THE COURTS

Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. I]

Proposed Rule 104 Revision of Comment

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania approve the Revision of Comment to Rule 104. The changes are being proposed to include language reflecting the effect on the issue of competency of the opinions in *Commonwealth v. Washington*, 554 Pa. 559, 722 A.2d 643 (1998) and *Commonwealth v. Delbridge*, 578 Pa. 641, 855 A.2d 27 (2003).

This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's consideration in formulating this proposal. Please note that the Committee Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Report.

The text of the proposed Comment changes precede the Report. Additions are bold, and deletions are bold and in brackets.

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

Richard L. Kearns
Staff Counsel
Supreme Court of Pennsylvania
Committee on Rules of Evidence
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055

no later than September 6, 2006

By the Committee on Rules of Evidence

RICHARD A. LEWIS,
Chair

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 104. Preliminary Questions.

* * * * *

Comment

Paragraph 104(a) is identical to F.R.E. 104(a). The first sentence is consistent with prior Pennsylvania case law. See *Commonwealth v. Chester*, 526 Pa. 578, 587 A.2d 1367 (1991).

The second sentence of paragraph 104(a) is based on the premise that, by and large, the law of evidence is a "child of the jury system" and that the rules of evidence should not be applied when the judge is the fact finder. The theory is that the judge should be empowered to hear any relevant evidence to resolve questions of admissibility. Under the Federal Rule, the court may consider even the allegedly inadmissible evidence in deciding whether to admit the evidence. See *Bourjaily v. United States*, 483 U.S. 171 (1987). There is no express authority in Pennsylvania on whether the court is bound by the rules of evidence in making its determinations on preliminary questions. In view of this, the approach of the Federal Rule has been adopted.

Pa.R.E. 104(a) does not resolve whether the allegedly inadmissible evidence alone is sufficient to establish its own admissibility. Some other rules specifically address this issue. For example, Pa.R.E. 902 provides that some evidence is self-authenticating. But under Pa.R.E. 803(25), the allegedly inadmissible evidence alone is not sufficient to establish some of the preliminary facts necessary for admissibility. In other cases the question must be resolved by the trial court on a case-by-case basis.

Paragraph 104(b) is identical to F.R.E. 104(b) and appears to be consistent with prior Pennsylvania case law. See *Commonwealth v. Carpenter*, 472 Pa. 510, 372 A.2d 806 (1977).

The first sentence of paragraph 104(c) differs from the first sentence of F.R.E. 104(c) in that the Federal Rule says "Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury." The first sentence of Pa. R.E. 104(c) has been changed to be consistent with Pa.R.Crim.P. 581(F), which requires hearings outside the presence of the jury in all cases in which it is alleged that the evidence was obtained in violation of the defendant's rights.

The second sentence of paragraph 104(c) is identical to the second sentence of F.R.E. 104(c). Paragraph 104(c) says that hearings on other preliminary matters, both criminal and civil, shall be conducted outside the jury's presence when required by the interests of justice. Certainly, the court should conduct a hearing outside the presence of the jury when the court believes that it is necessary to prevent the jury from hearing prejudicial information.

In *Commonwealth v. Washington*, **554 Pa. 559,** 722 A.2d 643 (**[Pa.]** 1998), a case involving child witnesses, the Supreme Court created a per se **[error]** rule requiring competency hearings to be conducted outside the presence of the jury. In *Commonwealth v. Delbridge*, **578 Pa. 641,** 855 A.2d 27 (**[Pa.]** 2003), the Supreme Court held that a competency hearing is the appropriate way to explore an allegation that the **[testimony] memory** of a child has been **["impaired"] so corrupted** or "tainted" by **unduly** suggestive **or coercive** interview techniques**[, and that the burden is on a party alleging testimonial incompetency by reason of taint to prove it by clear and convincing evidence] as to render the child incompetent to testify**.

The right of an accused to have his or her testimony on a preliminary matter taken outside the presence of the jury, a right that the rule expressly recognizes, does not appear to have been discussed in prior Pennsylvania case law.

Paragraph 104(d) is identical to F.R.E. 104(d). In general, when a party offers himself or herself as a witness, the party may be questioned on all relevant matters in the case. See *Agate v. Dunleavy*, 398 Pa. 26, 156 A.2d 530 (1959). Under Pa.R.E. 104(d), however, when the accused in a criminal case testifies only with

regard to a preliminary matter, he or she may not be cross-examined as to other matters. Although there is no Pennsylvania authority on this point, it appears that this rule is consistent with Pennsylvania practice. This approach is consistent with paragraph 104(c) in that it is designed to preserve the defendant's right not to testify generally in the case.

Paragraph 104(e) differs from F.R.E. 104(e) to clarify the meaning of this paragraph. See 21 Wright and Graham, *Federal Practice and Procedure* § 5058 (1977). This paragraph is consistent with prior Pennsylvania case law.

REPORT

Proposed Revision of Comment Pa.R.E. 104

Changes

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania approve the Revision of Comment to Pa.R.E. 104.

This Revision of Comment is being proposed to include language reflecting the effect on the issue of competency of the opinions in *Commonwealth v. Washington*, 554 Pa. 559, 722 A.2d 643 (1998) and *Commonwealth v. Delbridge*, 578 Pa. 641, 855 A.2d 27 (2003).

[Pa.B. Doc. No. 06-1433. Filed for public inspection July 28, 2006, 9:00 a.m.]

[225 PA. CODE ART. VI]

Proposed Rule 601 Revision of Comment

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania approve the Revision of Comment to Rule 601. The changes are being proposed to include recent case law on the issue of competency.

This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's consideration in formulating this proposal. Please note that the Committee Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Report.

The text of the proposed Comment changes precede the Report. Additions are bold, and deletions are bold and in brackets.

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

Richard L. Kearns
Staff Counsel
Supreme Court of Pennsylvania
Committee on Rules of Evidence
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055

no later than September 5, 2006

By the Committee on Rules of Evidence

RICHARD A. LEWIS,
Chair

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE VI. WITNESSES

Rule 601. Competency.

* * * * *

Comment—**2006**

Pa.R.E. 601**[(a)]** differs from F.R.E. 601 **and is intended to preserve existing Pennsylvania law**. F.R.E. 601 abolishes all existing grounds of incompetency except for those specifically provided in later rules dealing with witnesses and in civil actions governed by state law. **[Pa.R.E. 601(b) has no counterpart in the Federal Rules.]** Pa.R.E. 601(a) is consistent with Pennsylvania statutory law. 42 Pa.C.S.A. §§ 5911 and 5921 provide that all witnesses are competent except as otherwise provided. Pennsylvania statutory law provides several instances in which witnesses are incompetent. See, e.g., 42 Pa.C.S.A. § 5922 (persons convicted in a Pennsylvania court of perjury incompetent in civil cases); 42 Pa.C.S.A. § 5924 (spouses incompetent to testify against each other in civil cases with certain exceptions set out in 42 Pa.C.S.A. §§ 5925, 5926, and 5927); 42 Pa.C.S.A. §§ 5930—5933 and 20 Pa.C.S.A. § 2209 ("Dead Man's statutes").

[Pa.R.E. 601(a) does not recognize any decisional grounds for incompetency.] At one time Pennsylvania law provided that neither a husband nor a wife was competent to testify to non-access or absence of sexual relations if the effect of that testimony would illegitimatize a child born during the marriage. See *Commonwealth ex rel. Leider v. Leider*, 434 Pa. 293, 254 A.2d 306 (1969). **[This] That** rule was abandoned in *Commonwealth ex rel. Savruk v. Derby*, 235 Pa. Super. 560, 344 A.2d 624 (1975).

Pa.R.E. 601(b) **has no counterpart in the Federal Rules and** is consistent with Pennsylvania law concerning the **factors for determining** competency of **a person to testify, including** persons with a mental defect and children of tender years. See *Commonwealth v.* ***Baker*****, 466 Pa. 479, 353 A.2d 454 (1976) (standards for determining competency generally);** ***Commonwealth v.*** *Goldblum*, 498 Pa. 455, 447 A.2d 234 (1982) (mental capacity); *Rosche v. McCoy*, 397 Pa. 615, 156 A.2d 307 (1959) (immaturity). **In** ***Commonwealth v. Delbridge*****, 578 Pa. 641, 855 A.2d 27 (Pa. 2003), the Supreme Court reiterated concern for the susceptibility of children to suggestion and fantasy and held that a child witness can be rendered incompetent to testify where unduly suggestive or coercive interview techniques corrupt or "taint" the child's memory and ability to testify truthfully about that memory. See also** ***Commonwealth v. Judd*****, Pa. Super. 2006.**

The application of the standards in Pa.R.E. 601(b) is a factual question to be resolved by the Court **as a preliminary question under Rule 104. The party challenging competency bears the burden of proving grounds of incompetency by clear and convincing evidence.** ***Commonwealth v. Delbridge*****, 578 Pa. at 664; 855 A.2d at 40. In** ***Commonwealth v. Washington*****, 554 Pa. 559, 722 A.2d 643 (1998), a case involving child witnesses, the Supreme Court announced a per se rule requiring trial courts to conduct competency hearings outside the presence of the jury.** Expert testimony has been used when competency

under these standards has been an issue. E.g., *Commonwealth v. Baker*, 466 Pa. 479, 353 A.2d 454 (1976); *Commonwealth v. Gaerttner*, 355 Pa. Super. 203, 484 A.2d 92 (1984). **[Pa.R.E. 601(b) is intended to preserve existing law and not to expand it.]**

* * * * *

REPORT

Proposed Revision of Comment Pa.R.E. 601

Changes

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania approve the Revision of Comment to Pa.R.E. 601.

The Revision of Comment proposed for Pa.R.E. 601 calls attention to cases concerning the factors for determining the competency of a person to testify. With respect to a child witness, the concept of "taint" is described in *Commonwealth v. Delbridge*, 578 Pa. 641, 855 A.2d 27 (Pa. 2003). Accordingly, the proposed revision calls attention to the per se rule in *Commonwealth v. Washington*, 554 Pa. 559, 722 A.2d 643 (Pa. 1998) requiring competency hearings to be held outside the presence of the jury.

[Pa.B. Doc. No. 06-1434. Filed for public inspection July 28, 2006, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1300]

Technical Amendment of Rule 1330 Governing Proceedings to Compel Arbitration and Confirm Arbitration Award in Consumer Credit Transactions; No. 461 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 14th day of July, 2006, Pennsylvania Rule of Civil Procedure 1330 is amended to read as follows.

Whereas prior distribution and publication of this amendment would otherwise be required, it has been determined that immediate promulgation is required in the interest of justice and efficient administration.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective immediately.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1300. ARBITRATION

Subchapter B. PROCEEDING TO COMPEL ARBITRATION AND CONFIRM AN ARBITRATION AWARD IN A CONSUMER CREDIT TRANSACTION

Rule 1330. Notice Required by Rule 1329(d)(1). Form.

The notice required by Rule 1329(d)(1) shall be substantially in the following form:

(Caption)
Notice to File Answer

The motion attached to this notice asks the court to enforce an agreement to submit claims to arbitration. If you oppose submission of this claim to arbitration, you must file an answer to the motion with the Prothonotary within **[thirty (30)] twenty (20)** days of mailing or other service of this notice. If you fail to respond, this case will proceed to arbitration and may result in the entry of a money judgment against you.

Official Note: A court may by local rule require the notice to be repeated in one or more designated languages other than English.

Explanatory Comment

Rule 1329(d)(1) provides that "a motion for a rule to show cause why arbitration should not be compelled shall begin with a notice substantially in the form prescribed by Rule 1330." That notice advises that there is a thirty-day period in which to file an answer to the motion. This time period conflicts with Rule 1329(d)(2) which prescribes a twenty-day period. The present amendment changes the time period set forth in the notice to twenty days, thus conforming to Rule 1329(d)(2).

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 06-1435. Filed for public inspection July 28, 2006, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 81

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, October 13, 2006 directed to:

Patricia A. Miles, Esquire
Counsel, Domestic Relations Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055
FAX (717) 795-2175
E-mail: patricia.miles@pacourts.us

By the Domestic Relations
Procedural Rules Committee

NANCY P. WALLITSCH, ESQ.
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTION FOR SUPPORT

Rule 1910.1. Scope. Definitions.

(a) Except as provided by subdivision (b), the rules of this chapter govern all civil actions or proceedings brought in the court of common pleas to enforce a duty of support, or an obligation to pay alimony pendente lite.

Official Note: A duty of support is imposed by the following statutes: 23 Pa.C.S.**A.** § 4321 and Section 3 of the Support Law of June 24, 1937, P. L. 2045, 62 P. S. § 1973 **(repealed) now Act 43-2005, July 7, 2005, P. L. 196**. The procedure under the rules of this chapter implements Chapter 43**[, subchapter C]** of **Part V of the Domestic Relations Code,** Title 23 of the Consolidated Statutes, 23 Pa.C.S.**A.** § **[4341] 4301** et seq., relating to support proceedings. The procedure under these rules provides an alternative to the **[inter-county] intrastate** and interstate **[procedure] procedures** under **[the Revised Uniform Reciprocal Enforcement of Support Act (1968)] Parts VIII and VIII-A of the Domestic Relations Code,** 23 Pa.C.S.**A.** **§§ [4501] 7101** et seq. **and 8101 et seq.** For alimony and alimony pendente lite, see Sections 3701 and 3702 of the Divorce Code, 23 Pa.C.S.**A** §§ 3701, 3702.

Official Note: Long arm jurisdiction is available in support actions brought pursuant to these rules per 23 Pa.C.S.A. § 4342(c).

(b) The rules of this chapter shall not govern

(1) an action or proceeding for support based upon a contract or agreement which provides that it may not be enforced by an action in accordance with these rules, **[and]**

(2) an application for a temporary order of support and other relief pursuant to the Protection from Abuse Act of December 19, 1990, P. L. 1240, No. 206, 23 Pa.C.S.**A** § 6101 et seq. or

(3) an action for support of an indigent brought pursuant to Chapter 46 of the Domestic Relations Code, 23 Pa.C.S.A. § 4601 et seq.

Official Note: Where a contract or agreement provides that it cannot be enforced in accordance with the rules, actions upon a contract or agreement for support are to be heard by the court and not a conference officer or hearing officer under Rules 1910.11 or 1910.12. However, such actions should be expedited and given preference in court listings.

