

SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE
NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Pa.R.C.P. No. 205.6, and
Proposed Amendment of Pa.R.C.P. Nos. 229.2 and 240

The Civil Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the adoption of Pa.R.C.P. No. 205.6 governing the certification and filing of confidential information and confidential documents, and amendments of Pa.R.C.P. Nos. 229.2 governing the petition to transfer structured settlement payment rights and 240 governing the petition to proceed *in forma pauperis* for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will neither constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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Civil Procedural Rules Committee
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Pennsylvania Judicial Center
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All communications in reference to the proposal should be received by **September 12, 2017**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Civil Procedural Rules Committee,

David L. Kwass
Chair

[This is an entirely new rule.]

Rule 205.6. Confidential Information and Confidential Documents. Certification.

Unless public access is otherwise constrained by applicable authority, any attorney, or any party if unrepresented, who files a document pursuant to these rules with the prothonotary's office shall comply with the requirements of Sections 7.0 and 8.0 of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (Policy) including a certification of compliance with the Policy and, as necessary, a Confidential Information Form, unless otherwise specified by rule of court, or a Confidential Document Form in accordance with the Policy.

Note: Applicable authority includes but is not limited to statute, procedural rule or court order. The *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (Policy) can be found on the website of the Supreme Court of Pennsylvania at <http://www.pacourts.us/public-record-policies>. Sections 7.0(D) and 8.0(D) of the Policy provide that the certification shall be in substantially the following form:

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

The Confidential Information Form and the Confidential Document Form can be found at <http://www.pacourts.us/public-record-policies>. In lieu of the Confidential Information Form, Section 7.0(C) of the Policy provides for a court to adopt a rule or order pursuant to Pa.R.J.A. No. 103(c) permitting the filing of a document in two versions, a "Redacted Version" and an "Unredacted Version."

Rule 229.2. Petition to Transfer Structured Settlement Payment Rights.

(a) * * *

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) The Payee's Affidavit in Support of Petition shall be substantially in the following form:

(Caption)

**Payee's Affidavit in Support of
Petition to Transfer Structured Settlement Rights**

I, _____, the payee, verify that the statements below are true and correct:

1. Payee's name, address and age: _____
_____.

2. Marital Status:
____ Never Married; ____ Married; ____ Separated; ____ Divorced
If married or separated, name of spouse: _____.

3. Minor children and other dependents:
Initials of minor children, [N]names of other dependents, ages, and
places of residence: _____
_____.

4. Income:
(a) Payee's monthly income and sources: _____
_____.

(b) If presently married, spouse's monthly income and sources: _____
_____.

5. Child support, alimony or alimony pendente lite

Obligation to pay: ___ Yes ___ No

If yes, state the amount of the obligation, to whom payable, and whether there are arrearages:_____.

6. Previous transfers

Have you previously filed a petition to transfer payment rights under the structured settlement that is the subject of this petition? ___Yes ___ No

If yes, for each petition that you filed,

(a) If the transfer was submitted for court approval, list the court, the case caption and case number, and state whether the court approved or disapproved the transfer:

_____.

(b) If the transfer was approved,
(i) State the name of the transferee and identify (listing due dates and payment amount(s)) the payments involved in the transfer:_____.

(ii) State the amount of money and the manner in which the money was used:_____.

(c) Have you ever transferred payments without court approval? If so, please explain:

_____.

7. Reasons for transfer

Describe in detail your reasons for the proposed transfer, including an explanation as to why a sale of a lesser amount of the structured settlement amount will not better serve your interests: _____

8. Payment of debts

If you seek the transfer in order to pay debts, list each debt, including the name of the creditor and the amount presently owed:

Debt	Creditor	Amount Owed
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

Verification

I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

DATE: _____

Signature

(g) * * *

(h) * * *

(i) * * *

Note: The form of order does not preclude a court from adding additional language to the order as deemed appropriate in the individual circumstances of a case.

The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts.* See Rule 205.6.

Rule 240. [In Forma Pauperis] *In Forma Pauperis*

(a) This rule shall apply to all civil actions and proceedings except actions pursuant to the Protection From Abuse Act **and the Victims of Sexual Violence and Intimidation Act.**

Note: The term “all civil actions and proceedings” includes all domestic relations actions except those brought pursuant to the Protection From Abuse Act, **[which are governed by] 23 Pa.C.S. § 6106 and the Victims of Sexual Violence and Intimidation Act, 42 Pa.C.S. §§ 62A01-62A20.**

(b) A party who is without financial resources to pay the costs of litigation is entitled to proceed **[in forma pauperis] *in forma pauperis.***

(c) Except as provided by subdivision (d), the party shall file a petition and an affidavit in the form prescribed by subdivision (h). The petition may not be filed prior to the commencement of an action or proceeding or the taking of an appeal.

(1)(i) If the petition is filed simultaneously with the commencement of the action or proceeding or with the taking of the appeal, the prothonotary shall docket the matter and petition without the payment of any filing fee.

(ii) If the court shall thereafter deny the petition, the petitioner shall pay the filing fee for commencing the action or proceeding or taking the appeal. A party required to pay such fee may not without leave of court take any further

steps in the action, proceeding or appeal so long as such fee remains unpaid. Not sooner than ten days after notice of the denial of the petition pursuant to Rule 236, the prothonotary shall enter a judgment of **[non pros] non pros** in the action or proceeding or strike the appeal if the fee remains unpaid. The action, proceeding or appeal shall be reinstated only by the court for good cause shown.

