

**SUPREME COURT OF PENNSYLVANIA
MINOR COURT RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.C.P.M.D.J. No. 206

The Minor Court Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P.M.D.J. No. 206, 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 neither will constitute a part of the rules nor 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:

**Pamela S. Walker, Counsel
Minor Court Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9526
minorrules@pacourts.us**

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 Minor Court Rules Committee,

Anthony W. Saveikis
Chair

REPORT

Proposed Amendment of Pa.R.C.P.M.D.J. No. 206

PETITION TO PROCEED *IN FORMA PAUPERIS*

I. Introduction

The Minor Court Rules Committee (“Committee”) is planning to propose the amendment of Pa.R.C.P.M.D.J. No. 206 to the Supreme Court of Pennsylvania. The rule addresses, among other things, the petition to proceed *in forma pauperis*. The Committee is proposing to eliminate the requirement that the petitioner provide the names of children for whom he or she provides support, and instead provide just the ages of such children.

II. Discussion

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. Although the Policy does not apply to the records filed with and maintained by the magisterial district courts, the Committee recognized the important policy considerations set forth therein, particularly as the Policy relates to the confidentiality of minors’ names and dates of birth. See Policy, Section 7.0A(5).

The Committee noted that Pa.R.C.P.M.D.J. No. 206E, which prescribes the content of the *in forma pauperis* petition, requires the disclosure of the names and ages of children dependent upon the petitioner for support. The Committee discussed this requirement in light of the new Policy, and was unable to find a compelling reason for requiring the disclosure of children’s names on the petition. The Committee agreed to recommend the elimination of that requirement, and, instead, only require the listing of dependent children’s ages in the petition.

III. Proposed Changes

The Committee plans to propose the amendment of Rule 206 by deleting the requirement that the petitioner disclose the names of dependent children on the *in forma pauperis* petition. The Committee will also propose minor stylistic changes throughout Rule 206.

Rule 206. Costs; Proceedings **[in Forma Pauperis]** *In Forma Pauperis*

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

B. Except as otherwise provided by **[subdivision]** paragraph C of this rule, the prevailing party in magisterial district **[judge]** court proceedings shall be entitled to recover taxable costs from the unsuccessful party. Such costs shall consist of all filing, personal service, witness, and execution costs authorized by Act of Assembly or general rule and paid by the prevailing party.

C. Taxable costs on appeal or **[certiorari]** 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 obtained in the magisterial district **[judge]** court proceeding. A defendant who prevails on **[certiorari]** certiorari proceedings brought by the defendant or who obtains a favorable judgment upon appeal by either party shall not be liable for costs incurred by the plaintiff in the preceding magisterial district **[judge]** court proceeding and may recover taxable costs in that proceeding from the plaintiff. A plaintiff who is unsuccessful in the magisterial district **[judge]** court proceeding may recover taxable costs in that proceeding from the defendant if the plaintiff is successful on appeal, and in that event the defendant may not recover costs in the magisterial district **[judge]** court proceeding from the plaintiff.

D. This rule shall apply to all civil actions and proceedings except actions pursuant to the Protection **[f]**From Abuse Act or 42 Pa.C.S. §§ 62A01-62A20.

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

Under **[subdivision]** paragraph B, "personal service ... costs" 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]** *in forma pauperis* and who remains indigent. See *Brady v. Ford*, **[451 Pa. Super. 363,]** 679 A.2d 837 (**Pa. Super.** [(1996)]).

For special provisions governing actions pursuant to the Protection From Abuse Act, see Sections 6106(b) and (c) of the Domestic Relations Code, 23 Pa.C.S. §§ 6106(b) and (c). For special provisions governing actions seeking relief for victims of sexual violence or intimidation, see 42 Pa.C.S. §§ 62A01-62A20.

E. Proceedings **[In Forma Pauperis]** *in forma pauperis*

[(i)](1) A party who is without financial resources to pay the costs of litigation shall be entitled to proceed **[in forma pauperis]** *in forma pauperis*.

[(ii)](2) Except as provided by subparagraph **[(iii)](3)**, the party shall file a petition and affidavit in the form prescribed by subparagraph **[(vi)](6)**. 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 filing costs.

Except as prescribed by subparagraph **[(iii)](3)**, the **[Magisterial District Judge]** **magisterial district judge** shall act promptly upon the petition and shall enter 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 **[Magisterial District Judge]** **magisterial district judge** shall briefly state the reasons therefor. The unsuccessful petitioner may proceed no further so long as such costs remain unpaid.

[(iii)](3) If the party is represented by an attorney, the **[Magisterial District Judge]** **magisterial district judge** shall allow the party to proceed **[in forma pauperis]** *in forma pauperis* upon the filing of a **[praecipe which]** *praecipe that* contains a certification by the attorney that the attorney is providing free legal service to the party and believes the party is unable to pay the costs.

[(iv)](4) A party permitted to proceed **[in forma pauperis]** *in forma pauperis* shall not be required to pay any costs imposed or authorized by Act of Assembly or general rule which are payable to any court or any public officer or employee.

The magisterial district judge shall inform a party permitted to proceed **[in forma pauperis]** *in forma pauperis* of the option to serve the complaint by mail in the manner permitted by these rules.

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.

[(v)](5) 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 costs shall be taxed as costs and paid to the **[Magisterial District Judge]** **magisterial district judge** by the party paying the monetary recovery. In no event shall the exonerated costs be paid to the indigent party.

[(vi)](6) The petition for leave to proceed **[in forma pauperis]** *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]** *in forma pauperis* (without payment of the filing 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 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 costs is true and correct:

(a) Name: _____
Address: _____

(b) Employment
[My present employer is: _____]
If you are presently employed, state
Employer: _____
Address: _____
Salary or wages per month: _____
Type of work: _____ [;]
[or I am presently unemployed.]
If you are presently unemployed, state
The date of my last employment was: _____
Salary or wages per month: _____
Type of work: _____

(c) Other income that I have received 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: _____
[Workman's] Workers' compensation: _____
Public assistance: _____

Other: _____

(d) Other contributions to household support

[(Wife) (Husband)] Spouse Name: _____

My **[(Wife) (Husband)] Spouse** is employed: _____

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; bonds: _____

Other: _____

(f) Debts and obligations

Mortgage: _____

Rent: _____

Loans: _____

Other: _____

(g) Persons dependent upon me for support

[(Wife) (Husband)] Spouse Name: _____

Ages of Minor Children, if any: _____

[Name: _____ Age

Name: _____ Age

Name: _____ 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 petition are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. **[Sec.] § 4904**, relating to unsworn falsification to authorities.

Date: _____

Petitioner _____

Action by the Magisterial District Judge: _____

Date: _____ Magisterial District Judge: _____

Note: This Rule substantially follows Pa.R.C.P. No. 240. Under subparagraph E[(iv)](4), “any costs” includes all filing, service, witness, and execution costs.