(c) As used in this chapter, unless the context of a rule indicates otherwise, the following terms shall have the following meanings:

"Conference officer," the person who conducts an office conference pursuant to Rule 1910.11.

"Hearing officer," the person who conducts a hearing on the record and makes recommendations to the court pursuant to Rule 1910.12.

"Overdue support," the amount of delinquent support equal to or greater than one month's support obligation which accrues after entry or modification of a support order as the result of obligor's nonpayment of that order.

"Past due support," the amount of support which accrues prior to entry or modification of a support order as the result of retroactivity of that order. When nonpayment of the order causes overdue support to accrue, any and all amounts of past due support owing under the order shall convert immediately to overdue support and remain as such until paid in full.

"Suspend," eliminate the effect of a support order for a period of time.

"Terminate," end not only the support order, but the support obligation as well.

"Trier of fact," the judge, hearing officer, or conference officer who makes factual determinations.

"Vacate," declare a particular support order null and void, as if it were never entered.

Explanatory Comment—1994

Nothing in this rule should be interpreted to eliminate the distinctions between spousal support and alimony pendente lite which are established by case law.

Alimony pendente lite must be distinguished from permanent alimony for purposes of this rule. The rule applies only to alimony pendente lite. The procedure for obtaining permanent alimony is governed by Section 3702 of the Divorce Code, 23 Pa.C.S.A. § 3702, and Rules of Civil Procedure 1920.1 et seq. Agreements for alimony approved by the court in connection with actions for divorce under Section 3701 of the Divorce Code are deemed to be court orders enforceable under Section 3703 of the Code.

Section 3105(a) of the Divorce Code provides that all agreements relating to matters under the code, whether or not merged or incorporated into the decree, are to be treated as orders for purposes of enforcement unless the agreement provides otherwise. Subdivision (b)(1) is amended to conform to the statute.

There is considerable diversity in the terminology used throughout the rules, and in the various counties, to describe the individuals who conduct conferences and hearings pursuant to the support rules. The addition of subdivision (c) to the rules standardizes terminology and eliminates the confusion which results from individual counties using inconsistent terms to refer to persons performing the same function. All references in the rules to conference or hearing officers have been amended to conform to the terminology set forth in subdivision (c).

In an effort to further standardize the terminology used in support matters, the additional terms are defined.

Explanatory Comment—2000

Act 1998-127 technically amended Act 1997-58 to define and differentiate between past due and overdue support to clarify that only overdue support constitutes a lien by operation of law against the obligor's real or personal property. 23 Pa.C.S.**A.** § 4302 now defines overdue support as "support which is delinquent under a payment schedule established by the court." Past due support is defined as "support included in an order of support which has not been paid."

The definitions of past due and overdue support in this rule do not substantively change the legislative definitions. They merely elaborate on them in terms which are more familiar and helpful to the bench and bar. Specifically, past due support consists of the purely retroactive arrearages which accumulate between the date of the filing of the complaint or petition for modification and the date of the hearing and entry of the initial or modified

support order. Overdue support refers to the delinquent arrearages which accrue after entry of the order due to the obligor's failure to pay support pursuant to the order.

These definitions are important for determining the remedies available for collecting support arrearages. Pursuant to 23 Pa.C.S.**A.** § 4352(d), only overdue support (delinquent arrearages) constitutes a lien by operation of law against the obligor's property. Conversely, past due support (retroactive arrears) does not operate as a lien against this property as long as the obligor remains current on the support order.

Rule 1910.20 extends this legislative distinction between overdue and past due support to the following remedies available to collect support: (1) consumer agency reporting under 23 Pa.C.S.**A.** § 4303; (2) suspension of licenses under 23 Pa.C.S.**A.** § 4355; and (3) the full range of new collection remedies under 23 Pa.C.S.**A.** § 4305(b)(10). Accordingly, these remedies are available only to collect overdue support. They are not available to collect past due support as long as the obligor remains current on the order. If, however, the obligor subsequently defaults on the support order, Rule 1910.20(c) provides that any past due support still owing under the order immediately becomes overdue support subject to the full range of collection remedies. It remains overdue support until collected in full.

Pursuant to Rule 1910.20(c), all overdue support, including past due support which has converted to overdue support, remains subject to Act 58 remedies until paid in full. Any repayment plan subsequently agreed to by the parties, or ordered by the court pursuant to a contempt proceeding (including any arrearage component), does not preclude the use of these remedies for collecting overdue support more quickly, whenever feasible.

In cases involving past due support only, the obligee is not entirely without remedy in the event that additional income or assets of the obligor are discovered after the hearing which would enable collection of past due support more quickly. In these cases, identification of those income sources or assets provides a basis for modification pursuant to Rule 1910.19. Modification includes increasing the rate of repayment on past due support and, if appropriate, ordering that the past due support be paid in full. In these cases, the obligee may also petition the court for special relief pursuant to Rule 1910.26 to have the income or assets frozen and seized pending the petition for modification in order to secure payment of past due support.

Explanatory Comment—2006

Act 43-2005, July 7, 2005, P. L. 196, repealed the Act of June 24, 1937 (P. L. 2045, No.397), known as The Support Law and added Chapter 46 to the Domestic Relations Code, 23 Pa.C.S.A. § 4601 et. seq. Section 4 of Act 43-2005 states that the addition of Chapter 46 is a continuation of the Act of June 24, 1937 (P. L. 2045, No. 397). Chapter 46 addresses the responsibility of certain family members to maintain indigent relatives, whether or not the indigent person is a public charge. New subdivision (b)(3) clarifies that the support rules and guidelines do not apply to actions brought under Chapter 46 of the Domestic Relations Code.

[Pa.B. Doc. No. 06-1436. Filed for public inspection July 28, 2006, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CHS. 200, 400 AND 1000]

Proposed amendments to Rules 206, 402 and 1001—1020 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 206, 402, and 1001—020 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges to make comprehensive changes to the rules relating to appeals to the courts of common pleas from judgments entered in the magisterial district courts. 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,

Michael F. Krimmel, Counsel
Minor Court Rules Committee
Supreme Court of Pennsylvania
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055
Fax 717-795-2175
or e-mail to: minorrules@pacourts.us

no later than Friday, September 1, 2006.

By the Minor Court Rules Committee

THOMAS E. MARTIN, Jr.,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 200. RULES OF CONSTRUCTION; GENERAL PROVISIONS

Rule 206. Costs; Proceedings In Forma Pauperis.

[A.] (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.] (B) Recovery of Taxable Costs Generally.

(1) Except as otherwise provided **[by subdivision C of] in** this rule, the prevailing party in magisterial district court proceedings shall be entitled to recover taxable costs from the unsuccessful party.

(2) Taxable [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] (C) Recovery of Taxable Costs on Appeal or Certiorari.

(1) Except as otherwise provided in this paragraph, taxable costs on appeal or certiorari shall be paid by the unsuccessful party**[, and a]**.

(2) 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 court proceeding.

(3) A defendant who prevails on 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 court proceeding and may recover taxable costs in that proceeding from the plaintiff.

(4) A plaintiff who is unsuccessful in the magisterial district 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 court proceeding from the plaintiff.

(5) In no case shall an appellant who failed to appear at the hearing in the magisterial district court recover any taxable costs on appeal.

[D.] (D) This rule shall apply to all civil actions and proceedings except actions pursuant to the Protection from Abuse Act.

Official Note: **With regard to the establishment of taxable costs in general, see Section 1726 of the Judicial Code, 42 Pa.C.S. § 1726.**

Under paragraph (B)(2), "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. "Execution" costs include those for executing an order for possession.

The items constituting taxable costs in appeal or certiorari proceedings will be governed by law or general rule applicable in the court of common pleas. **Paragraph (C)(5) provides, however, that an appellant who did not appear at the hearing in the magisterial district court may not recover taxable costs on appeal. This is intended to discourage the wasting of resources that occurs when one party does not attend the magisterial district court hearing with the intent of filing an appeal. An appellant appeared at the hearing in the magisterial district court if the appellant or the appellant's attorney of record or authorized representative attended the hearing.**

[Under subdivision 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.]

* * * * *

[E.] (E) Proceedings 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.

[(ii)] (2) Except as provided **[by subparagraph (iii)] in paragraph (3)**, the party shall file a petition and affidavit in the form prescribed **[by subparagraph (vi)] in paragraph (6)**. The petition may not be filed prior to the commencement of an action, which action shall be accepted in the first instance**[,]** without the payment of filing costs.

Except as prescribed **[by subparagraph (iii)] in paragraph (3)**, the 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 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 **at law**, the magisterial district judge shall allow the party to proceed in forma pauperis upon the filing of a praecipe which 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 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] court** shall inform a party permitted to proceed 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 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, the exonerated costs shall be taxed as costs and paid to the magisterial district **[judge] court** 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 and affidavit shall be substantially in the following form:

* * * * *

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

CHAPTER 400. ENFORCEMENT OF JUDGMENTS RENDERED BY MAGISTERIAL DISTRICT JUDGES FOR THE PAYMENT OF MONEY

Rule 402. Request for Order of Execution. Entry of Judgment in Court of Common Pleas.

[A.] (A) Execution of a judgment for the payment of money rendered by a magisterial district judge may be ordered by a magisterial district judge in whose **[office] court** the judgment was rendered or entered, provided the **[plaintiff files in that office**

(1) not before the expiration of 30 days from the date the judgment is entered by the magisterial district judge, and

(2) within five years of that date,
a request for an order of execution] judgment holder files a request for an order of execution in that court not before the expiration of 30 days from the date the judgment is entered and within five years of that date.

[B.] (B) The request form shall be attached to the order, return and other matters required by these rules.

[C.] (C)(1) The **[plaintiff] judgment holder** may enter the judgment, for the purpose of requesting an order of execution thereon, in **[an office of]** a magisterial district **[judge] court** other than that in which it was rendered only if levy is to be made outside the county in which the judgment was rendered and the **[office] court** in which the judgment is entered for execution **[is that of the magisterial district judge whose magisterial district]** is situated in the county in which levy is to be made.

(2) The **[plaintiff] judgment holder** may enter the judgment in such other **[office] court** by filing therein a copy of the record of the proceedings containing the judgment, certified to be a true copy by the magisterial district judge in whose existing **[office] court** the judgment was rendered or by any other official custodian of the record.

[D.] (D)(1) The **[plaintiff] judgment holder** may enter the judgment in the court of common pleas in any county. When so entered, the indexing, revival and execution of the judgment shall be in accordance with procedures applicable in the court of common pleas.

(2) The judgment **[may] shall** be entered in the court of common pleas **[by filing with the prothonotary a copy of the record of the proceedings containing the judgment, certified to be a true copy by the magisterial district judge in whose office the judgment was rendered or by any other official custodian of the record.] in the following manner:**

(a) The judgment holder shall file with the prothonotary a Praecipe to Enter the Magisterial District Court Judgment in the Court of Common Pleas along with a copy of the notice of judgment certified to be a true copy by the magisterial district judge in whose court the judgment is entered or by any other official custodian of the record.

(b) The praecipe filed under paragraph (a) shall

(i) Identify the parties to the judgment and the magisterial district court in which the judgment is entered and that court's docket number associated with the judgment.

(ii) Direct the prothonotary to enter the judgment upon the proper docket and in the judgment index of the court of common pleas.

(iii) Direct the prothonotary to serve the defendant with notice of the entry of the judgment in the court of common pleas by mailing a copy of the praecipe in accordance with paragraph (c).

(iv) Direct the magisterial district court to transmit to the prothonotary the original record of the proceedings in accordance with paragraph (d).

(c)(i) When filing the praecipe under paragraph (a), the judgment holder shall provide to the prothonotary a first class postage paid envelope pre-addressed to the magisterial district court in which the judgment is entered and a first class postage paid envelope pre-addressed to the defendant at the address as listed on the complaint filed in the magisterial district court or as otherwise appearing in the records of that court. The prothonotary shall thereupon send by ordinary mail a copy of the praecipe to the magisterial district court and the defendant, and shall note such service and any return on the docket.

(ii) Failure to serve the defendant with the notice as required by paragraph (i) shall not affect the lien of the judgment.

(d) The magisterial district court to which the praecipe is directed shall, within ten days after receipt of the praecipe, transmit to the prothonotary the original record of the proceedings including but not limited to the following items:

(i) The original complaint.

(ii) All original documents related to service filed in the case.

(iii) Any original exhibits or other evidence retained by the magisterial district court.

(iv) The notice of judgment.

(v) Such other original documents that the magisterial district court deems pertinent to the record.

(e) The original record of the magisterial district court proceedings shall thereafter be retained by the prothonotary. The magisterial district court shall note in the case file that the original record was transmitted to the prothonotary, and shall retain in the case file a duplicate copy of all documents so transmitted.

(3) The judgment may be entered in the court of common pleas **only** after 30 days from the date the judgment is entered **[by] in** the magisterial district **[judge] court**. The judgment may not be entered in the court of common pleas after five years from the date the judgment is entered **[by] in** the magisterial district **[judge] court**.

(4) Except as provided in **[subparagraph D] paragraph (D)**(5) of this rule, once the judgment is entered in the court of common pleas all further process must come from the court of common pleas and no further process may be issued by the magisterial district **[judge] court**.

(5) The magisterial district **[judge] court** shall enter satisfaction on the docket of the magisterial district court proceedings upon the filing by any party in interest of a certified copy of the docket entries of the court of common pleas showing the judgment and satisfaction have been entered in the court of common pleas.

Official Note: Under **[subdivision A] paragraph (A)** of this rule, the execution proceedings are commenced by requesting an "order of execution." The request may not be filed before the expiration of 30 days after the date the judgment is entered **[by] in** the magisterial district **[judge] court**. This will give the defendant an opportunity to obtain a supersedeas within the appeal period. The request must be filed within five years of the date the judgment is entered **[by] in** the magisterial district

[judge] court. No provision has been made for revival of a judgment in magisterial district court proceedings.

[Subdivision C] Paragraph (C) provides for entering the judgment, for the purpose of requesting an order of execution, in **[an office of]** a magisterial district **[judge] court** other than that in which the judgment was rendered when levy is to be made outside the county in which the judgment was rendered. Compare Pa.R.C.P. No. 3002.

