

July 2021

## New Rules Affecting Property Rights Adopted by State Supreme Court

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### Recommended Citation

New Rules Affecting Property Rights Adopted by State Supreme Court, 17 Dicta 282 (1940).

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# ***New Rules Affecting Property Rights Adopted by State Supreme Court***

In order to facilitate compliance with Section 302 (3) of the Soldiers' and Sailors' Civil Relief Act of 1940, the Supreme Court of Colorado, acting on advice of the Code Revision Committee of the state bar, promulgated a new rule on October 28, 1940. The new rule became effective November 1, 1940. It will be Rule 120 of the Revised Code if the rules now being considered by the Supreme Court are adopted.

The Code Revision Committee sent to the Supreme Court the third draft of the rules the first of November with the resolution adopted by the state bar recommending that the court promulgate the new rules of procedure. Indications are that the court will hold a conference of the judges of the county and district courts to discuss the rules, and that adoption of the draft will probably follow about the first of the year, coming into effect in the spring of 1941.

The new rule pertaining to the military service provisions follows:

## **RULE 120. ORDERS AUTHORIZING SALES UNDER POWERS**

(a) *Motion and Notice.* Whenever by law an order of court is required authorizing a sale under a power of sale contained in an instrument, any interested person may file a motion verified by the oath of such person or of someone in his behalf, in any court of record asking for such order; such motion shall describe the instrument containing the power and the property sought to be sold thereunder and shall state the names of the persons having any interest in such property and shall state the address of each such person or shall state that his address is unknown. The court shall by order fix a time and place for the hearing of such motion. The clerk shall issue a notice containing a description of the instrument and of the property sought to be sold thereunder and the time and place of the hearing and shall state that an order is asked authorizing a sale of said property under such power of sale. Such notice shall be served by the clerk mailing, not less than ten days before the hearing, a copy thereof to each person stated in the motion as having any interest in such property whose address is stated in such motion and by the clerk posting, not less than ten days before the hearing, a copy thereof in a prominent place in his office. Such mailing and posting shall be evidenced by the certificate of the clerk.

(b) *Sales of Real Estate.* Provided, however, that when the property to be sold is real estate and the power of sale is contained in a deed of trust to a public trustee, the motion need state the names of only those persons who have any record interest in such real estate and the address of each such person as such address is given in the recorded instrument of writing and copies of the notice need be mailed only to each person so named in the motion whose address is so stated. If such recorded instrument of writing does not give such address no copy of the notice need be mailed to the particular person whose address is not so given; provided, however, that where only the county and state is given as the address of such person, then the copy of the notice shall be mailed to the county seat of such county.

(c) *Hearing and Order.* No motions or pleadings shall be required or permitted to be filed by anyone other than the person who filed the motion for the order authorizing the sale. At the time and place set for the hearing or to which the hearing may be continued, the court shall examine such affidavits as may have been filed and hear such testimony as may be offered and shall then summarily determine the motion and grant or deny said motion and enter an order accordingly. At any time before the entry of such order the court may require such additional notice to be given as it may see fit.

(d) *Return of Sale.* The court shall require a return of such sale to be made to the court for its approval.

(e) *Docket Fee.* A docket fee of \$5.00 shall be paid by the person filing such motion.

This rule facilitates compliance with Sec. 302 (3) Soldiers' and Sailors' Civil Relief Act of 1940, reading as follows: "No sale under a power of sale or under a judgment entered upon warrant of attorney to confess judgment contained in any such obligation shall be valid if made during the period of military service or within three months thereafter, unless upon an order of sale previously granted by the court and a return thereto made and approved by the court."

In order to make for uniform procedure respecting other provisions of the Civil Relief Act, the District Court of the First Judicial District adopted the following rule which is now in effect:

"Before a default judgment is entered, the plaintiff shall file in the court an affidavit setting forth facts showing that the defendant is not in military service of the United States or, if unable to file such affidavit, the plaintiff shall in lieu thereof file an affidavit setting forth either that the defendant is in such military service or that plaintiff is not able to determine whether or not defendant is in such service. Before entering a default judgment the court shall appoint an attorney to represent any

and all defendants, in default, who are or may be in such military service, and protect their interests. Such appointment shall be made upon application of plaintiff, but if no such application be made the Court shall make the appointment on its own motion. Provided, however, no such appointment shall be made if it appears from the affidavit filed by the plaintiff that the defaulting defendant is not in such military service. The Court may, in its discretion, allow a fee to such attorney not to exceed \$10.00, to be taxed and paid by the plaintiff as a part of his costs. This rule shall take effect as of November 1, A. D. 1940."

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## ***Intolerable***

Lawrence Sullivan in his recent book, *The Dead Hand of Bureaucracy*, states his conviction as follows: "To check the crippling influence of runaway bureaucracy is our foremost problem; and upon its solution depends the survival of the American way of life." (*The Reader's Digest*, October, 1940, p. 120.)

The latest manifestation of a reach for power by administrative boards is the declaration of a system for the discipline and control of attorneys representing private clients. A few months ago the Federal Trade Commission promulgated a rule empowering a trial examiner to suspend a hearing and recommend to the Commission for disbarment from practice before it any attorney whom the examiner deemed guilty of "disrespectful" language or conduct (*vide supra*, p. 165).

Now the New York State Labor Relations Board has followed suit and issued a rule, effective September 16, 1940, empowering a trial examiner to exclude from further participation in the proceeding any attorney who, in the examiner's discretion, has been guilty of "contemptuous" conduct before him. In such an instance the hearing is to be adjourned so as to afford the attorney's client opportunity to obtain other counsel. A right of appeal to the board is granted to the aggrieved attorney, but the determination of the board is final.

The above regulations pose the question whether a board, frequently consisting of laymen, should ever have the power to sit in judgment on the conduct of a lawyer, a sworn officer of the courts, in defending his client's rights. It is well known that numerous administrative commissions are appointed under statutes of a social-economic character, often of the most controversial nature. It is well known, moreover, that those men who administer these statutes are frequently