

# FINAL REPORT<sup>1</sup>

*Amendments to Pa. R.C.P.M.D.J. Nos. 410, 412, and 418*

## **TECHNICAL AMENDMENTS CONCERNING EXECUTION OF JUDGMENTS FOR MONEY; STAY OF EXECUTION; ABANDONMENT OF LEVY**

### I. INTRODUCTION

On June 9, 2008, effective January 1, 2009, upon recommendation of the Minor Court Rules Committee,<sup>2</sup> the Supreme Court of Pennsylvania approved amendments to Rules 410, 412 and 418 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges.<sup>3</sup>

### I. DISCUSSION AND RULE CHANGES

The Minor Court Rules Committee (“the Committee”) proposed technical amendments to Rules 410, 412, and 418 of the Rules of Conduct, Office Standards, and Civil Procedure for Magisterial District Judges to address three separate issues concerning the execution of judgments for money.

#### *A. Rules 410 and 418*

The Committee reviewed Pa. R.C.P.M.D.J. No. 410 in response to an inquiry from a constable who asked if execution of a money judgment could be stayed upon request of the plaintiff. The Committee noted that the magisterial district court rules governing execution of money judgments do make provision for a stay of execution in certain circumstances,<sup>4</sup> but not specifically at the request of the plaintiff. The Committee further noted that the Rules of Civil Procedure governing actions in the courts of record do provide for a stay of execution “upon written direction of the plaintiff.”<sup>5</sup>

The Committee believed it advisable to incorporate a provision into the magisterial district court rules to allow for stay upon request of the plaintiff. The Committee reasoned

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<sup>1</sup> The Committee’s Final Report should not be confused with the Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee’s Notes or the contents of the explanatory Final Report.

<sup>2</sup> Minor Court Rules Committee Recommendation 2-2006.

<sup>3</sup> Supreme Court of Pennsylvania Order No. 245, Magisterial Docket No. 1 (June 9, 2008).

<sup>4</sup> See Pa. R.C.P.M.D.J. No. 410 (providing for stay of execution upon entry of bond), Pa. R.C.P.M.D.J. No. 413 (providing for stay of sale of property because of objection to levy or other property claim), and Pa. R.C.P.M.D.J. No. 420 (providing for relief in cases of property claims and disputes).

<sup>5</sup> Pa.R.C.P. No. 3121(a)(1).

that post-judgment settlement negotiations may affect a plaintiff's desire to move forward with execution once commenced, and believed that a plaintiff should have the ability to request a stay of execution. This proposed rule would differ from Pa.R.C.P. No. 3121(a)(1) in that it would provide for a stay of execution upon written request of the plaintiff to the magisterial district judge. The requirement that the plaintiff make the request to the court would enable the magisterial district judge to make a judicial determination as to whether the stay should be granted and provide more certainty as to when the stay takes effect.

Accordingly, the Committee proposed that Rule 410 be amended to provide for the stay of execution upon written request of the plaintiff to the magisterial district court. To accomplish this, the Committee proposed that Rule 410 be tabulated into three paragraphs. Paragraph (A) contains the provisions as to when execution shall be stayed, including the new provision regarding a stay at the request of the plaintiff. Within paragraph (A), the Committee proposed that the provision regarding the inapplicability of the rule to judgments obtained for wages for manual labor be deleted. This provision was based on a prior law<sup>6</sup> that was repealed by the Judiciary Act Repealer Act,<sup>7</sup> and was not expressly codified in the Judicial Code (Title 42, Pennsylvania Consolidated Statutes).

New paragraphs (B) and (C) have been added to Rule 410 to provide that when execution is stayed under the rule the stay may not be lifted without written order of the magisterial district judge, and that when a stay is lifted execution may proceed without reissuance of the order of execution.

In the course of reviewing the Rule 410 stay provisions, the Committee reviewed the provisions in Rule 418 regarding the abandonment of a levy for inability to hold a sale. The existing rule provides that the levy shall be abandoned if a sale is not held within six months. The Committee was concerned, however, with the existing provision in the rule that periods during which the sale is stayed are excluded from the six month period. Specifically, the Committee was concerned that under the current provisions of the rule property could be subject to levy *ad infinitum* so long as a stay was issued and not lifted. This, of course, could impose a tremendous burden on the judgment debtor whose property is subject to the levy. The Committee noted that this situation could arise more easily if execution could be stayed simply by a request of the plaintiff as was proposed under Rule 410.

To address this problem, the Committee proposed that Rule 418 be divided into two paragraphs. New paragraph (A) provides that as a general rule the levy shall be

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<sup>6</sup> The Act of May 14, 1874, P.L. 145, No. 79, § 1, 12 P.S. § 2207.

<sup>7</sup> The Act of April 28, 1978, P.L. 202, No. 53, § 2, 42 Pa.C.S. § 20002(a) [640] as affected by the Act of Oct. 5, 1980, P.L. 693, No. 142, § 324(b).

abandoned if a sale is not held within three months. New paragraph (B) still excludes from the three-month period time during which the sale is stayed, but in all cases the executing officer would be required to abandon a levy if a sale is not held within six months. This new provision is intended put limits on the amount of time property can be subject to levy, and to enable the magisterial district judge to have more control over the length of time a stay is in effect.

### *B. Rule 412*

The Committee reviewed Pa. R.C.P.M.D.J. No. 412 in response to an inquiry from a constable who suggested that an executing officer be required to post notice of a sale in the magisterial district court in the magisterial district in which the place of sale is located if different from the court from which the order of execution issued.<sup>8</sup> It was suggested that this requirement would aid in informing an executing officer of other levies that may have been made upon the same property that is the subject of his or her levy and sale. This information is needed so that an executing officer will know if there is an existing levy by another executing officer that has priority over his or her levy.

The Committee agreed that such a notice requirement would be helpful. Accordingly, the Committee divided Rule 412A into two paragraphs. Paragraph (A)(1) contains the existing provision that notice of the sale be given at least six days prior to the sale. Paragraph (A)(2) contains the requirements as to how notice is to be given, including the new provision discussed above.

In addition, the Committee made other minor revisions to the rules and Notes to address gender neutrality issues and to enhance clarity.

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<sup>8</sup> Rule 412 already requires the posting of a handbill in the magisterial district court from which the order of execution issued. This rule change does not change that requirement, but requires that the notice be posted in a second magisterial district court if the place of sale is located in a different magisterial district.