As to **[subdivision D] paragraph (D)**, see Section 1516 of the Judicial Code, 42 Pa.C.S. § 1516. The 30 day limitation in the rule **[appears to be required by] is consistent with** this Section. **[Certification by the magisterial district judge should not be done before the expiration of 30 days after the date of entry of the judgment.]**

Paragraph (D) was substantially amended in 2006 to provide a new procedure for entering a judgment in the court of common pleas. The rule requires that the judgment holder file with the prothonotary a Praecipe to Enter the Magisterial District Court Judgment in the Court of Common Pleas along with a certified copy of the notice of judgment from the magisterial district court. This praecipe serves a number of purposes. First, it directs the prothonotary to enter the magisterial district court judgment upon the proper docket and in the judgment index of the court of common pleas. Second, by the prothonotary sending a copy of it to the defendant, the praecipe serves as notice to the defendant that the judgment has been entered in the court of common pleas. Finally, the praecipe directs the magisterial district court to transmit the original case file to be filed with and retained by the prothonotary.

It is necessary for the prothonotary to retain the original case documents because they may be needed if the judgment is renewed and the jurisdiction of the magisterial district court is subsequently challenged by a writ of certiorari under Rule 1009(A)(1)(a). Because there is no time limit on raising a question of jurisdiction by certiorari, the original case documents must be retained so long as the judgment remains in effect. Since magisterial district court judgments cannot be revived like judgments entered in the court of common pleas, after five years there would be no possibility of filing a writ of certiorari relating to a magisterial district court judgment unless the judgment were entered in the court of common pleas.

The rule requires that the magisterial district court retain a duplicate of the case documents transmitted to the prothonotary, but this duplicate may be destroyed in accordance with the applicable records retention schedule.

The Praecipe to Enter the Magisterial District Court Judgment in the Court of Common Pleas shall be on a form prescribed by the Court Administrator of Pennsylvania. *See* Rule 212.

Paragraph (D)(2)(c)(ii) makes clear that failure to serve the defendant with notice of the entry of the judgment, including a return of the ordinary mail as undeliverable, shall not affect the lien of the judgment.

Under paragraph (D)(2)(d)(ii), "original documents related to service" includes certified mail return receipt cards, returned envelopes with notations from the postal service, and any proof or return of service filed with the court.

The only method available to renew a **magisterial district court** judgment would be to record the judgment in the **[Prothonotary's] prothonotary's** office prior to the expiration of the five-year period and then follow the applicable Rules of Civil Procedure for the revival of judgments. See Pa.R.C.P. No. 3025 et seq. Also, **[subdivision D] paragraph (D)** makes clear that when the judgment is entered in the court of common pleas, all further process shall come from the court of common pleas and that no further process shall be issued by the magisterial district judge**[except that the magisterial district judge], but he or she** shall enter on the magisterial district court docket proof of satisfaction of a judgment that had been entered in the court of common pleas and subsequently satisfied in that court. This exception is necessary so that procedures exist for entering satisfaction of all judgments with the magisterial district court, regardless of whether the judgment has been certified to and satisfied in the court of common pleas.

CHAPTER 1000. APPEALS

APPELLATE PROCEEDINGS WITH RESPECT TO JUDGMENTS AND OTHER DECISIONS OF MAGISTERIAL DISTRICT JUDGES IN CIVIL **[MATTERS] AND POSSESSORY ACTIONS**

Rule 1001. Definitions.

As used in this chapter:

[(1) *Judgment*—A judgment rendered by a magisterial district judge under Rule 319, 322 or 514.

(2) *Appeal*—An appeal from a judgment to the court of common pleas.

(3) *Certiorari*—An examination by the court of common pleas of the record of proceedings before a magisterial district judge to determine questions raised under Rule 1009A.

(4) *Supersedeas*—A prohibition against any further execution processes on the judgment affected thereby.

(5) *Court of common pleas*—The court of common pleas of the judicial district in which is located the magisterial district wherein the questioned action of the magisterial district judge took place.

(6) *Claimant*—Includes a defendant with respect to a defendant's cross-complaint or supplementary action filed pursuant to Rule 342 in the action before the magisterial district judge.

(7) *Defendant*—Includes a plaintiff with respect to the defendant's cross-complaint or supplementary action filed pursuant to Rule 342 in the action before the magisterial district judge.

(8) *Service by certified or registered mail*—The mailing of properly addressed certified or registered mail.

(9) *Proof of service*—A verified written statement that service was made by personal service or by certified or registered mail, with the sender's re-

ceipt for certified or registered mail attached thereto if service was made by mail.]

"appeal" means an appeal to the court of common pleas from a judgment entered by the magisterial district court;

"certiorari" means an examination by the court of common pleas of the record of proceedings before the magisterial district court to determine questions raised under Rule 1009(A);

"court of common pleas" means the court of common pleas of the judicial district in which is located the magisterial district wherein the questioned action of the magisterial district court took place;

"judgment" means a judgment entered by a magisterial district court under Rule 319, 322, or 514;

"proof of service" means a verified written statement that service was made by personal service or by certified mail, with the sender's receipt for certified mail attached thereto if service was made by certified mail;

"service by certified mail" means the mailing of properly addressed certified mail;

"supersedeas" means a prohibition against any further execution processes on the judgment affected thereby.

Official Note: Although one of the purposes of the definitions in this rule is to avoid needless repetition throughout these appellate rules, some of the definitions are intended to state or clarify the law as well.

In connection with the definition of "appeal" **[in subdivision (2),]** see also Rule 1007 and the note thereto. **Upon appeal to the court of common pleas, a possessory action brought under Chapter 500 may proceed in the same manner as an appeal of a civil action brought under Chapter 300, including being heard by a board of arbitrators.**

[Under subdivision (3), certiorari] Certiorari under these rules is restricted to an examination of the record of the proceedings before the magisterial district **[judge, which will appear on the complaint forms prescribed by the State Court Administrator]** court. See *Flaherty v. Atkins*, 189 Pa. Super. 550, 152 A.2d 280 (1959). This is a narrow form of certiorari, both with respect to procedure and the matters which can be considered under Rule **[1009A] 1009(A)**. Since an aggrieved party will be entitled to a broad form of appeal de novo under these rules, there seems to be no justification for providing also for a broad form of certiorari. These restrictions on the writ of certiorari are authorized by § 26 of the Schedule to Article V of the 1968 Constitution. The writ of error, which at common law was probably available only to review the proceedings of a court of record (see *Beale v. Dougherty*, 3 Binn. 432 (1811)), is not a form of appellate process permitted by these rules. See also *County of Carbon v. Leibensperger*, 439 Pa. 138, 266 A.2d 632 (1970) (court of common pleas cannot issue writ of prohibition).

The definition of supersedeas **[in subdivision (4) points out the proper office and] reflects the** limited nature of a supersedeas. See also Rules 1008 and 1013 and the notes thereto.

Under **[subdivision (9),] the definitions of "proof of service" and "service by certified mail,"** there is no requirement that the sender's receipt for certified mail be postmarked. There is no return receipt requirement for certified **[or registered]** mail. It is no longer necessary that the proof of service be under oath or affirmation; however, the statement is now made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

APPEAL

Rule 1002. Time and Method of Appeal.

[A. A] (A)(1) Except as otherwise provided in paragraph (B), a party aggrieved by a judgment **[for money, or a judgment affecting the delivery of possession of real property arising out of a nonresidential lease,]** may appeal therefrom within **[thirty (30)] 30** days after the date of the entry of the judgment by filing with the prothonotary of the court of common pleas a notice of appeal **[on a form which shall be prescribed by the State Court Administrator together with a copy of the Notice of Judgment issued by the magisterial district judge]**. The Prothonotary shall not accept **[an] a notice of** appeal **[from an aggrieved party]** which is presented for filing **under this paragraph** more than **[thirty (30)] 30** days after the date of entry of judgment without leave of **[Court] court** and upon good cause shown.

(2) An appeal from only the money portion of a judgment in a case arising out of a residential lease is governed by paragraph (A)(1).

[B.] (B) A party aggrieved by a judgment for the delivery of possession of real property **in a case** arising out of a residential lease may appeal therefrom within ten **[(10)]** days after the date of the entry of judgment by filing with the prothonotary of the court of common pleas a notice of appeal **[on a form which shall be prescribed by the State Court Administrator, together with a copy of the Notice of Judgment issued by the magisterial district judge]**. The prothonotary shall not accept **[an] a notice of** appeal **[from an aggrieved party]** which is presented for filing **under this paragraph** more than ten **[(10)]** days after the date of entry of judgment without leave of court and upon good cause shown.

(C) In all cases, the party filing the notice of appeal shall file a copy of the notice of judgment issued by the magisterial district court together with the notice of appeal. In cases involving counterclaims filed pursuant to Rule 315 or Rule 508, the party filing the notice of appeal shall file a copy of all notices of judgment relating to the original complaint and all counterclaims.

Official Note: **The [Thirty] 30** day **[limitation in subdivision A] appeal period provided for in paragraph (A)** of this rule is **[the same as that found in the Judicial Code § 5571(b)] derived from Section 5571(b) of the Judicial Code**, 42 Pa.C.S. § 5571(b)**[, as amended by § 10(67) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53]**. The ten day **[limitation in subdivision B1] appeal period provided for in paragraph (B)** of this rule is **[designed to implement the time for appeal**

set forth in § 513 of the Landlord and Tenant Act of 1951 (Act No. 1995-33, approved July 6, 1995) (Act No. 1995-33 was suspended by the Pa. Supreme Court on March 28, 1996 by Order of Court insofar as the Act is inconsistent with Rules of Civil Procedure Governing Actions and Proceedings Before Magisterial District Judges, as adopted by that Order.)] derived from Section 513 of the Landlord and Tenant Act of 1951 as amended, 68 P. S. § 250.513.

[The two subdivisions of this rule] Paragraphs (A) and (B) are intended to **[clarify] specify** that **only** where the right of possession of residential real estate is at issue, the shorter ten day **appeal** period **[for appeal]** applies; where the appeal is taken from any **other** judgment **[for money, or a judgment affecting a nonresidential lease,]** under these rules, the thirty day **appeal** period **[of time for appeal]** applies. **[A party may appeal the money portion of a judgment only within the thirty day appeal period specified in subsection A of this rule. It] Thus, an appeal from only the money portion of a judgment in a case arising from a residential lease is subject to the 30 day appeal period applicable to money judgments in general. In addition, it** is the intent of this rule that **where the right of possession of residential real estate is at issue** no supersedeas under **[Pa.R.C.P.D.J. No.] Rule** 1008**(B)** shall be issued by the **[Prothonotary] prothonotary** after the ten **[(10)]** day period for filing an appeal, unless by order of court.

The method of appeal is by filing with the prothonotary a **written** "notice of appeal" on a form **[to be]** prescribed by the **[State]** Court Administrator **of Pennsylvania**. **[Copies of this same form will be used for service under Pa.R.C.P.D.J. No. 1005. This permits use of the same form for filing and service. No useful purpose would be served by having two forms, one called an "appeal" for filing and another called a "notice of appeal" for service.] See Rule 212. The current version of the notice of appeal form is available on Pennsylvania's Unified Judicial System website, www.courts.state.pa.us. This same form is used for service and proof of service under Rule 1005.**

[The 1990 amendment is intended to encourage the complete utilization of the hearing process available before the magisterial district judge.

A copy of the Notice of Judgment must be filed since it will contain the separate entries required by Pa.R.C.P.M.D.J. No. 514.A and will be needed by the Prothonotary.]

Paragraph (C) requires that the appellant file a copy of the notice of judgment together with the notice of appeal. When the case involves counterclaims, the appellant must file copies of all notices of judgment together with the notice of appeal. See Rule 1004(C) and Official Note. The notice of judgment will contain the separate entries required by Rule 514(A) and other information needed by the prothonotary to process the appeal. When entering a judgment for the delivery of possession of real property the magisterial district judge must make a determination as to the amount of monthly rent, even if no money judgment is sought or entered. The prothonotary must have this information to calculate the amount due under Rule 1008(B).

With regard to costs on appeal, see Rule 206.

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Rule 1003. Bond for Appeal.

No bond or other security shall be required for appeal.

Official Note: No bond or other security is required for taking an appeal. Such a requirement would seem to be contrary to Article V, § 9, of the Constitution, although this section of the Constitution would not prevent requiring a bond for a supersedeas. See Rule 1008.

With regard to costs on appeal, see Rule 206.

Rule 1004. **[Filing Complaint or Praecipe] Pleadings** on Appeal. Appeals Involving **[Cross-Complaints] Counterclaims**.

[A. If the appellant was the claimant in the action before the magisterial district judge, he shall file a complaint within twenty (20) days after filing his notice of appeal.] (A) Except as otherwise provided by this rule, the pleadings in an action appealed to the court of common pleas from a magisterial district court shall be as prescribed by the rules of civil procedure governing a civil action in the court of common pleas.

(B)(1) An appellant who was the original plaintiff in the action in the magisterial district court shall file a complaint within 20 days after filing the notice of appeal.

[B. If the] (2) An appellant **who** was the **original** defendant in the action **[before] in** the magisterial district **[judge he shall file with his notice of appeal a praecipe requesting the prothonotary to enter a rule as of course upon the appellee to file a complaint within twenty (20) days after service of the rule or suffer entry of a judgment of non pros] court shall file with the prothonotary a copy of the complaint filed in the magisterial district court, either together with the notice of appeal required by Rule 1002 or within ten days after filing the notice of appeal. The action shall thereafter proceed as provided in paragraph (a) or paragraph (b)**.

(a) Within 20 days of filing the notice of appeal, the appellant shall file an answer to the complaint, which may also include a new matter, a counterclaim, or both. No further pleading is required. The action shall proceed in the court of common pleas upon the complaint and answer so filed except that

(i) An appellant who has filed a counterclaim in the action in the court of common pleas may seek an order to compel the appellee to file an answer to the counterclaim, but otherwise the allegations in the counterclaim shall be deemed denied.

(ii) An appellant may file preliminary objections in accordance with Pa.R.C.P. No. 1028 within 20 days after filing the notice of appeal. Preliminary objections filed under this paragraph are limited to the following grounds:

(1) lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue, or improper service of a complaint;

(2) lack of capacity to sue or nonjoinder of a necessary party;

(3) pendency of a prior action or agreement for alternative dispute resolution;

(4) failure to exercise or exhaust a statutory remedy, and

(5) full, complete and adequate non-statutory remedy at law.

