

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT [ 204 PA. CODE CHS. 81 AND 83 ]

#### Amendment of Rule 502(b) of the Pennsylvania Rules of Disciplinary Enforcement and Rule 1.15(u) of the Rules of Professional Conduct; No. 133 Disciplinary Rules Doc.

##### Order

*Per Curiam*

*And Now*, this 9th day of February, 2015, it is hereby *Ordered* that Rule 502(b) of the Pennsylvania Rules of Disciplinary Enforcement and Rule 1.15(u) of the Pennsylvania Rules of Professional Conduct are amended in the following form. These amendments shall be effective for the 2015-16 annual attorney assessment and shall continue until further Order of this Court.

Pursuant to Rule 103 of the Pennsylvania Rules of Judicial Administration, the immediate amendment of Rule 502(b) of the Pennsylvania Rules of Disciplinary Enforcement and Rule 1.15(u) of the Pennsylvania Rules of Professional Conduct is required in the interest of efficient administration.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration and shall be effective immediately.

##### Annex A

#### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT

#### Subpart A. PROFESSIONAL RESPONSIBILITY

#### CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

#### Subchapter A. RULES OF PROFESSIONAL CONDUCT

#### § 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

#### CLIENT-LAWYER RELATIONSHIP

#### Rule 1.15. Safekeeping Property.

\* \* \* \* \*

(u) Every attorney who is required to pay an active annual assessment under Rule 219 of the Pennsylvania Rules of Disciplinary Enforcement (relating to annual registration of attorneys) shall pay an additional annual fee of [ **\$35.00** ] **\$30.00** for use by the IOLTA Board. Such additional assessment shall be added to, and collected with and in the same manner as, the basic annual assessment [ , **but the statement mailed by the Attorney Registration Office pursuant to Rule 219 shall separately identify the additional assessment imposed pursuant to this subdivision** ]. All amounts received pursuant to this subdivision shall be credited to the IOLTA Board.

\* \* \* \* \*

### Subpart B. DISCIPLINARY ENFORCEMENT CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

### Subchapter E. PENNSYLVANIA LAWYERS FUND FOR CLIENT SECURITY GENERAL PROVISIONS

#### Rule 502. Pennsylvania Lawyers Fund for Client Security.

\* \* \* \* \*

(b) *Additional fee*. Every attorney who is required to pay an active annual fee under Rule 219 (relating to annual registration of attorneys) shall pay an additional annual fee of [ **\$35.00** ] **\$45.00** for use by the Fund. Such additional fee shall be added to, and collected with and in the same manner as, the basic annual fee [ , **but the statement mailed by the Attorney Registration Office pursuant to Rule 219 shall separately identify the additional fee imposed pursuant to this subdivision** ]. All amounts received pursuant to this subdivision shall be credited to the Fund.

\* \* \* \* \*

[Pa.B. Doc. No. 15-351. Filed for public inspection February 27, 2015, 9:00 a.m.]

## Title 237—JUVENILE RULES

### PART I. RULES

### [ 237 PA. CODE CH. 1 ]

#### Order Amending Rules 170 and 173 of the Rules of Juvenile Court Procedure; No. 662 Supreme Court Rules Doc.

##### Order

*Per Curiam*

*And Now*, this 12th day of February, 2015, upon the recommendation of the Juvenile Court Procedural Rules Committee, the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3):

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 170 and 173 of the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective immediately.

Madame Justice Todd dissents.

##### Annex A

#### TITLE 237. JUVENILE RULES

### PART I. RULES

#### Subpart A. DELINQUENCY MATTERS

#### CHAPTER 1. GENERAL PROVISIONS

#### PART C(3). EXPUNGING OR DESTROYING RECORDS, FINGERPRINTS, AND PHOTOGRAPHS

#### Rule 170. Motion to Expunge or Destroy Records.

\* \* \* \* \*

Comment

\* \* \* \* \*

The new procedures instituted with the changes of [ 201- ] 2014 require one procedure for expunging or destroying records, fingerprints, and photographs. One order will go to the appropriate agencies and departments as required by Rule 172 and will help those agencies become more efficient in the manner in which items are destroyed or expunged.