(2) If the action or proceeding is commenced or the appeal is taken without the simultaneous filing of a petition, the appropriate filing fee must be paid and shall not be refunded if a petition is thereafter filed and granted.

(3) Except as provided by subdivision (j)(2), the court shall act promptly upon the petition and shall enter its order within twenty days from the date of the filing of the petition. If the petition is denied, in whole or in part, the court shall briefly state its reasons.

(d)(1) If the party is represented by an attorney, the prothonotary shall allow the party to proceed **[in forma pauperis] in forma pauperis** upon the filing of a **[praecipe] praecipe** which contains a certification by the attorney that he or she is providing free legal service to the party and believes the party is unable to pay the costs.

(2) The **[praecipe] praecipe** shall be substantially in the form prescribed by subdivision (i).

(e) A party permitted to proceed **[in forma pauperis] 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.

(f) A party permitted to proceed **[in forma pauperis] in forma pauperis** shall not be required to

(1) pay any cost 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, or

(2) post bond or other security for costs as a condition for commencing an action or proceeding or taking an appeal.

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

(h) The affidavit in support of a petition for leave to proceed **[in forma pauperis]** *in forma pauperis* shall be substantially in the following form:

(Caption)

1. I am the (plaintiff) (defendant) in the above matter and because of my financial condition am unable to pay the fees and costs of prosecuting or defending the action or proceeding.

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:

(a) Name: _____

Address: _____

(b) Employment

If you are presently employed, state

Employer: _____

Address: _____

Salary or wages per month: _____

Type of work: _____

If you are presently unemployed, state

Date of last employment: _____

Salary or wages per month: _____

Type of work: _____

(c) Other income within the past twelve months

Business or profession: _____

Other self-employment: _____

Interest: _____

Dividends: _____

Pension and annuities: _____

Social security benefits: _____

Support payments: _____

Disability payments: _____

Unemployment compensation and supplemental benefits: _____

Workers' compensation: _____

Public assistance: _____

Other: _____

(d) Other contributions to household support

(Wife)(Husband) Name: _____

If your (wife) (husband) is employed, state

Employer: _____

Salary or wages per month: _____

Type of work: _____

Contributions from children: _____

Contributions from parents: _____

Other contributions: _____

(e) Property owned

Cash: _____

Checking account: _____

Savings account: _____

Certificates of deposit: _____

Real estate (including home): _____

Motor vehicle: _____

Make _____,

Year _____,

Cost _____,

Amount Owed \$ _____

Stocks and bonds: _____

Other: _____

(f) Debts and Obligations

Mortgage: _____

Rent: _____

Loans: _____

Other: _____

(g) Persons dependent upon you for support

(Wife)(Husband) Name: _____

Children, if any:

[Name] Initials: _____

Age: _____

Other Persons:

Name: _____

Relationship: _____

4. I understand that I have a continuing obligation to inform the court of improvement in my financial circumstances which would permit me to pay the costs incurred herein.

5. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: _____

Petitioner

(i) The praecipe required by subdivision (d) shall be substantially in the following form:

(Caption)

[PRAECIPE] PRAECIPE TO PROCEED [IN FORMA PAUPERIS] IN FORMA PAUPERIS

To the Prothonotary:

Kindly allow _____, (Plaintiff) (Defendant) to proceed **[in forma pauperis] in forma pauperis**.

I, _____, attorney for the party proceeding **[in forma pauperis]** *in forma pauperis*, certify that I believe the party is unable to pay the costs and that I am providing free legal service to the party.

Attorney for

(j)(1) If, simultaneous with the commencement of an action or proceeding or the taking of an appeal, a party has filed a petition for leave to proceed **[in forma pauperis]** *in forma pauperis*, the court prior to acting upon the petition may dismiss the action, proceeding or appeal if the allegation of poverty is untrue or if it is satisfied that the action, proceeding or appeal is frivolous.

Note: A frivolous action or proceeding has been defined as one that “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U. S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

(2) If the petitioner commences the action by writ of summons, the court shall not act on the petition for leave to proceed **[in forma pauperis]** *in forma pauperis* until the complaint is filed. If the complaint has not been filed within ninety days of the filing of the petition, the court may dismiss the action pursuant to subdivision (j)(1).

Note: The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. See Rule 205.6.

Explanatory Comment

On January 6, 2017, the Supreme Court of Pennsylvania adopted the *Public Access Policy: Case Records of the Appellate and Trial Courts* (Policy), which will become effective January 6, 2018. In anticipation of the implementation of the Policy, the Civil Procedural Rules Committee is proposing new Rule 205.6 which provides that absent any applicable authority that constrains public access, all civil filings must comply with the Policy. Of particular importance are the requirements of Sections 7.0 and 8.0 governing confidential information and confidential documents. In addition, the rule provides that all practitioners and unrepresented parties must certify that a filing is compliant with the Policy.

The Committee is also proposing amendments to Rule 229.2 governing the petition to transfer structured settlement payment rights and Rule 240 governing the petition to proceed *in forma pauperis*. Section 7.0(A)(5) of the Policy prohibits the disclosure of the names of minor children in a filing unless the minor is charged as a defendant in a criminal matter. Both Rule 229.2 and Rule 240 require the filing of an affidavit in support of the petition. The form affidavit currently requires the disclosure of the full names of any minor children of the petitioner. See Rule 229.2(f) and 240(h). The proposed amendment would require a petitioner to provide the initials only of any minor children. In addition, a note cross-referencing new Rule 205.6 has been added to both rules. Stylistic amendments to Rule 240 are also proposed.

By the Civil Procedural Rules Committee,

David L. Kwass
Chair