(b) Within 20 days of filing the notice of appeal by the appellant, the appellee may file a complaint in the form prescribed by the rules of civil procedure governing a civil action in the court of common pleas. If the appellee files this complaint, all subsequent pleadings shall be in the form prescribed by the rules of civil procedure governing a civil action in the court of common pleas.

[C. When judgments have been rendered on complaints of both the appellant and the appellee and the appellant appeals from the judgment on his complaint or on both complaints, the appellee may assert his claim in the court of common pleas by pleading it as a counterclaim if it can properly be so pleaded in that court. If the appellant appeals only from the judgment on his complaint, the appellee may appeal from the judgment on his complaint at any time within thirty (30) days after the date on which the appellant served a copy of his notice of appeal upon the appellee.] (C) An appeal by any party shall be deemed an appeal by all parties as to all judgments and all issues unless otherwise stipulated in writing by all parties.

Official Note: **[The twenty days allowed the claimant-appellant under subdivision A will give him time to consider, among other things, matters under Rule 1007B. The procedure upon failure to file a complaint pursuant to a rule to do so entered under subdivision B will be governed by the Rules of Civil Procedure (Pa.R.C.P. No. 1037(a)).] This rule was substantially amended in 2006 in a number of respects. First, to alleviate the burden previously put on the plaintiff to file a complaint in the form usually required by the rules of civil procedure governing civil actions in the court of common pleas when an appeal is taken by the defendant from a judgment in a magisterial district court, the rule permits the plaintiff to use the complaint filed in the magisterial district court.**

[The landlord's complaint in an appeal from a judgment concerning the possession of real property will contain the same material averments as those required under Rule 503C, an averment that the tenant claims possession of the property being substituted for an averment that he retains it if he has vacated the property or has been ejected from it. See, as to this general requirement of pleading, Palethorp v. Schmidt, 12 Pa. Super. 214 (1900). See also the note to Rule 1081(30).

Subdivision C permits the appellee, when there were cross-complaints in the action before the magisterial district judge and the appellant appeals from the judgment on his complaint or on both complaints, to assert his claim by way of a counterclaim in the court of common pleas if the claim is cognizable as a counterclaim in that court. However, even when this procedure is permissible, the appellee must, if he desires to use it, still give a notice of appeal under Rule 1002, with the time extension allowed by subdivision C (see the Judicial Code, § 5571(f) 42 Pa.C.S. § 5571(f)), if he intends to appeal from the judgment on his complaint and the appellant has not appealed from that judgment, although in such a case subdivision A of Rule 1004 will not be applicable. If the appellee can and intends to avail himself of the procedure permitted by subdivision C, he need not obey any rule to file a complaint served upon him under subdivision B.

All judgments entered must be appealed to preserve all issues, if such issue can be properly pleaded in the court of common pleas. This is of particular importance under subdivision C, where both complaints must be appealed to preserve all issues. See *Borough of Downingtown v. Wagner*, 702 A.2d 593 (Pa. Cmwlth. 1997).]

Paragraph (B)(2) provides that upon an appeal by a party who was the original defendant in the action in the magisterial district court, the appellee (who was the original plaintiff in the action in the magisterial district court) has the choice of either (1) filing no pleading and proceeding on the complaint filed in the magisterial district court or (2) filing a complaint in the form required for a civil action in the court of common pleas. If the appellee proceeds by filing a complaint as in a common pleas civil action, the appellant must respond by filing a responsive pleading as in a common pleas civil action.

With regard to paragraph (B)(2)(a)(ii), consistent with the policy of promoting simplified procedures in magisterial district court actions, it was thought desirable to limit the grounds upon which preliminary objections could be filed in appeals from judgments in such actions. The second major change to the rule under the 2006 amendments involves appeals in cases involving counterclaims and in cases involving multiple parties. Paragraph (C) now provides that an appeal by any party is deemed an appeal by all parties as to all judgments and all issues. This includes all judgments in cases involving counterclaims. Further, such appeals require the filing of only a single notice of appeal. *See American Appliance v. E.W. Real Estate Management, Inc.*, 564 Pa. 473, 769 A.2d 444 (2001). See also Rule 1002(C) and Official Note. Compare Pa.R.C.P. No. 1309 (with regard to appeals from compulsory arbitration awards).

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Rule 1005. Service of Notice of Appeal and Other Papers.

[A.] (A)(1) The appellant shall, by personal service or by certified **[or registered]** mail, serve a copy of **[his] the** notice of appeal upon the appellee **[and upon the magisterial district judge in whose office the judgment was rendered. If required by Rule 1004B to request a rule upon the appellee to file a complaint, he shall also serve the rule by personal service or by certified or registered mail upon the appellee]**. The address of the appellee for the purpose of service shall be **[his] the** address as listed on the complaint **[form]** filed in **[the office of]** the magisterial district **[judge] court** or as otherwise appearing in the records of that **[office] court. [If the appellee has an attorney of record named in the complaint form filed in the office of the magisterial district judge,**

the service upon the appellee may be made upon the attorney of record instead of upon the appellee personally.]

(2) When filing the notice of appeal the appellant shall provide to the prothonotary a first class postage paid envelope pre-addressed to the magisterial district court in which the judgment was entered. The prothonotary shall thereupon send by ordinary mail a copy of the notice of appeal to the magisterial district court, and shall note such service and any return on the docket.

[B.] (B) The appellant shall file with the prothonotary proof of service of copies of **[his] the** notice of appeal**[, and proof of service of a rule upon the appellee to file a complaint if required to request such a rule by Rule 1004B,]** within ten **[(10)]** days after filing the notice of appeal.

[C.] (C) In lieu of service and proof of service **[pursuant to subparagraphs A. and B. of this Rule] under paragraphs (A)(1) and (B)**, the court of common pleas may, by local rule, permit or require that the appellant file with the notice of appeal a **[stamped] first class postage paid** envelope pre-addressed to the appellee at **[his] the** address as listed on the complaint **[form]** filed in **[the office of]** the magisterial district **[judge] court** or as otherwise appearing in the records of that **[office, or the attorney of record, if any, of the appellee, and a stamped envelope pre-addressed to the magisterial district judge in whose office the judgment was rendered. Copies of the notice of appeal, and Rule pursuant to 1004B, if applicable, shall thereupon be mailed by the prothonotary or court by first class mail, with such service and any return being noted on the court's docket] court**. **The prothonotary shall thereupon send by ordinary mail a copy of the notice of appeal to the appellee, and shall note such service and any return on the docket.**

[D. The party filing] (D) An appellee who elects to file a complaint under Rule 1004**(B)(2)(b)** shall forthwith serve it upon the opposite party in the appeal by leaving a copy for or mailing a copy to **[him at his] the opposite party at the** address as shown in the magisterial district court records mentioned in **[subdivision A] paragraph (A)(1)** of this rule. **[If the opposite party has an attorney of record either in the magisterial district court or court of common pleas proceeding, service upon the opposite party may be made upon the attorney of record instead of upon the opposite party personally.]**

[E.] (E) Service and proof of service may be made by attorney or other agent.

(F) If a party subject to service under this rule had an attorney of record or authorized representative in the proceedings in the magisterial district court, or if there is an attorney of record in the appellate proceeding in the court of common pleas, a copy of the document to be served upon the party shall also be served upon the attorney of record or authorized representative in the same manner that it is to be served upon the party.

Official Note: **[Subdivision A] Paragraph (A)(2)** requires service of a copy of the notice of appeal upon the magisterial district **[judge as well as upon the appellee, or his attorney of record] court**. This copy, when received by the magisterial district **[judge] court**, may operate as a supersedeas under Rule 1008.

[As to subdivision B] With regard to paragraph (B), there is no return receipt requirement for service by certified **[or registered]** mail and consequently no **[such]** receipt need be filed with the prothonotary, although if service is by certified **[or registered]** mail the sender's receipt must be attached to the proof of service. See Rule 1001**[(9) and the last paragraph of the note to Rule 1001]**. The notice of appeal and the proof of service may be filed simultaneously. See also Rule 1006 **[and its note]**.

With regard to proof of service when the local option under paragraph (C) is used, see *Breza v. Don Farr Moving & Storage Co.*, 828 A.2d 1131 (Pa. Super. Ct. 2003).

[Subdivision C prescribes] Paragraph (D) provides for a pleading type service of the complaint, which may be made by ordinary mail, upon the opposite party in the appeal **[or his attorney of record]**.

With regard to paragraph (F), see the definitions of "attorney of record" in Rule 202 and Pa.R.C.P. No. 76. See also Rule 207 regarding representation by an authorized representative.

Rule 1006. Striking Appeal.

Upon failure of the appellant to comply with Rule **[1004A or Rule 1005B] 1004(B) or Rule 1005(B)**, the prothonotary shall, upon praecipe of the appellee, mark the appeal stricken from the record. The court of common pleas may reinstate the appeal upon good cause shown.

Official Note: This rule is intended to provide sanctions for failing to act within the time limits prescribed.

If an appeal is stricken pursuant to this rule, any supersedeas based on it shall be terminated. See Rule 1008(C). If this occurs, and the court of common pleas does not reinstate the appeal upon good cause shown, the judgment holder may proceed with execution of the judgment entered in the magisterial district court.

Rule 1007. Procedure on Appeal.

[A.] (A) The proceeding on appeal shall be conducted de novo **[in accordance with the Rules of Civil Procedure that would be applicable if the action was initially commenced in the court of common pleas]**.

[B.] (B) Except as otherwise provided in **[subdivision C] paragraph (C)**, the action upon appeal may not be limited with respect to amount in controversy, joinder of causes of action or parties, counter-claims, added or changed averments or otherwise because of the particulars of the action before the magisterial district judge.

[C.] (C) When an appeal is taken from a supplementary action filed pursuant to Rule 342, only those issues arising from the Rule 342 action are to be considered.

(D) The prothonotary shall promptly give the magisterial district court written notice of the disposition of the proceeding on appeal.

Official Note: As under earlier law, the proceeding on appeal is conducted de novo, but the former rule that the proceeding would be limited both as to jurisdiction and subject matter to the action before the magisterial district judge (see *Crowell Office Equipment v. Krug*, 213 Pa. Super. 261, 247 A.2d 657 (1968)) has not been retained. Under **[subdivision B] paragraph (B)**, the court of common pleas on appeal can exercise its full jurisdiction and all parties will be free to treat the case as though it had never been before the magisterial district judge, subject of course to the Rules of Civil Procedure. The only limitation on this is contained in **[subdivision C] paragraph (C)**, which makes clear that an appeal from a supplementary action filed pursuant to Rule 342 is not intended to reopen other issues from the underlying action that were not properly preserved for appeal.

Upon appeal to the court of common pleas, a possessory action brought under Chapter 500 may proceed in the same manner as an appeal of a civil action brought under Chapter 300, including being heard by a board of arbitrators.

Paragraph (D) requires that the prothonotary give the magisterial district court written notice of the disposition of the proceeding on appeal. Disposition may include the entry a judgment, the striking of the appeal pursuant to Rule 1006, the voluntary termination of the appeal, or other disposition in the court of common pleas. If the appeal is stricken or voluntarily terminated, the judgment holder may be able to proceed with execution of the judgment entered in the magisterial district court; it is, therefore, important that the magisterial district court receive prompt official notice of the disposition of the appeal since the judgment holder may wish to execute in that court.

Rule 1008. Appeal as Supersedeas.

[A. Receipt] (A) Except as otherwise provided in paragraph (B), receipt by the magisterial district **[judge] court** of the copy of the notice of appeal **[from the judgment]** shall operate as a supersedeas**[, except as provided in subdivision B of this rule]**.

[B.] (B)(1) When an appeal is from a judgment for the possession of real property, receipt by the magisterial district **[judge] court** of the copy of the notice of appeal shall operate as a supersedeas only if the appellant at the time of filing the appeal**[,]** deposits with the prothonotary a sum of **[money ( ] cash,** or a bond**[,]** with surety approved by the prothonotary**[ )]**, equal to the lesser of three **[(3)]** months' rent or the rent actually in arrears on the date of the filing of appeal, based upon the magisterial district judge's order of judgment, and, thereafter, deposits cash or bond with the prothonotary in a sum equal to the monthly rent which becomes due during the period of time the proceedings upon appeal are pending in the court of common pleas, such additional deposits to be made within **[thirty (30)] 30** days following the date of the appeal, and each successive **[thirty (30)] 30** day period thereafter.

(2) Only when a deposit of cash or bond is made in accordance with paragraph (1) at the time of filing the appeal, the prothonotary shall make upon the notice of appeal and its copies a notation that it will operate as a supersedeas when received by the magisterial district court.

[Upon application by the landlord, the court] (3)(a) Except as otherwise provided in paragraph (b), the prothonotary shall release **[appropriate sums] to the landlord funds** from the escrow account **[on a continuing basis] within five days of the funds being collected** while the appeal is pending **[to compensate the landlord for the tenant's actual possession and use of the premises during the pendency of the appeal]**.

(b) Upon application by the tenant and for good cause shown, the court of common pleas may impound the funds in the escrow account and direct the prothonotary not to release funds except upon order of court.

(4) In the event the appellant fails to deposit the sums of money, or bond, required by this rule when such deposits are due, the prothonotary, upon praecipe filed by the appellee, shall terminate the supersedeas **but not the underlying appeal**. **[Notice of the termination of the supersedeas shall be forwarded via first class mail to all parties, but if any party has an attorney of record named in the complaint form or other filings with the court, notice shall be given to the attorney instead of to the party. Notice to a party that does not have an attorney of record is sufficient if mailed to the party's last known address of record.**

Where the deposit of money or bond is made pursuant to the Rule at the time of filing the appeal, the prothonotary shall make upon the notice of appeal and its copies a notation that it will operate as a supersedeas when received by the magisterial district judge.]

[C.] (C) If an appeal is stricken or voluntarily terminated, any supersedeas based on it shall terminate. The prothonotary shall **[pay the deposits of rental to the party who sought possession of the real property] thereupon release to the landlord any remaining funds paid in accordance with paragraph (B)(1)**.