\* \* \* \* \*

**Official Note:** Rule 170 adopted April 1, 2005, effective October 1, 2005. Amended July 28, 2014, effective September 29, 2014. **Amended February 12, 2015, effective immediately.**

\* \* \* \* \*

**Rule 173. Retention of Specific Information from Juvenile Records.**

\* \* \* \* \*

D. *Statistical and research purposes.* The juvenile probation office, the Juvenile Court Judges' Commission, and the Administrative Office of Pennsylvania Courts may maintain the following information in a separate document, file, or database for statistical and research purposes:

- 1) **a list of juvenile names;**
- 2) **identifying information, such as date of birth;**
- [ 1 ] 3) demographic information;
- [ 2 ] 4) a list of the delinquent acts alleged or petitioned;
- [ 3 ] 5) a list of the delinquent acts found, if applicable;
- [ 4 ] 6) the disposition of the case; and
- [ 5 ] 7) any recidivism information.

\* \* \* \* \*

Comment

\* \* \* \* \*

Paragraph (D) provides for the retention of specific information for statistical and research purposes. **[ A juvenile's name may not be associated with this information. Demographics, however, may be retained. Aggregate data compiled under this paragraph also ]** The information gathered under this paragraph is confidential. However, aggregate data compiled may be shared with other persons as statistical and research [ records only ] information. When sharing aggregate data, the juvenile's name or any identifying information cannot be utilized.

\* \* \* \* \*

**Official Note:** Rule 173 adopted July 28, 2014, effective September 29, 2014. **Amended February 12, 2015, effective immediately.**

\* \* \* \* \*

[Pa.B. Doc. No. 15-352. Filed for public inspection February 27, 2015, 9:00 a.m.]

# Title 246—MINOR COURT CIVIL RULES

## PART I. GENERAL

[ 246 PA. CODE CHS. 200, 400, 500, 800 AND 1000 ]

### Proposed Rescission of Pa.R.C.P.M.D.J. Nos. 1009—1015, and Proposed Amendment of Pa.R.C.P.M.D.J. Nos. 206, 403, 515—516, 820, 1001—1002, 1005, the Official Notes to Pa.R.C.P.M.D.J. Nos. 514 and 1005, and the Supplemental Instructions for Obtaining a Stay of Eviction

The Minor Court Rules Committee is planning to propose to the Supreme Court of Pennsylvania the rescission of Pa.R.C.P.M.D.J. Nos. 1009—1015, governing writs of certiorari, as well as the amendment of Pa.R.C.P.M.D.J. Nos. 206, 403, 515—516, 820, 1001—1002, the Official Notes to Pa.R.C.P.M.D.J. Nos. 514 and 1005, and the Supplemental Instructions for Obtaining a Stay of Eviction, for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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

All communications in reference to the proposal should be received by April 15, 2015. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Minor Court Rules Committee*

BRADLEY K. MOSS,  
*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.

\* \* \* \* \*

C. Taxable costs on appeal [ or certiorari ] shall be paid by the unsuccessful party, and a plaintiff who appeals shall be considered an unsuccessful party if he or

she does not obtain on appeal a judgment more favorable than that obtained in the magisterial district court proceeding. 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. 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.

\* \* \* \* \*

**Official Note:** “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.

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.

This rule does not provide for the assessment of filing costs against an unsuccessful plaintiff who has been permitted to proceed in forma pauperis and who remains indigent. *See Brady v. Ford*, [ **451 Pa. Super. 363**, ] 679 A.2d 837 (Pa. Super. 1996).

\* \* \* \* \*

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

**Rule 403. Issuance and Reissuance of Order of Execution.**

\* \* \* \* \*

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

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

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

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

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

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

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

\* \* \* \* \*

**CHAPTER 500. ACTIONS FOR THE RECOVERY OF POSSESSION OF REAL PROPERTY**

**Rule 514. Judgment; Notice of Judgment or Dismissal and the Right to Appeal.**

\* \* \* \* \*

**Official Note:** Paragraph A of this rule requires that the plaintiff appear and give testimony to prove the complaint before the magisterial district judge can enter judgment against the defendant, even when the defendant fails to appear for the hearing. The magisterial district judge may not enter a default judgment in a possessory action, including a judgment for money only. See Rule 512A and Note. The various issues that the magisterial district judge must determine at the hearing include: whether notice to quit was given to the defendant in accordance with law or that no notice was required under the terms of the lease; the amount or rent due, if any; damages to the leasehold premises, if any; the amount found to constitute the monthly rental, and; the amount of the security deposit held by the landlord, if any.

