

FINAL REPORT

Recommendation 1-2008, Minor Court Rules Committee

Amendments to Rules 1008 and 1013 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

EXCEPTIONS FOR INDIGENT RESIDENTIAL TENANTS IN APPEALS

On April 15, 2008, effective May 15, 2008, upon recommendation of the Minor Court Rules Committee,¹ the Supreme Court of Pennsylvania approved amendments to Rules 1008 and 1013 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges.²

I. Background

In late 2007, the Minor Court Rules Committee (“Committee”) became aware of federal district court lawsuits challenging the constitutionality of Pa.R.C.P.M.D.J. No. 1008B. In both *Jones v. Lamb*³ and *Santiago v. Sutton*⁴, federal district court judges enjoined the use of Rule 1008B as applied to indigent tenants. The courts relied upon federal constitutional guarantees of due process and equal protection in holding that indigent residential tenants’ rights were being violated by Rule 1008B’s requirement that tenants post three times the monthly rent or the rent determined to be in arrears so that they could remain in the home while appealing a magisterial district judge’s award of possession to the landlord.

The Committee learned that two counties -- Allegheny and Berks -- had already been subject to litigation of Rule 1008B but that other lawsuits on behalf of indigent tenants were likely. In order to comply with the federal district courts’ holdings; to limit litigation and associated expenses; and to provide a uniform, statewide procedure for indigent residential tenants, the Committee agreed that an immediate amendment to Rule 1008 was advisable. At the same time, the Committee decided to make similar revisions to Rule 1013.

II. Discussion

Rule 1008B (“Appeal as Supersedeas”) requires that residential tenants who want to remain in a rental unit during an appeal must post “a sum of money equal to the lesser of three (3) months’ rent or the rent actually in arrears on the date of the filing of appeal, based upon the magisterial district judge’s order of judgment...” Until the instant

¹ Minor Court Rules Committee Recommendation 1-2008.

² Supreme Court of Pennsylvania Order No. 241 Magisterial Rules Docket No. 1 (April 15, 2008).

³ Docketed in the U.S. District Court for the Western District of PA at: 05-1025.

⁴ Docketed in the U.S. District Court for the Eastern District of PA at: 07-2496.

rule change, residential tenants who were unable to post this sum of money could not remain in their homes pending a *de novo* appeal by a common pleas court.

Similarly, Rule 1013B (“Writ of Certiorari as Supersedeas”) requires a residential tenant to post the same sum (three months’ rent or the rent actually in arrears) in order to receive a supersedeas from the prothonotary’s office, allowing the residential tenant to remain in the rental unit during the writ of certiorari process. The change to Rule 1013 allows indigent residential tenants to follow a procedure that maintains them in their homes during the writ of certiorari process.

In determining that these rules changes were necessary, the Committee reviewed pleadings from *Lamb* and *Santiago*, such as complaints and temporary restraining orders. In addition, the Committee reviewed the federal district court case *Pleasant v. Evers*. See *Wendolyn Pleasant and Tenants’ Action Group v. Evers*, 1998 WL 205431 (E.D. Pa. Apr. 24, 1998), C.A.NO. 97-4124 (Ludwig, J.). In *Evers*, Community Legal Services challenged Philadelphia Municipal Court’s Rule of Procedure 124, which required a deposit to be paid in almost the same fashion as Pa.R.C.P.M.D.J. No 1008B. During the early phases of the protracted litigation, a temporary restraining order was entered enjoining the use of the Municipal Court rule. Ultimately, *Evers* led Municipal Court to change its practices and create a standing procedure for indigent residential tenants’ appeals. That procedure is still used today.

After reviewing the various federal court cases, the Committee proposed that Rule 1008 be amended to provide a procedure on appeal for indigent residential tenants. In addition, the Committee proposed that Rule 1013 be amended to cure the same type of problem, only in the praecipe for writ of certiorari arena.

III. Approved Rule Changes

A. *Rule 1008*

The Committee proposed amendment of Rule 1008 to include a new subdivision C that contains the appeal procedure for indigent residential tenants. Within new subdivision C, there is an explanation of how much tenants are to pay, including the scenarios of rent already being paid that month, or no rental payment for the month of the appeal. Two tenant’s affidavits are provided within the new C, while the new subdivision also references supplemental instructions that will be provided by the prothonotary’s office staff to residential tenants who have suffered a judgment for possession. The supplemental instructions and attached poverty income guidelines will be available on the Minor Court Rules Committee’s website, much in the same way that federal income guidelines are posted on the Civil Procedural Rules Committee’s website. See Pa.R.C.P. No. 3302(b). The income guidelines appended to the supplemental instructions are modeled upon the guidelines promulgated by the Civil Procedural Rules Committee for Pa.R.C.P. No. 3302(b).

In addition, the Note to the Rule has been amended to delete the obsolete terms “trespass” and “assumpsit.” They have been replaced with “civil action.” The Note to the Rule has also been amended to include a short explanation of the background of the Rule change. Finally, miscellaneous grammatical errors were corrected.

B. Rule 1013

The Committee proposed amendment of Rule 1013 to include a new subdivision C that contains the writ of certiorari procedure for indigent residential tenants. Within new subdivision C, there is an explanation of how much tenants are to pay, including the scenarios of rent already being paid that month, or no rental payment for the month of the writ. Two tenant’s affidavits are provided within the new C, while the new subdivision also references supplemental instructions that will be provided by the prothonotary’s office staff to residential tenants who have suffered a judgment for possession. The supplemental instructions and attached poverty income guidelines will be available on the Minor Court Rules Committee’s website, much in the same way that federal income guidelines are posted on the Civil Procedural Rules Committee’s website. See Pa.R.C.P. No. 3302(b). The income guidelines appended to the supplemental instructions are modeled upon the guidelines promulgated by the Civil Procedural Rules Committee for Pa.R.C.P. No. 3302(b).

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