(D) If a supersedeas is terminated in accordance with any provision of this rule, the prothonotary shall send notice of the termination of the supersedeas via first class ordinary mail to all parties. If a party subject to notice under this paragraph had an attorney of record or authorized representative in the proceedings in the magisterial district court, or if there is an attorney of record in the appellate proceeding in the court of common pleas, a copy of the notice shall also be sent to the attorney of record or authorized representative via first class ordinary mail.

Official Note: **[Subdivision A] Paragraph (A)** provides for an automatic supersedeas in appeals from **[trespass and assumpsit actions] money judgments** upon receipt by the magisterial district judge of a copy of the notice of appeal. **An appeal from only the money portion of a landlord and tenant judgment would also be governed by paragraph (A). See Rules 514 and 521.** It did not seem worthwhile to require bond or other security for costs as a condition for supersedeas in trespass and assumpsit appeals.

[Subdivision B] Paragraph (B), however, does require the deposit of money or approved bond as a condition for supersedeas where the appeal is from a judgment for the possession of real property. This provision substantially **[incorporates the purpose and intent of the Legislative provision contained in Act No. 1995-33, approved July 6, 1995. The 1996 amendment provides a uniform, Statewide procedure (except Philadelphia County; See: Philadelphia Municipal Court Rules of Civil Procedure), and establishes a mechanism for the application of a supersedeas or the termination thereof without the need for any local court rule or order.] implements the legislative changes to the Landlord and Tenant Act of 1951 contained in the Act of July 6, 1995, P. L. 253, No. 33.**

A supersedeas issued under this rule remains in effect during the pendency of the appeal unless terminated in accordance with this rule. Paragraphs (B) and (C) provide in part for the termination of a supersedeas under certain circumstances. Only if a supersedeas is terminated pursuant to these provisions may the judgment holder proceed with execution of the judgment entered in the magisterial district court. A judgment holder who intends to proceed with execution of the judgment entered in the magisterial district court should provide the magisterial district court with a copy of the notice sent in accordance with paragraph (D). Paragraph (B)(4) makes clear that the underlying appeal may proceed even if the supersedeas is terminated.

The request for termination of the supersedeas, upon the praecipe filed with the prothonotary, may simply state: "Please terminate the supersedeas in the within action for failure of the appellant to pay monthly rental as required by Pa.R.C.P.**M.**D.J. No. 1008 for a period in excess of **[thirty (30)] 30** days" and will be signed by appellee. The prothonotary will then note upon the praecipe: "Upon confirmation of failure of the appellant to deposit the monthly rent for more than **[thirty (30)] 30** days, the supersedeas is terminated," and the prothonotary will sign and clock the praecipe. A copy of the praecipe may thereupon be displayed to the magisterial district judge who rendered the judgment, and a request for issuance of an order for possession under **[Pa. R.A.P.D.J. No.] Rule** 515 may be made.

When entering a judgment for the delivery of possession of real property the magisterial district judge must make a determination as to the amount of monthly rent, even if no money judgment is sought or entered. See Rule 514(A). The prothonotary must have this information to calculate the amount due under paragraph (B)(1). The deposit of rent required hereunder is intended to apply in all cases, irrespective of the reasons which caused the filing of the complaint before the magisterial district judge in the first instance. **[Disposition of the monthly rental deposits will be made by the court of common pleas following its de novo hearing of the matter on appeal.] Under the 2006 amendments to the rule, the prothonotary must release funds from the escrow account, within five days of the funds being collected, to the landlord during the pendency of the appeal unless otherwise directed by the court of common pleas in accordance with paragraph (B)(3)(b). This is intended to compensate the landlord for the tenant's actual possession and use of the premises during the pendency of the appeal. There is no requirement that the landlord make application for the release of funds under paragraph (B)(3)(a). This is a significant change from the former procedure.**

[The money judgment portion of a landlord and tenant judgment (see Pa.R.C.P.D.J. Nos. 514 and 521) would be governed by subdivision A.]

With regard to paragraph (D), see the definitions of "attorney of record" in Rule 202 and Pa.R.C.P. No. 76. See also Rule 207 regarding representation by an authorized representative.

* * * * *

CERTIORARI

Rule 1009. Praecipe for Writ of Certiorari.

[A. Unless he was the plaintiff in the action before the magisterial district judge] (A)(1) Except as otherwise provided in paragraph (2), a party aggrieved by a judgment may file with the prothonotary of the court of common pleas a praecipe for a writ of certiorari claiming that the judgment should be set aside because of

(a) lack of jurisdiction over the parties or subject matter,

(b) improper venue, or

(c) such gross irregularity of procedure as to make the judgment void.

(2) If the party aggrieved by the judgment was the plaintiff in the action before the magisterial district **[judge, he] court, the party** may file a praecipe for a writ of certiorari only on the **[last mentioned ground] grounds set forth in paragraph (1)(c)**.

[B. If lack of jurisdiction over the parties or the subject matter is claimed, the praecipe may be filed at any time after judgment. Otherwise it shall be filed within thirty (30) days from the date of the judgment.]

(B)(1) A praecipe for a writ of certiorari based on the grounds set forth in paragraph (A)(1)(a) may be filed at any time after the date of the entry of the judgment.

(2) A praecipe for a writ of certiorari based on the grounds set forth in paragraph (A)(1)(b) or (c) must be filed within 30 days after the date of the entry of the judgment.

[C. The praecipe shall identify the judgment complained of and the magisterial district judge in whose office the record of the proceedings containing the judgment is filed.] (C) Rescinded.

[D. The praecipe and the writ shall be on a form which shall be prescribed by the State Court Administrator.] (D) Rescinded.

Official Note: **[Subdivision A] Paragraph (A)** sets forth the grounds for certiorari. See the comments concerning the limited nature of certiorari in the note to Rule 1001. The plaintiff in the action before the magisterial district judge**[,]** (and the word "plaintiff" as used in this rule does not include a defendant who has sued on a **[cross-complaint,] counterclaim)[,]** may file a

praecipe for a writ of certiorari only on the ground of gross irregularity. Having instituted the proceedings before the magisterial district judge, the plaintiff should not be permitted to challenge jurisdiction or venue.

Under **[subdivision B] paragraph (B)**, the praecipe for the writ of certiorari must be filed within **[thirty] 30** days after the date of **the entry of** the judgment, except when a question of jurisdiction is raised. There is no time limit on raising a question of jurisdiction by certiorari. *Flaherty v. Atkins*, 189 Pa. Super. 550, 152 A.2d 280 (1959). A party who files **[his] a** praecipe after the **[thirty] 30** day period has run can be heard only on the question of jurisdiction (if permitted to raise that question under **[subdivision A] paragraph (A)**) even though **[he] the party** claims improper venue or gross irregularity along with **[his] the** claim of lack of jurisdiction. **See Rule 402 as to the retention by the prothonotary of the original record of the proceedings when a judgment is entered in the court of common pleas. Because there is no time limit on raising a question of jurisdiction by certiorari, the original case documents must be retained so long as the judgment remains in effect.**

The praecipe and writ must be commenced by filing with the prothonotary a written "Writ of Certiorari to Magisterial District Judge" on a form prescribed by the Court Administrator of Pennsylvania. See Rule 212. The current version of the form is available on Pennsylvania's Unified Judicial System website, www.courts.state.pa.us.

Rule 1010. Bond for Writ of Certiorari.

No bond or other security **[shall] may** be required for issuance of the writ of certiorari.

Official Note: As in the case of appeals (see Rule 1003), no bond or other security is required for certiorari, but see Rule 1013 with respect to supersedeas on certiorari.

Rule 1011. Issuance and Service of Writ of Certiorari.

[A.] (A) Upon receipt of the praecipe for a writ of certiorari, the prothonotary shall issue the writ and direct it to the magisterial district **[judge in whose office] court in which** the record of the proceedings containing the judgment is filed. **[The] A copy of the** writ shall be delivered for service to the party who filed the praecipe.

[B.] (B)(1) The party obtaining the writ shall serve it, by personal service or by certified **[or registered]** mail, **[upon the magisterial district judge to whom it was directed. In like manner, he shall also serve a copy of the writ]** upon the opposite party. The address of the opposite party for the purpose of service shall be **[his] the** address as listed on the complaint **[form]** filed in **[the office of]** the magisterial district **[judge] court** or as otherwise appearing in the records of that **[office] court**. **[If the opposite party has an attorney of record named in the complaint form filed in the office of the magisterial district judge, the service upon the opposite party may be made upon the attorney of record instead of upon the opposite party personally.]**

(2) When filing the praecipe for a writ of certiorari the appellant shall provide to the prothonotary a first class postage paid envelope pre-addressed to the magisterial district court in which the record of the proceedings containing the judgment is filed. The prothonotary shall thereupon mail a copy of the writ to the magisterial district court, and shall note such service and any return on the docket.

[C.] (C) If proof of service of the writ upon **[the magisterial district judge and]** the opposite party is not filed with the prothonotary within five **[(5)]** days after delivery of the writ for service, the prothonotary shall, upon praecipe of the opposite party, mark the writ stricken from the record and the writ shall not be reinstated nor shall any new writ issue.

[D.] (D) Service and proof of service may be made by attorney or other agent.

(E) If a party subject to service under this rule had an attorney of record or authorized representative in the proceedings in the magisterial district court, or if there is an attorney of record in the certiorari proceeding in the court of common pleas, a copy of the document to be served upon the party shall also be served upon the attorney of record or authorized representative in the same manner that it is to be served upon the party.

Official Note: The provisions as to service of the writ **[parallel] are similar to** those for service of notices of appeal **under Rule 1005**. **[Subdivision C] With regard to paragraph (B), there is no return receipt requirement for service by certified mail and consequently no receipt need be filed with the prothonotary, although if service is by certified mail the sender's receipt must be attached to the proof of service. See Rule 1001. Paragraph (C)** contains sanctions for failing to comply with the prescribed time limits, and reinstatement of the writ or the issuance of a new one is not allowed. **If the writ is stricken pursuant to paragraph (C), any supersedeas based on it shall be terminated. See Rule 1013(C). If this occurs the judgment holder may proceed with execution of the judgment entered in the magisterial district court.**

With regard to paragraph (E), see the definitions of "attorney of record" in Rule 202 and Pa.R.C.P. No. 76. See also Rule 207 regarding representation by an authorized representative.

Rule 1012. Return by Magisterial District Judge.

[The] (A) Except as otherwise provided in paragraph (B) the magisterial district **[judge] court** to **[whom] which** the writ of certiorari is directed shall, within ten **[(10)]** days after **[its]** receipt **[by him] of the writ**, make return to the writ by transmitting to the prothonotary a certified true copy of the record of the proceedings **[containing the judgment.] including but not limited to copies of the following items:**

(1) The complaint.

(2) All documents related to service filed in the case.

(3) Any exhibits or other evidence retained by the magisterial district court.

(4) The notice of judgment.

(5) Such other documents that the magisterial district court deems pertinent to the record.

(B) If the original record of the proceedings has been entered in the court of common pleas in accordance with Rule 402(D), the magisterial district court shall so notify the prothonotary.

Official Note: **[The certified true copy of the record of the proceedings containing the judgment will be a certified true copy of the filled out complaint form prescribed by the State Court Administrator.] Under paragraph (A)(2), "documents related to service" includes certified mail return receipt cards, returned envelopes with notations from the postal service, and any proof or return of service filed with the court.**

As to paragraph (B), Rule 402(D) provides that the original record of the proceedings is to be filed with the prothonotary when a magisterial district court judgment is entered in the court of common pleas. Since magisterial district court judgments cannot be revived like judgments entered in the court of common pleas, after five years there would be no possibility of filing a writ of certiorari relating to a magisterial district court judgment unless the judgment were entered in the court of common pleas. If the original record of the proceedings is no longer on file with the magisterial district court upon service of a writ of certiorari, the magisterial district court need only notify the prothonotary that the original documents needed for consideration of the writ are already on file with the prothonotary.

Rule 1013. Writ of Certiorari as Supersedeas.

[A. Receipt] (A) Except as otherwise provided in paragraph (B), receipt of the writ of certiorari by the magisterial district **[judge to whom] court to which** it was directed shall operate as a supersedeas**[, except as provided in subdivision B of this rule]**.

[B.] (B)(1) When the writ of certiorari involves a judgment for the possession of real property, receipt of the writ by the magisterial district **[judge] court** shall operate as a supersedeas only if the party obtaining the writ at the time of filing the writ**[,]** deposits with the prothonotary a sum of **[money ( ]cash,** or a bond**[,]** with surety approved by the prothonotary**[ )]**, equal to the lesser of three **[(3)]** months' rent or the rent actually in arrears on the date of the filing of **[appeal, as determined by the magisterial district judge] the writ, based upon the magisterial district judge's order of judgment**, and, thereafter, deposits cash or bond with the prothonotary in a sum equal to the monthly rent which becomes due during the period of time the **certiorari** proceedings **[upon writ]** are pending in the court of common pleas, such additional deposits to be made within **[thirty (30)] 30** days following the date of the filing of the writ, and each successive **[thirty (30)] 30** day period thereafter.

(2) Only when a deposit of cash or bond is made in accordance with paragraph (1) at the time of filing the writ, the prothonotary shall make upon the writ and its copies a notation that it will operate as a supersedeas when received by the magisterial district court.

[Upon application by the landlord, the court] (3)(a) Except as otherwise provided in paragraph (b), the prothonotary shall release **[appropriate sums] to the landlord funds** from the escrow account **[on a continuing basis] within five days of the funds being collected** while the writ is pending **[and while the ensuing proceeding is pending (in the event the writ is granted) to compensate the landlord for the tenant's actual possession and use of the premises during the pendency of the writ and during the pendency of ensuing proceeding (in the event the writ is granted)] in the court of common pleas**.

(b) Upon application by the tenant and for good cause shown, the court of common pleas may impound the funds in the escrow account and direct the prothonotary not to release funds except upon order of court.

