

INTRODUCTION

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt amendments to Rule 209, 403 and 410 of the Minor Court Civil Rules. The Committee has not yet submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the Committee's Official Notes to the rules. The Supreme Court does not adopt the Committee's Official Notes or the contents of the explanatory reports.

The text of the proposed changes precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit written suggestions, comments, or objections concerning this proposal to the Committee through counsel,

Pamela S. Walker, Counsel
Supreme Court of Pennsylvania
Minor Court Rules Committee
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
Fax: 717-231-9546
or email to: minorrules@pacourts.us

no later than February 22, 2013.

December 18, 2012

BY THE MINOR COURT RULES COMMITTEE:

Mary P. Murray, Chair

Pamela S. Walker
Counsel

Rule 209. Continuances **and Stays**.

A. Continuances may be granted for cause or by agreement.

B. Continuances shall be to a specific time and date. The magisterial district judge shall note continuances on the docket and shall promptly give or mail to the parties written notice of continuances.

C. Except for good cause shown,

(1) not more than one continuance shall be granted to each party, and

(2) the aggregate of all continuances shall not extend the date of the hearing:

(a) beyond 90 days from the date of filing the plaintiff's complaint in proceedings commenced pursuant to Rule 303, or

(b) beyond 30 days from the date of filing the plaintiff's complaint in proceedings commenced pursuant to Rule 502.

D. In all proceedings governed by these rules, the following shall constitute cause for granting a continuance:

(1) the scheduling of a party's attorney of record to appear at any proceeding under the Pennsylvania Rules of Disciplinary Enforcement, whether

(a) as counsel for a respondent-attorney before a hearing committee, special master, the Disciplinary Board or the Supreme Court;

(b) as a special master or member of a hearing committee; or

(c) as a member of the Disciplinary Board.

(2) the scheduling of a party's attorney of record to appear at any proceeding involving the discipline of a justice, judge or magisterial district judge under Section 18 of Article V of the Constitution of Pennsylvania, whether

(a) as counsel for a justice, judge or magisterial district judge before the special tribunal provided for in 42 Pa.C.S. § 727, the Court of Judicial Discipline, the Judicial Conduct Board or any hearing committee or other arm of the Judicial Conduct Board; or

(b) as a member of the Court of Judicial Discipline, the Judicial Conduct Board or any hearing committee or other arm of the Judicial Conduct Board.

E. Continuances **and stays** shall be granted in compliance with federal or state law, such as the Service[-]members Civil Relief Act., 50 App. U.S.C.[A.] § 501 et seq.

Official Note

This rule was amended in 2005 to consolidate the provisions of former Rules 320 (relating to continuances in civil actions) and 511 (relating to continuances in possessory actions) into one general rule governing continuances. The limitations set forth in subdivision C are intended to ensure that these cases proceed expeditiously. The grounds set forth in subdivisions D and E, of course, are not intended to be the only grounds on which a continuance will be granted.

Rule 403. Issuance and Reissuance of Order of Execution.

A. Upon the filing of the request form, the magisterial district judge shall note on the form the time and date of its filing and shall issue the order of execution thereon. The magisterial district judge shall deliver the order of execution for service and execution to the sheriff of, or any certified constable in, the county in which the office of the magisterial district judge issuing the order is situated. If this service is not available to the magisterial district judge, service may be made by any certified constable of the Commonwealth.

B. (1) Upon written request filed by the plaintiff within five years from the date of entry of the judgment, an order of execution shall be reissued at any time, and any number of times.

(2) If an order of execution is superseded by an appeal, writ of certiorari, supersedeas, or a stay pursuant to a bankruptcy proceeding **or other federal or state law**, and

(a) the appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated; or

(b) the bankruptcy **or other stay** is lifted; and

(c) the plaintiff wishes to proceed with the order of execution, the plaintiff must file with the magisterial district judge a written request for reissuance of the order of execution in accordance with subparagraph (1).

