeal period with leave of court; and the provision in Rule 1009 allowing for the filing at any time of a writ of certiorari claiming lack of personal or subject matter jurisdiction.

The new subparagraph requires a plaintiff who wishes to proceed with an order of execution after a supersedeas has been terminated or a stay lifted to request a reissuance of the order in accordance with the existing rule.

Also, the Committee recommended the addition of a new subdivision C to require a party requesting a reissuance of an order after a supersedeas is terminated or a stay is lifted to provide the court with an order or other documentation striking, dismissing, terminating, or lifting the supersedeas or stay.

The Committee also recommended a revision to the Note to Rule 403 to make clear that, although there are no filing costs for a reissued order of execution, there may be additional server costs.

2. Rule 516

The Committee recommended a similar amendment to Rule 516 (Issuance of Order for Possession) to add a subparagraph B(2) to provide for the reissuance of an order for possession upon the disposition of an appeal, writ of certiorari, or bankruptcy stay that had superseded or stayed the original order for possession. However, the amendment to Rule 516 differs from the Rule 403 amendment in that the request for reissuance, in cases arising from residential leases, would be subject to a 120-day time limit from the date the appeal, writ, supersedeas, or stay is terminated or lifted. This time limitation will be discussed in greater detail below.

The Committee recognized that in most cases an appeal or writ of certiorari will not operate as a supersedeas against an order for possession, because normally the appeal or writ will be filed before an order for possession may be issued because of the waiting periods for requesting an order for possession prescribed by Rule 515. However, the Committee believed it necessary to provide for this possibility because of the provision in Rule 1002 allowing for an appeal to be filed after the normal appeal period with leave of court; and the provision in Rule 1009 allowing for the filing at any time of a writ of certiorari claiming lack of personal or subject matter jurisdiction.

Also, the Committee recommended the addition of a new subdivision D to require a party requesting a reissuance of an order after a supersedeas is terminated or a stay lifted to provide the court with an order or other documentation striking, dismissing, terminating, or lifting the supersedeas or stay.

The Committee also recommended a revision to the Note to Rule 516 to make clear that, although there are no filing costs for a reissued order for possession, there may be additional server costs.

B. *Time Limitation on Issuance and Reissuance of Order for Possession in Cases Arising From Residential Leases*

1. Rule 515

The Committee recommended that subdivision B of Rule 515 (Request for Order for Possession) be amended to impose a 120-day time limit for the plaintiff to request an order for possession in cases arising from residential leases. Under the new subparagraph B(1), dealing with residential leases, the plaintiff is permitted to request an order for possession after the 10th day but within 120 days. Also, the Committee recommended the addition of a subparagraph B(2) to provide for a 120-day time limit for the plaintiff to request an order for possession, in a case arising from a residential lease, after a supersedeas or bankruptcy stay is terminated or lifted, thus allowing the plaintiff to proceed with the initial request for an order for possession.

The Note to the rule makes clear that the time limitation applies only to the request for order for possession in a case arising from a residential lease, and in no way affects the plaintiffs ability to execute on the money judgment.

2. Rule 516

The Committee also recommended a 120-day time limit on requests for the reissuance of orders for possession in cases arising from residential leases. The Committee recommended that Rule 516 (Issuance of Order For Possession) be amended to add a subparagraph B(1) as the general rule for reissuance of orders for possession. (See discussion of Rule 519 below.) As under the previous version of the rules, the amended Rule 516(B)(1) allows an order for possession to be reissued for one additional 60-day period. The new subdivision C, however, requires that the request for reissuance of the order for possession in a case arising from a residential lease be filed within 120 days of the date of the entry of the judgment or within 120 days of the date an appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated, or a bankruptcy stay is lifted. Also, the Committee recommended that the title of Rule 516 be changed to "ISSUANCE AND REISSUANCE OF ORDER FOR POSSESSION" to more accurately reflect its content and to be consistent with its counterpart in the civil action rules, Rule 403.

The Note to the rule makes clear that the time limitation applies only to the order for possession in cases arising from residential leases and in no way affects the plaintiffs ability to execute on the money judgment.

C. *Correlative Rule Change to Rule 519*

Reissuance of orders for possession was formerly provided for in Rule 519

(Forcible Entry and Ejectment). The Committee recommended that reissuance of orders for possession be handled under Rule 516 as described above, and that Rule 519 be amended accordingly. This change makes the rules relating to landlord and tenant actions more closely parallel the civil action rules (see Pa. R.C.P.D.J. No. 403), and more appropriately arranges the subject matter of the rules. Also, the Committee recommended that the title of Rule 519 be changed to "FORCIBLE ENTRY AND DELIVERY OF POSSESSION" to more accurately reflect its content.

D. Technical and "Housekeeping" Amendments

In a related matter, the Committee recommended a revision to the Note to Rule 515 to clarify that at the time the plaintiff files the request for an order for possession, the district justice court should collect server costs for all actions through delivery of possession. Thereafter, if the debt is satisfied 48 hours or more prior to a scheduled delivery of possession, a portion of the server fees may be refundable. The revised Note cross references Rules 516 through 520 and Section 2950(d) of the Judicial Code, 42 Pa.C.S. § 2950(d).

Finally, the Committee recommended minor changes to Rules 403, 515, 516, and 519 to correct citation form, to address gender neutrality issues in the rules, and to make other minor clarifications.