(4) In the event **[that]** the party filing the writ fails to deposit the sums of money, or bond, required by this rule when such deposits are due, the prothonotary, upon praecipe filed by the party that did not file the writ, shall terminate the supersedeas**, but not the underlying writ**. **[Notice of the termination of the supersedeas shall be forwarded via first class mail to all parties, but if any party has an attorney of record named in the complaint form or other filings with the court, notice shall be given to the attorney instead of to the party. Notice to a party who or which does not have an attorney of record is sufficient if mailed to the party's last known address of record.**

Where the deposit of money or bond is made pursuant to this Rule at the time of the filing of the writ, the prothonotary shall make upon the writ and its copies a notation that the writ will operate as a supersedeas when received by the magisterial district judge.

C.] (C) If a writ of certiorari is stricken, **[dismissed] quashed,** or discontinued, any supersedeas based on it shall terminate. The prothonotary shall **[pay the deposits of rental to the party who sought possession of the real property] thereupon release to the landlord any remaining funds paid in accordance with paragraph (B)(1)**.

(D) If a supersedeas is terminated in accordance with any provision of this rule, the prothonotary shall send notice of the termination of the supersedeas via first class ordinary mail to all parties. If a party subject to notice under this paragraph had an attorney of record or authorized representative in the proceedings in the magisterial district court, or if there is an attorney of record in the certiorari proceeding in the court of common pleas, a copy of the notice shall also be sent to the attorney of record or authorized representative via first class ordinary mail.

Official Note: As in appeals **[(see Pa.R.C.P.D.J. No. 1008)]**, certiorari operates as an automatic supersedeas **[in trespass and assumpsit matters]** when the writ is received by the magisterial district **[judge] court when the judgment subject to the writ is only a money judgment**. If the writ involves a judgment for the possession of real property, however, it will operate as a supersedeas upon receipt by the magisterial district **[judge] court** only if money is paid or a bond is filed conditioned as stated in the rule. This

[Rule has been amended to require] requires a payment equal to the lesser of three months rent or the rent actually in arrears in order for the writ involving a judgment for the possession of real property to act as a supersedeas to ensure consistency **[between this Rule and Pa.R.C.P.D.J. No. 1008**. **(Appeal as Supersedeas)] with Rule 1008**. **See Rule 1008. If the judgment subject to the writ is only the money judgment portion of a landlord and tenant judgment, the matter would be governed by paragraph (A) of this rule and the automatic supersedeas would issue.**

When entering a judgment for the delivery of possession of real property the magisterial district judge must make a determination as to the amount of monthly rent, even if no money judgment is sought or entered. See Rule 514(A). The prothonotary must have this information to calculate the amount due under paragraph (B)(1).

A supersedeas issued under this rule remains in effect during the pendency of the certiorari proceeding in the court of common pleas unless terminated in accordance with this rule. Paragraphs (B) and (C) provide in part for the termination of a supersedeas under certain circumstances. Only if a supersedeas is terminated pursuant to these provisions may the judgment holder proceed with execution of the judgment entered in the magisterial district court. A judgment holder who intends to proceed with execution of the judgment entered in the magisterial district court should provide the magisterial district court with a copy of the notice sent in accordance with paragraph (D). Paragraph (B)(4) makes clear that the underlying writ may proceed even if the supersedeas is terminated.

The request for termination of the supersedeas, upon the praecipe filed with the prothonotary, may simply state: "Please terminate the supersedeas in the within action for failure of the party filing the writ to pay monthly rental as required by Pa.R.C.P.**M**.D.J. No. 1013 for a period in excess of **[thirty (30)] 30** days" and will be signed by **the** landlord. The prothonotary will then note upon the praecipe: "Upon confirmation of failure of the party filing the writ to deposit the monthly rent for more than **[thirty (30)] 30** days, the supersedeas is terminated," and the prothonotary will sign and clock the praecipe. A copy of the praecipe may thereupon be displayed to the magisterial district judge who rendered the judgment, and a request for issuance of an order for possession under **[Pa.R.C.P.D.J. No.] Rule** 515 may be made.

[The money judgment portion of a landlord and tenant judgment (see Pa.R.C.P.D.J. Nos. 514 and 521) would be governed by subdivision A of this rule.] Under the 2006 amendments to the rule, the prothonotary must release funds from the escrow account, within five days of the funds being collected, to the landlord during the pendency of the writ in the court of common pleas unless otherwise directed by the court of common pleas in accordance with paragraph (B)(3)(b). This is intended to compensate the landlord for the tenant's actual possession and use of the premises during the pendency of the writ. There is no requirement that the landlord make application for the release of funds under paragraph (B)(3)(a). This is a significant change from the former procedure.

With regard to paragraph (D), see the definitions of "attorney of record" in Rule 202 and Pa.R.C.P. No. 76. See also Rule 207 regarding representation by an authorized representative.

Rule 1014. Orders of Court in Certiorari Proceedings.

[A.] (A) If the court of common pleas finds in favor of the party obtaining the writ, it shall enter an order that the judgment is set aside without prejudice to the cause of action.

[B.] (B) If the court of common pleas finds against the party obtaining the writ, it shall enter an order that the writ is **[dismissed] quashed**.

Official Note: **[Subdivision A] Paragraph (A)** states the rule that if the court finds in favor of the party obtaining the writ, it merely sets the judgment below aside without prejudice to the cause of action. The grounds for certiorari do not go to the merits of the case but only to matters that usually can be cured by **[later selecting a proper tribunal**. See ***Statler v. Alexander Film Co.*****, 21 D & C 512 (1934)] remedial action**.

* * * * *

Rule 1015. Certiorari and Appeal Not Permitted.

A judgment may not be the subject of both certiorari and appeal. The prothonotary shall mark stricken from the record any writ of certiorari concerning a judgment as to which an appeal is pending if proof of service of copies of the notice of appeal has been filed. If the appeal is stricken or voluntarily terminated, **the prothonotary shall reinstate** the writ of certiorari **[shall be reinstated]** upon praecipe of the party obtaining the writ.

Official Note: This rule forbids bringing both certiorari and an appeal. An appeal involves a trial de novo on the merits, although in many cases first in the form of compulsory arbitration, without regard to any defects in the proceedings below, whereas certiorari does attack defects, not going to the merits, in the proceedings below. To attempt to combine these two procedures would cause administrative difficulties hardly worth the effort, considering that a successful certiorari would often merely allow the case to be tried again**[, either]** before **the same or** another magisterial district judge or in the court of common pleas, and that an appeal actually is a second trial although it may have changed aspects (see Rule **[1007B] 1007(B)**). Probably because of these administrative difficulties, the courts of common pleas have rather uniformly prohibited joining the two remedies of appeal and certiorari and have either required an election or forced the prosecution of the first type filed to the exclusion of the other. **[See, for example, *Ward v. Harligan*, 1 W.N.C. 72 (1874); *Russell v. Shirk*, 3 C.C. 287 (1888).]** Since under the 1968 Constitution a party is entitled as of right to an appeal (Art. V, § 9) but not to certiorari (Art. V, Schedule, 26), it was decided to provide in this rule that the remedy of appeal would take precedence in all cases and that a writ of certiorari addressed to a judgment under appeal (from the time of filing proof of service) would be stricken. This would apply even in the perhaps rare case when one party appeals and the other files certiorari.

STATEMENT OF OBJECTION

Rule 1016. Statement of Objection to Rule 420 Orders and Determinations.

[A.] (A) Any party in interest aggrieved by an order or determination made by a magisterial district judge under Rule 420 may obtain a reconsideration thereof in the court of common pleas **only** by filing a **written** statement of objection to the order or determination with the prothonotary and with the magisterial district **[judge in whose office] court in which** the order or determination was made.

[B.] (B) The statement of objection shall be filed with the prothonotary and the magisterial district **[judge] court** within ten **[(10)]** days after the date of the order or determination to which objection is made.

Official Note: This rule and Rules 1017—1020 provide a system for reconsideration in the court of common pleas of orders and determinations of magisterial district judges dealing with execution matters.

Under **[subdivision B] paragraph (B)** of this rule, the statement of objection must be filed within ten days after the date of the questioned order or determination. See Rule **[421C] 421(C)**. The time limit for filing a statement of objection need not be the same as that for filing a notice of appeal from a judgment. See **[the Judicial Code, §] section** 5571(c)(4) **of the Judicial Code**, 42 Pa.C.S. § 5571(c)(4)**[, as amended by § 10(67) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53]**. It may be noted that under Pa.R.C.P. Nos. 3206(b) and 3207(b) objections to sheriff's determinations must be made within ten days after the date of mailing of the determination.

Rule 1017. Form and Content of Statement of Objection.

The statement of objection**[, which shall be on a form which shall be prescribed by the State Court Administrator,]** shall merely **[state] set forth** that the party filing it objects to the order or determination described in the statement.

Official Note: This rule prescribes the form and content of the statement of objection. **The statement of objection must be commenced by filing with the prothonotary and the magisterial district court a written "Statement of Objection to Rule 420 Orders and Determinations of Magisterial District Judge" on a form prescribed by the Court Administrator of Pennsylvania. See Rule 212. The current version of the form is available on Pennsylvania's Unified Judicial System website, www.courts.state.pa.us.** Compare Pa.R.C.P. Nos. 3206(b), 3207(b).

Rule 1018. Duties of Magisterial District Judge Upon Receipt of Statement of Objection.

[A.] (A)(1) Immediately upon receipt of the statement of objection, the magisterial district **[judge] court** shall send a copy of it by **first class** ordinary mail to all other parties in interest.

(2) If a party subject to service under paragraph (1) has an attorney of record or authorized representative in the proceedings in the magisterial district court, the magisterial district court shall also send a copy of the statement of objection by first class ordinary mail to the attorney of record or authorized representative.

[B.] (B) Within ten **[(10)]** days after receiving the statement of objection, the magisterial district **[judge] court** shall **[file with] transmit to** the prothonotary a certified true copy of the record of actions taken by the magisterial district judge under Rule 420, but copies of only those appeals, objections, claims, exceptions, or requests considered under Rule 420 that are pertinent to the statement of objection need be **[attached to] included in** that record.

Official Note: As to the procedure in **[subdivision A] paragraph (A)**, compare Pa.R.C.P. Nos. 3206(b), 3207(b).

With regard to paragraph (A)(2), see the definition of "attorney of record" in Rule 202. See also Rule 207 regarding representation by an authorized representative.

[Subdivision B] Paragraph (B) is intended to bring before the court copies of the documents on file in the **[office of the]** magisterial district **[judge] court** pertaining to the matter in question. The **[attachments to] documents included in** the record of Rule 420 actions referred to in this **[subdivision] paragraph** are notations by the magisterial district judge of appeals taken under Rule **[408C] 408(C)** and objections to levy under Rule 413, property claims under Rule 413, exceptions to distribution under Rule **[416C] 416(C)** and requests to set aside sale under Rule **[420C] 420(C)** filed in **[the office of]** the magisterial district **[judge] court**.

Rule 1019. Consideration of Statement of Objection by Court of Common Pleas.

[A.] (A) Upon consideration of the statement of objection, the court of common pleas shall take such action and make such orders as shall be just and proper.

[B.] (B) The matters raised by the statement of objection shall be considered de novo by the court of common pleas.

Official Note: Consideration of the matters raised by the statement of objection will be de novo and the court is given broad latitude and discretion in disposing of these matters. Although the proceedings are de novo, this will not excuse failure to comply with whatever time limitations are imposed (see Rules **[408C] 408(C)**, 413, **[416C and 420C] 416(C) and 420(C)**) for raising before the magisterial district **[judge] court** the matters now before the court of common pleas.

Rule 1020. Statement of Objection to Operate as Stay.

Until further order of the court of common pleas, receipt by the magisterial district **[judge] court** of the statement of objection shall operate as a stay of any execution proceedings that may be affected by the proceedings on the statement.

Official Note: Under this rule, receipt by the magisterial district **[judge] court** of the statement of objection operates initially as an automatic stay of the affected execution proceedings.

REPORT

Proposed Amendments to Rules 206, 402, and 1001—1020 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

Comprehensive Changes to the Rules Relating to Appeals to the Courts of Common Pleas From Judgments Entered in the Magisterial District Courts

I. *Introduction and Background*

The Minor Court Rules Committee (the Committee) is proposing significant amendments to the rules of procedure governing appeals to the courts of common pleas from judgments entered in the magisterial district courts (Chapter 1000). This proposal is the culmination of several years work, and is in response to inquiries and suggestions from interested persons, developments in case law, and the Committee's own internal discussions.

II. *Proposed Rule Changes*

While many of the proposed changes are self-explanatory or editorial in nature, the following represent more significant changes in practice and require more in-depth explanation.[1]

A. Discussion of Selected Changes to Appellate Rules 1001—1020

1. *Rule 1001*

The Committee proposes that the definitions in Rule 1001 be revised to conform to the substantive changes in the subsequent appellate rules. Specifically, because of significant proposed changes in Rule 1004, the definitions of "claimant" and "defendant" are rendered unnecessary. In addition, the Committee proposes that all references to registered mail be deleted as unnecessary.

In the Official Note, among other changes, the Committee proposes additional wording to make clear that an appeal of a possessory (landlord and tenant) action brought under Chapter 500 may be heard by a board of arbitrators in the same manner as an appeal of a civil action brought under Chapter 300.[2] This has been the source of confusion from time-to-time, with some suggesting that an appeal from a magisterial district court possessory judgment should proceed in the court of common pleas as an action in ejectment. The Committee believes that landlord and tenant matters, as statutorily created causes of action, may be heard by arbitrators and proceed as in other appeals from magisterial district court judgments.

2. *Rule 1002*

The Committee proposes the addition of a new paragraph (A)(2) to make clear that an appeal from only the money portion of a judgment in a case arising out of a residential lease is governed by paragraph (A)(1) and the longer 30 day appeal period applies. While this has been the subject of much confusion since the 1995 amendments to the Landlord and Tenant Act, the Committee has long believed that only appeals from judgments for the possession of real property arising out of residential lease agreements should be subject to the shorter ten day appeal period, and where a tenant contests only the judgment for money, and not the judgment for possession, the tenant should be accorded the longer 30 day appeal period (and the applicable automatic supersedeas under Rule 1008(A)).