C. A written request for reissuance of the order of execution filed pursuant to subparagraph B(2) must be accompanied by a copy of the court order or other documentation striking, dismissing, or terminating the appeal, writ of certiorari, or supersedeas, or lifting the bankruptcy **or other stay**.

Official Note

Under subdivision A, the order may be executed by the sheriff of the county in which the office of the issuing magisterial district judge is situated, as well as by any certified constable in that county.

If payment of the judgment was ordered to be made in installments under Rule 323, the magisterial district judge should not issue an order of execution on the judgment unless it appears that there was a default in the installment payments.

Subdivision B will permit the reissuance of an order of execution upon written request of the plaintiff timely filed. Compare Pa.R.C.P. No. 3106(b). The written request for reissuance may be in any form and may consist of a notation on the permanent copy of the request for order of execution form, "Reissuance of order of execution requested," subscribed by the plaintiff. The magisterial district judge shall mark all copies of the reissued order of execution, "Reissued. Request for reissuance filed _____ (time and date)." A new form may be used upon reissuance, those portions retained from the original being exact copies although signatures may be typed or printed with the mark "/s/." There are no filing costs for reissuing an order of execution, for the reissuance is merely a continuation of the original proceeding. However, there may be additional server costs for service of the reissued order of execution.

The magisterial district court shall enter stays in compliance with federal or state law, such as the Servicemembers Civil Relief Act., 50 App. U.S.C. § 501 et seq.

Rule 410. Stay of Execution Generally.

(A) Execution shall be stayed as to the property of the defendant upon the occurrence of any of the following:

(1) Upon written request of the plaintiff to the magisterial district court.

(2) Upon the entry of a bond with the magisterial district court by any person or party in interest, with security approved by the magisterial district judge, in the amount of the plaintiff's judgment, including probable interest and costs, or in such lesser amount as the magisterial district judge may direct, naming the Commonwealth of Pennsylvania as the obligee, and conditioned to pay the amount due within 90 days of the entry of the bond, unless the time for payment is extended by the magisterial district judge.

(3) Upon request of the defendant or party in interest to the magisterial district court made in compliance with federal or state law.

(B) When execution is stayed pursuant to this rule, the stay may not be lifted without written order of the magisterial district judge.

(C) After a stay is lifted, execution may proceed without reissuance of the order of execution.

Official Note

Compare Pa.R.C.P. No. 3121(a). Other rules in this chapter may also provide for a stay in specific circumstances covered by those rules. **The magisterial district court shall enter stays in compliance with federal or state law, such as the Servicemembers Civil Relief Act., 50 App. U.S.C. § 501 et seq.**

REPORT

Proposed Amendments to Rules 209, 403, and 410 of the Minor Court Civil Rules

CLARIFYING PERMISSIBLE GROUNDS FOR STAYS

I. Introduction and Background

The Minor Court Rules Committee (the “Committee”) is proposing amendments to the rules of procedure governing stays of proceedings in magisterial district courts. The goal of these rule changes is to clarify that permissible grounds for stays include compliance with federal and state laws.

The Committee first looked at this issue in 2007 when several magisterial district judges inquired why the rules of civil procedure did not specifically address continuances for military personnel. Following a review of the issue, the Committee recommended, and the Supreme Court of Pennsylvania adopted in 2008, an amendment to Rule 209 (providing for continuances) referencing the Servicemembers Civil Relief Act, 50 App. U.S.C. § 501 et seq. (“Act”).

More recently, staff counsel with the Administrative Office of Pennsylvania Courts advised the Committee that she fielded an inquiry from a magisterial district court attempting to stay an order for possession against an active duty serviceperson deployed overseas. The magisterial district court was aware of the Act, and sought to comply with its provisions. In discussing this situation, the Committee agreed that the reference to the Act should also be included in rules providing for stays, not only continuances.

II. Proposed Rule Changes

To address the issues discussed above, the Committee proposes adding a reference to the granting of stays in compliance with federal or state law in Rules 209, 403, and 410 of the Minor Court Rules. The Committee also proposes amending the Official Notes to Rules 403 and 410 to cite the Act.