

FINAL REPORT¹

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 RULE 206 IS NOT REQUIRED TO PAY SERVICE COSTS

On November 25, 2002, effective January 1, 2003, upon the recommendation of the Minor Court Rules Committee,² the Supreme Court of Pennsylvania amended Rule 206 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices.³

I. Background

The Committee undertook a review of Rule 206 in response to an inquiry from the Administrative Office of 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 forma 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 noted 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. 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 recommended that Rule 206 be amended to make this clarification and to more closely mirror Pa.R.C.P. No. 240.

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. 3 Minor Court Rules 2002.

³ Supreme Court of Pennsylvania Order No. 138, Magisterial Docket No. 1, Book No. 2 (November 25, 2002).

In conjunction with the 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 recommended 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 costs” including filing, service, witness, and execution costs.

Also, the Committee recommended a further amendment to Rule 206E(iv) to include a provision similar to Pa.R.C.P. No. 240(e) to make clear that 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 would enable the party to pay costs. The Committee noted that such a provision is included in the in forma pauperis petition form (Rule 206E(vi)), but is not specified in the rule itself.

The Committee also recommended a revision to the Note to clarify that the 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. As authority for this, the Committee recommended that a reference to *Brady v. Ford*, 679 A.2d 837 (Pa. Super. Ct. 1996), be added to the Note.

Finally, in conjunction with the 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.