The Committee further proposes the addition of a new paragraph (C) that would require the party filing the appeal to file a copy of all notices of judgment relating to the original complaint and all counterclaims. This is intended to facilitate proposed new Rule 1004(C), and is consistent with the Pennsylvania Supreme Court's holding in *American Appliance v. E.W. Real Estate Management, Inc.*, 564 Pa. 473, 769 A.2d. 444 (2001).[3]

3. *Rule 1004*

The Committee proposes significant changes to Rule 1004 to streamline the appellate process. Under current rules, appeals to the court of common pleas are heard de novo, and all pleadings and procedures beyond the filing of the notice of appeal must conform to the rules of civil procedure governing actions in the court of common pleas. Under the Committee's proposed changes, this would remain the case when the plaintiff from the magisterial district court proceedings appeals; i.e., the plaintiff would be required to file a complaint in conformity with the common pleas rules, and thereafter all pleadings and procedures would be in accordance with those rules. When the defendant from the magisterial district court proceedings appeals, however, the proposed rules would give the plaintiff the option to proceed in the court of common pleas using the complaint filed in the magisterial district court proceedings.[4] This is intended to alleviate the burden currently placed on the plaintiff to file a common pleas complaint when the defendant takes an appeal. The existing requirement that the plaintiff file a common pleas complaint in all cases usually forces the plaintiff to incur the additional expense of hiring a lawyer to draft and file the complaint, after the plaintiff has already obtained a judgment and often after the defendant failed to appear and defend at the district court level. Under the proposed rules, when the plaintiff elects to proceed on the magisterial district court complaint there would be streamlined responsive pleadings and limited grounds on which preliminary objections could be filed. For example, the permissible grounds for preliminary objections would not include improper form of complaint because the magisterial district court complaint does not conform to the common pleas requirements. The proposed rules would also permit a plaintiff to file a common pleas complaint as under current procedures, and if the plaintiff elects to do so all subsequent pleadings and procedures would need to conform to regular common pleas practice. This proposed simplified pleading option would require numerous conforming amendments to other rules in Chapter 1000.

The second proposed major change to Rule 1004 involves appeals in cases involving counterclaims and in cases involving multiple parties. The proposed amendment to paragraph (C) would provide that an appeal by any party is deemed an appeal by all parties as to all judgments and all issues unless otherwise stipulated in writing by all parties. This would include all judgments in cases involving counterclaims. Further, such appeals

[1] In addition to the substantive changes discussed here, the Committee is proposing numerous editorial changes to improve tabulation, enhance readability, correct citation form, and to conform to modern drafting style.

[2] The Committee proposes a similar note in Rule 1007.

[3] See discussion infra Part II.A.3.

[4] This concept was initially introduced in a proposal put forth by the Civil Procedural Rules Committee. See the Civil Procedural Rules Committee's Proposed Recommendation No. 160, published at 30 Pa.B. 2126 (April 29, 2000). Because the procedures relating to appeals from magisterial district court judgments are set forth in Chapter 1000 of the magisterial district court civil rules which are under the purview of the Minor Court Rules Committee, and it was thought desirable to keep all such procedures in one set of rules, the Civil Procedural Rules Committee referred this matter to the Minor Court Rules Committee.

would require the filing of only a single notice of appeal.[5] This proposed change is intended to be consistent with the Pennsylvania Supreme Court's holding in *American Appliance v. E.W. Real Estate Management, Inc.*, 564 Pa. 473, 769 A.2d. 444 (2001). This proposed change would also be consistent with Pa.R.C.P. No. 1309 governing appeals from compulsory arbitration awards.

4. *Rule 1005*

The Committee proposes that Rule 1005 be amended to provide for service of the notice of appeal upon the magisterial district court by first class ordinary mail. The proposed rule would require the appellant to provide to the prothonotary, at the time of filing the notice of appeal, a first class postage paid envelope pre-addressed to the magisterial district court. The Committee believes that personal service or service by certified mail upon the district court is an unnecessary burden and expense. Service upon the appellee would continue to be by personal service or certified mail, or in accordance with the local rule option under paragraph (C).[6]

Proposed new paragraph (F) would require service upon a party's attorney of record or personal representative in the magisterial district court proceedings, if any.[7] This is intended to make the service and notice provisions in Chapter 1000 consistent with similar provisions elsewhere in the rules.[8]

5. *Rule 1006*

The Committee proposes a revision to the Official Note to Rule 1006 to make clear that if an appeal is stricken any supersedeas based on the appeal is terminated, and in this event the holder of the magisterial district court judgment may execute upon the judgment utilizing the execution procedures at the district court level. This provision, and similar provisions proposed throughout the Chapter 1000 rules,[9] is intended to provide guidance as to when a judgment holder may return to the magisterial district court level to execute upon a judgment that had been appealed to the court of common pleas.[10]

6. *Rule 1007*

In Rule 1007, the Committee proposes the addition of a new paragraph (D) that would require the prothonotary to promptly give the magisterial district court written notice of the disposition of the proceeding on appeal. The Committee believes it to be particularly important that this provision be made a part of the rule because, depending on the disposition of the appeal, the holder of the magisterial district court judgment may or may not be able to return to the district court to execute upon the judgment utilizing the execution procedures at the district court level.[11]

7. *Rule 1008*

The Committee proposes amendments to Rule 1008 to clarify when the automatic supersedeas (paragraph (A)) applies, and when a deposit of cash or bond is required to secure a supersedeas (paragraph (B)). In addition, the Committee proposes a significant change to existing procedure with regard to rent monies paid from the escrow account held by the prothonotary under paragraph (B). Under the current rule, the landlord must make application for the release of escrow funds. Because the escrowed funds are intended to compensate the landlord for the tenant's actual possession and use of the premises during the pendency of the appeal, however, the Committee believes that funds should automatically be paid to the landlord on an ongoing basis. Under the proposal, therefore, paragraph (B)(3)(a) would be amended to require the prothonotary to release funds from the escrow account within five days of the funds being collected while the appeal is pending. Paragraph (B)(3)(b) would provide for an application of the tenant to the court to impound the escrowed funds for good cause shown. The Committee believes this to be a more equitable system for the disbursement of escrowed funds.

A proposed amendment to paragraph (B)(4) would make clear that the failure of the tenant to make the rent payments in accordance with paragraph (B)(1) terminates the supersedeas but not the underlying appeal. This has been the source of some confusion, and the Committee believes that termination of the supersedeas alone does not affect the disposition of the underlying appeal.[12]

8. *Rule 1009*

In addition to numerous editorial changes, the Committee proposes a revision to the Note to Rule 1009 to cross reference the proposed new procedure in Rule 402 for the entry of a magisterial district court judgment in the court of common pleas.[13]

9. *Rule 1012*

The Committee proposes that Rule 1012 be amended to specify what documents should be included in the certified true copy of the magisterial district court record sent to the prothonotary in response to a writ of certiorari. In addition, a new paragraph (B) would be added to conform to the proposed new procedure in Rule 402 for the entry of a magisterial district court judgment in the court of common pleas.[14]

10. *Rule 1013*

Rule 1013 would be amended to mirror, to the extent possible, the supersedeas provisions in Rule 1008, including the proposed new procedure for the disbursement of escrow funds to a landlord.[15]

B. Discussion of Correlative Changes to Rules 206 and 402

1. *Rule 206*

The Committee reviewed paragraph (C) of Rule 206 relating to recovery of taxable costs on appeal or certiorari, and is proposing a significant change to promote the efficient utilization of judicial resources and the effective administration of justice. Specifically, the Committee is proposing the addition of a new paragraph (C)(5) that would provide that an appellant who did not appear at the hearing in the magisterial district court may not recover taxable costs on appeal. This provision is intended to discourage the wasting of judicial resources that occurs when one party does not attend the magisterial district court hearing with the intent of filing an appeal and

[5] See discussion of Rule 1002 supra Part II.A.2.
[6] Similar changes are proposed in Rule 1011 with regard to service of a writ of certiorari.
[7] Similar provisions are proposed in Rules 1008, 1011, 1013, and 1018.
[8] See Supreme Court of Pennsylvania Order No. 230, Magisterial Docket No. 1 (June 1, 2006) implementing Recommendation No. 3 Minor Court Rules 2004, and accompanying explanatory Final Report, note 10, published at 36 Pa.B. 2955 (June 17, 2006).
[9] See proposed amendments or revisions to the Official Notes to Rules 1007, 1008, 1011, and 1013.
[10] For further discussion of this issue, see the Committee's proposal and explanatory Report published at 34 Pa.B. 1933 (April 10, 2004).
[11] See supra Part II.A.5 and note 10.
[12] A similar change is proposed in Rule 1013 with regard to a supersedeas based on a writ of certiorari.
[13] See discussion infra Part II.B.2.
[14] Id.
[15] See discussion supra Part II.A.7.

litigating the case in the court of common pleas. The Committee believes that the magisterial district courts offer an affordable, efficient, and effective forum in which to resolve many disputes, and that litigants should fully and properly avail themselves of the district court process before appealing matters to the courts of common pleas.

2. *Rule 402*

In Rule 402, the Committee is proposing a new procedure for the entry of a magisterial district court judgment in the court of common pleas. The Committee reviewed a recent case, *Smith v. Sperduti*,[16] which addressed an apparent conflict between Pa. R.C.P.M.D.J. No. 1009 and the Scheduled Records/District Justice Record Retention Schedule.[17] In *Smith*, the issue was whether "an aggrieved party [can] secure relief from a judgment of a district justice (now a magisterial district judge) by way of a writ of certiorari, claiming lack of jurisdiction over him, after the case records of the district justice have been destroyed pursuant to the record retention and disposition schedule adopted to implement Pa.R.J.A. 507(b)?"[18] As the court pointed out, "there is seemingly irreconcilable conflict between Pa.R.C.P.D.J. 1009(B), which permits a praecipe for a writ of certiorari anytime after judgment where lack of jurisdiction is claimed, and the record retention and disposition schedule of our Supreme Court"[19] which provides for the destruction of civil case records seven years after entry of judgment.[20] Although the court was able to decide this case by appropriately considering "evidence beyond the record of the district justice to determine the issue with regard to those facts not within the personal knowledge of the district justice,"[21] the Committee believes the conflict between Rule 1009 and the records retention schedule should be resolved. The Committee concluded that because there is no time limit on raising a question of jurisdiction by certiorari, the original case documents must be retained so long as the judgment remains in effect.[22]

To resolve the conflict, the Committee proposes that Rule 402(D)(2) be amended to provide a procedure by which the original record of a case that is entered in the court of common pleas be retained by the prothonotary, and therefore not subject to the records retention schedule applicable to the magisterial district courts. The amended rule would require a magisterial district court judgment holder who seeks to enter the judgment in the court of common pleas to file with the prothonotary a "Praecipe to Enter the Magisterial District Court Judgment in the Court of Common Pleas"[23] along with a certified true copy of the judgment. The praecipe would, among other things, direct the prothonotary to enter the judgment upon the proper docket and the judgment index, direct the prothonotary to give notice of the entry of judgment to the defendant by mailing a copy of the praecipe to the defendant,[24] and direct the magisterial district court to transmit the original record of the proceedings to the prothonotary to be retained by the prothonotary. Under this proposed procedure, therefore, the original record — including, notably, records relating to service — would be available if at any time in the future the judgment was challenged under Rule 1009 for lack of jurisdiction. The copy of the record retained by the magisterial district court could be destroyed in accordance with the records retention schedule.

[16] 74 Pa. D. & C.4th 395 (C.P. Beaver County 2005)
[17] 204 Pa. Code § 213.51. See also Pa.R.J.A. No. 507.
[18] 74 Pa. D. & C.4th at 397.
[19] Id. at 400.
[20] 204 Pa. Code § 213.51(a)(3).
[21] 74 Pa. D. & C.4th at 401.
[22] At the outset, the Committee noted that the issue in *Smith* would not have arisen had the magisterial district court judgment not been entered in the court of common pleas, because the judgment would have expired after five years (see Rule 402(A) and (D)(3)), two years before the record could have been destroyed under the records retention schedule. Therefore, the *Smith* issue can arise only when a judgment is entered in the court of common pleas, thereby potentially extending the life of the judgment beyond the seven year records destruction date.
[23] The rule contemplates that the praecipe would be on a preprinted form. See Pa. R.C.P.M.D.J. No. 212.
[24] See Pa.R.C.P. No. 236.

[Pa.B. Doc. No. 06-1437. Filed for public inspection July 28, 2006, 9:00 a.m.]

PART I. GENERAL

[246 PA. CODE CH. 1000]

Correction to Rule 1002 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

The Order of December, 15, 2000, published at 30 Pa.B. 6882, 6883 (December 30, 2000), amended the comment to Rule 1002. A paragraph of the official note was not codified correctly. This notice corrects the affected portion of the official note currently published in the *Pennsylvania Code*.

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 1000. APPEALS

APPEAL

Rule 1002. Time and Method of Appeal.

* * * * *

Official Note: The thirty day limitation in subdivision A of this rule is the same as that found in the Judicial Code § 5571(b), 42 Pa.C.S. § 5571(b), as amended by § 10(67) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53. The ten day limitation in subdivision B of this rule is designed to implement the time for appeal set forth in § 513 of the Landlord and Tenant Act of 1951 (Act No. 1995-33, approved July 6, 1995) (Act No. 1995-33 was suspended by the Pa. Supreme Court on March 28, 1996 by Order of Court insofar as the Act is inconsistent with Rules of Civil Procedure Governing Actions and Proceedings Before District Justices, as adopted by that Order.). The two subdivisions of this rule are intended to clarify that where the right of possession of residential real estate is at issue, the shorter, ten day period for appeal applies; where the appeal is taken from any judgment for money, or a judgment affecting a nonresidential lease, under these rules, the thirty day period of time for appeal applies. A party may appeal the money portion of a judgment only within the thirty day appeal period specified in subsection A of this rule. It is the intent of this rule that no supersedeas under Pa.R.C.P.D.J. No. 1008 shall be issued by the Prothonotary after the ten (10) day period for filing an appeal, unless by order of court.

* * * * *

[Pa.B. Doc. No. 06-1438. Filed for public inspection July 28, 2006, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CRAWFORD COUNTY

In the Matter of the Adoption of Local Criminal Rule 117 Providing for Coverage and Availability of Issuing Authorities with Respect to Issuing Warrants; Preliminary Arraignments; Summary Trials; and Setting and Accepting Bail; AD No. 4 of 2006

Order

And Now, July 13, 2006 pursuant to Rule 105 of the Pennsylvania Rules of Criminal Procedure, it is hereby ordered that Local Rule 117 (Cra.R.Crim.P. 117) is hereby adopted to take effect thirty (30) days after publication in the *Pennsylvania Bulletin*.

The Court Administrator is ordered and directed to:

1. File seven (7) certified copies of this order with the Administrative Office of Pennsylvania Courts.

2. Send two (2) certified copies and a diskette to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Send one (1) certified copy of this order to the Pennsylvania Criminal Procedural Rules Committee.

4. Forward one (1) copy to the Crawford County Law Library.

5. Keep continuously available for public inspection copies of this order and rule in the Clerk of Courts Office.

By the Court

GORDON R. MILLER,
President Judge

Rule 117. COVERAGE—ISSUING WARRANTS; PRELIMINARY ARRAIGNMENTS AND SUMMARY TRIALS; AND SETTING AND ACCEPTING BAIL

REGULAR BUSINESS HOURS

All magisterial district judge offices shall be open for regular business on Mondays through Fridays, excluding holidays, from 8:30 a.m. to 4:30 p.m. local time.

CONTINUOUS COVERAGE

Continuous coverage for the issuance of search warrants and arrest warrants, for warrants issued pursuant to Pa.R.Crim.P. 430 in a summary case, for the issuance of emergency orders under the Protection from Abuse Act, and for those services set forth in Pa.R.Crim.P. 117(A)(2)(a), (b), (c) and (d) shall be in accordance with the traditional on-call system as presently established.

NON-BUSINESS HOURS

At least one magisterial district judge shall be available at all times in Crawford County. The responsibility of the judge on call is to perform the services referred to in this order and any other acts of an emergency nature as required by rule or law. A magisterial district judge in a particular district may contact police officers and other law enforcement agencies to indicate that said judge shall be called first even though said judge is not the on call magisterial district judge in order to handle matters required of magisterial district judges within the district of that particular judge.

Otherwise, the magisterial district judge on call shall be contacted by all police agencies and other law enforcement agencies. Said judge must be available (able to be accessed or able to render services as required by rule or law). The magisterial district judge shall not have the option of determining when he or she will be available. The on call magisterial district judge must be available and must respond (answer or reply) in a timely fashion. In certain instances, such as under Rules 441 and 519 of the Pennsylvania Rules of Criminal Procedure, arresting officers may release a person from custody and subsequently file a citation or summons when specific conditions have been met. Police agencies and arresting officers are encouraged to familiarize themselves with these sorts of rules as those rules will be discussed by a magisterial district judge in deciding whether an arraignment is necessary in these cases.

The on call magisterial district judge will be available during non-office hours for a week at a time in rotation, with each assignment period beginning on Monday at 4:30 p.m. and ending the following Monday at 8:30 o'clock a.m. (except Monday holidays, when the assignment period ends at 4:30 p.m. on that particular Monday).

During that time the on call magisterial district judge is responsible for coverage by being available for inquiries at his or her home, through use of the beeper, or through communication with Crawford County Control. By providing continuous availability the on call magisterial district judge can then effectively receive/monitor all on call requests. If it is necessary for the on call magisterial district judge to personally act within two (2) hours of the time that judge's office will open for the next business day, the magisterial district judge may require the police officer or other law enforcement agency to bring a defendant before the appropriate magisterial district judge at or after the opening of that office.

During temporary assignments in the on call schedule the magisterial district judge assigned is authorized to call upon the services of other magisterial district judges as needed, and mutually agreed upon, particularly if the other magisterial district judges have an office that is more convenient to the parties by reason of geographical location.

The court administrator shall, annually, prepare a temporary assignment schedule to be used in Crawford County outside of normal business hours for the purposes set forth in this rule. That schedule is known as the "Emergency Assignment Schedule." Modifications to this schedule may occur amongst respective magisterial district judges provided any modifications are mutually agreed upon and subsequently conveyed to Crawford County Control. Any additional compensation for subsequent modification of an existing schedule shall be waived.

MAGISTERIAL DISTRICT JUDGE TEMPORARY ASSIGNMENTS

When during regular business hours for magisterial district judges, a judge who has venue over a particular matter is unavailable, any other magisterial district judge in Crawford County is hereby temporarily assigned to serve the magisterial district of the judge who is unavailable. Such an arrangement may be made between respective magisterial district judges by mutual agreement. Any additional compensation for said arrangement will be waived.

OFFICIALS DESIGNATED TO ACCEPT BAIL

Magisterial district judges and the Clerk of Courts shall be authorized to accept bail in accordance with the provisions, and subject to the limitations, of the Pennsylvania Rules of Criminal Procedure.

[Pa.B. Doc. No. 06-1439. Filed for public inspection July 28, 2006, 9:00 a.m.]

INDIANA COUNTY

Adoption of Rules of Criminal Procedure IC117, IC431 and IC520; No. AD-2-2006

Order of Court

And Now, this 12th day of July, 2006, it is hereby *Ordered* and *Directed* that new Indiana County Rules of Criminal Procedure IC117, IC431 and IC520 are adopted effective August 1, 2006.

The Indiana County District Court Administrator is *Ordered* and *Directed* to do the following:

1. File seven (7) certified copies of this Administrative Order and Rule with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the Pennsylvania Criminal Procedural Rules Committee.

4. Forward one (1) copy for publication in the *Indiana County Law Journal*.

5. Forward one (1) copy to the Indiana County Law Library.

6. Keep continuously available for public inspection copies of this Administrative Order and Rule in the Clerk of Court's Office.

By the Court

WILLIAM J. MARTIN,
President Judge

ADOPTION OF RULES OF CRIMINAL PROCEDURE INDIANA COUNTY 117, INDIANA COUNTY 431 and INDIANA COUNTY 520

Local Rule IC 117 Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail

A. After hours coverage shall be provided by a Magisterial District Judge, assigned on a rotational schedule, who has county-wide jurisdiction and who operates between the hours of 4:00 p.m. to 8:00 a.m. Monday through Friday. Holiday and weekend coverage shall be provided by an assigned on-call Magisterial District Judge.

1. The "duty" Magisterial District Judge will hold Court by video conferencing available from any approved advanced communication technology site. The Magisterial District Court Office will remain closed to the public during after hours coverage except at the discretion of the Magisterial District Judge.

2. In the event a Magisterial District Judge is needed when the Court is not scheduled for after hours coverage for the issuance of a search or arrest warrant, a protection from abuse petition, or other emergency matter; the "duty" Magisterial District Judge will be contacted through the Indiana County Emergency Management Agency at (724) 349-1428.

3. Procedures for executed summary warrants shall be pursuant to Pa.R.Crim.P.431.

B. Monetary bond may be posted outside of regularly scheduled daily work hours at the Indiana County Jail.

The Indiana County Sheriff's Office is designated to accept bail deposits as provided in Rule 117, having the defendant sign the bail bond, releasing the defendant and delivering the bail deposit and bail bond to the issuing authority or The Clerk of Courts. After hour bail deposits must be in the form of cash or a money order. The posting of $10,000.00 or more in cash shall require the submission of Form 8300, an Internal Service Regulation. All persons wishing to post bail after hours shall contact the duty sheriff by calling the Indiana County Emergency Management Agency at (724) 349-1428.

Rule IC 431 Procedure When Defendant Arrested With Warrant

A. In lieu of bringing a summary offender before the Magisterial District Judge when summary warrant is executed, the police officer shall follow the options provided in Pa.R.Crim.P.431.

B. The hours of 6:00 a.m. to 10:00 p.m. provided for in PA.R.Crim.P.431(A)(2) are not extended. Any arrest made outside these specified hours shall be handled pursuant to subsection (a).

Rule IC 520 Bail Before Verdict

Monetary bond may be posted outside of regularly scheduled daily work hours at the Indiana County Jail pursuant to procedure outline in Rule IC 117B.

Effective 8/01/06

[Pa.B. Doc. No. 06-1440. Filed for public inspection July 28, 2006, 9:00 a.m.]

LEHIGH COUNTY

Adoption of New Lehigh Rule of Criminal Procedure 117; File No. AD-2-2006

Order

And Now, this 11th day of July, 2006, pursuant to the requirements of Pa.R.Crim.P. 117, *It Is Ordered* that effective August 1, 2006, new Lehigh County Rule of Criminal Procedure, Leh.R.Cr.P.117 Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials: and Setting and Accepting Bail, be and the same is hereby adopted in the following form.

It Is Further Ordered that seven (7) certified copies of this Order and the attached Rule of Criminal Procedure shall be filed with the Administrative Office of Pennslvania Courts; that two (2) certified copies and one (1) diskette shall be filed with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; that one (1) certified copy shall be filed with the Criminal Procedural Rules Committee of the Supreme Court of

Pennsylvania; and that one copy shall be filed with the Clerk of Courts—Criminal of the Court of Common Pleas of Lehigh County.

By the Court

WILLIAM H. PLATT,
President Judge

Leh.R.Cr.P.117. Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail.

1. Magisterial District Judge Offices shall be open for regular business on Mondays through Fridays, excluding holidays, during such hours as established by Order of the President Judge, and as may be modified with the approval of the President Judge to meet the needs of the public and the court.

2. Continuous coverage for the issuance of warrants, the holding of preliminary arraignments and summary trials, and the setting and accepting of bail and collateral shall be by the traditional on-call system as presently established. The President Judge shall establish the schedule of assignment of Magisterial District Judges to on-call duty.

3. An on-call Magisterial District Judge, while on-call, and the Clerk of Courts-Criminal, on any day and at any time, are authorized to accept bail in accordance with the provisions, and subject to the limitations, of the Pennsylvania Rules of Criminal Procedure.

[Pa.B. Doc. No. 06-1441. Filed for public inspection July 28, 2006, 9:00 a.m.]

LUZERNE COUNTY

Order Promulgating New Rule of Criminal Procedure 150; No. 1 MD/06

Order

Now, this 1st day of June, 2006, *It Is hereby Ordered* that new Luzerne County Rule of Criminal Procedure 150 is hereby promulgated in the following form.

It Is Further Ordered that the District Court Administrator shall file seven (7) certified copies of this Order and the attached Rule with the Administrative Office of Pennsylvania Courts, two (2) copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee, one (1) certified copy to the Criminal Procedural Rules Committee, once (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee, and one (1) copy to the *Luzerne Legal Register* for publication in the next issue.

It Is Further Ordered that the effective date of this order shall be thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

It Is Further Ordered that this local rule shall be kept continuously available for public inspection and copying in the Prothonotary's Office and the Clerk of Court's Office.

By the Court

MICHAEL T. CONAHAN,
President Judge

L.R.CRIM.P. 150 Bench Warrants

(1) The person executing a bench warrant shall deliver the subject of the warrant to the warden of the Luzerne County Prison. The person executing a bench warrant shall immediately notify the Court Administrator that the subject of the warrant is in custody. In the event, the subject of the warrant is lodged at the Luzerne County Prison after the close of the business day, the person executing the bench warrant shall notify the Court Administrator as required by this paragraph at the opening of the next business day.

(2) In addition, when the subject of the warrant has been delivered to the warden of Luzerne County, the warden shall immediately notify the Court Administrator that the subject of the warrant is in custody. In the event, the subject of the warrant is lodged at the Luzerne County Prison after the close of the business day, the warden shall notify the Court Administrator as required by this paragraph at the opening of the next business day.

(3) If the subject voluntarily surrenders, the Court Administrator must be immediately informed by the agency to which the subject has surrendered. In the event the subject of the warrant surrenders after the close of the business day, the agency shall notify the Court Administrator as required by this paragraph at the opening of the next business day.

(4) Upon receiving notice that a bench warrant has been executed or that the subject has surrendered, the Court Administrator shall immediately notify the issuing judge, the district attorney, any counsel of record and the public defender that the subject is in custody. In the event the issuing judge is unavailable, notice shall be given to a judge of this Court assigned criminal cases who is available. After consultation with the judge, the Court Administrator shall schedule a hearing to be held as soon as possible, but not later than 72 hours after the subject has been lodged at the Luzerne County jail. The Court Administrator may give oral notice of this hearing, along with written notice, and shall maintain a record of that notice.

[Pa.B. Doc. No. 06-1442. Filed for public inspection July 28, 2006, 9:00 a.m.]

WESTMORELAND COUNTY

Adoption of Rule of Criminal Procedure WC150; Amendment of Rule WC529; No. 2 Civil of 2006

Order

And Now This 13th day of July 2006, it is hereby *Ordered* that new Westmoreland Rule of Criminal Procedure WC150 is adopted, and that Westmoreland County Rule of Criminal Procedure 529 is amended. This Order is effective thirty days after publication in the *Pennsylvania Bulletin*.

By the Court

DANIEL J. ACKERMAN,
President Judge

Rule 150 Bench Warrants

(a) Whenever an individual is committed to the Westmoreland County Prison pursuant to a bench warrant issued by a Westmoreland County judicial officer, the

Warden or designee, shall promptly, or in no case later than the beginning of the next business day, notify the court administrator who shall:

(1) schedule a bench warrant hearing, and

(2) notify the district attorney, defense counsel of record, sheriff and probation office.

(b) Pursuant to Pa.R.Crim.P. 150(A)(4), whenever an individual is committed to the Westmoreland County Prison pursuant to a bench warrant issued by a judicial officer outside of Westmoreland County, the Warden or designee, shall promptly notify the proper authorities in the county of issuance.

(c) Any judge of the Court Of Common Pleas Of Westmoreland County may conduct a bench warrant hearing if the judge who issued the bench warrant is unavailable. Any Westmoreland County magisterial district judge may conduct a bench warrant hearing if the magisterial district judge who issued the bench warrant is unavailable.

(d) The Westmoreland County Warden shall release an individual held on a bench warrant by operation of law if the bench warrant hearing does not occur within 72 hours of commitment or by the close of the next business day if the 72 hours expires on a non-business day. The president judge shall advise the warden of any days in addition to weekends or holidays that are non-business days.

Rule WC529 Modification of Bail Order Prior to Trial

The defendant shall indicate on any petition to the court to modify bail prior to the preliminary hearing whether or not the defendant first applied for modification of bail from the magisterial district judge who was elected or assigned to preside over the jurisdiction where the crime occurred.

[Pa.B. Doc. No. 06-1443. Filed for public inspection July 28, 2006, 9:00 a.m.]