As to the notice to quit requirement, *see* Section 501 of The Landlord and Tenant Act of 1951, 68 P. S. § 250.501. *See also Patricia Bros., Inc. v. McKeefrey*, 38 Pa. D. & C.2d 149 (Delaware County C.P. 1966).

The separate entries provided in paragraph A are made necessary as a result of the rental deposit provisions for appeal [ **or certiorari** ] contained in Rules 1008B [ **and 1013B** ], as well as the wage attachment provisions contained in Section 8127 of the Judicial Code, 42 Pa.C.S. § 8127.

\* \* \* \* \*

**Rule 515. Request for Order for Possession.**

\* \* \* \* \*

B. (1) Except as otherwise provided in subparagraph (2), if the magisterial district judge has rendered a judgment arising out of a residential lease that the real property be delivered up to the plaintiff, the plaintiff may after the 10th day but within 120 days following the date of the entry of the judgment, file with the magisterial district judge a request for an order for possession. The request shall include a statement of the judgment amount, return and all other matters required by these rules.

(2) In a case arising out of a residential lease, if before the plaintiff requests an order for possession,

(a) an appeal [ **or writ of certiorari** ] operates as a supersedeas; or

(b) proceedings in the matter are stayed pursuant to a bankruptcy proceeding; and

(c) the supersedeas or bankruptcy stay is subsequently stricken, dismissed, lifted, or otherwise terminated so as to allow the plaintiff to proceed to request an order for possession, the plaintiff may request an order for possession only within 120 days of the date the supersedeas or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated.

**Official Note:** The fifteen days in subdivision A of this rule, when added to the 16 day period provided for in Rule 519A, will give the defendant time to obtain a supersedeas within the appeal period. See Rules 1002[ , ] **and 1008[ , 1009 and 1013 ]**.



The 1995 amendment to section 513 of The Landlord and Tenant Act of 1951, 68 P. S. § 250.513, established a ten-day period from a judgment for possession of real estate arising out of a residential lease; therefore, the filing of the request for order for possession in subparagraph B(1) is not permitted until after the appeal period has expired. In cases arising out of a residential lease, the request for order for possession generally must be filed within 120 days of the date of the entry of the judgment.

Subparagraph B(2) provides that in a case arising out of a residential lease, if a supersedeas [ ( )resulting from an appeal [ or writ of certiorari ] ], or a bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated, thus allowing the plaintiff to proceed with requesting an order for possession, the request may be filed only within 120 days of the date the supersedeas or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated.

The time limits in which the plaintiff must request an order for possession imposed in subdivision B apply only in cases arising out of residential leases and in no way affect the plaintiff's ability to execute on the money judgment. See Rule 516, Note, and Rule 521A.

At the time the plaintiff files the request for an order for possession, the magisterial district court should collect server fees for all actions through delivery of possession. Thereafter, if the order for possession is satisfied 48 hours or more prior to a scheduled delivery of possession, a portion of the server costs may be refundable. See Rules 516 through 520 and [ Section 2950(d) of the Judicial Code, 42 Pa.C.S. § 2950(d) ] 44 Pa.C.S. § 7161(d).

**Rule 516. Issuance and Reissuance of Order for Possession.**

\* \* \* \* \*

B. (1) Except as otherwise provided in subdivision C, upon written request of the plaintiff the magisterial district judge shall reissue an order for possession for one additional 60 day period.

(2) If an order for possession is issued and subsequently superseded by an appeal, [ writ of certiorari, ] supersedeas, or a stay pursuant to a bankruptcy proceeding, and

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

(b) the bankruptcy stay is lifted; and

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

C. In a case arising out of a residential lease a request for reissuance of an order for possession may be filed only within 120 days of the date of the entry of the judgment or, in a case in which the order for possession is issued and subsequently superseded by an appeal, [ writ of certiorari, ] supersedeas, or a stay pursuant to a bankruptcy proceeding, only within 120 days of the date the appeal[ , writ of certiorari, ] or supersedeas is stricken, dismissed, or otherwise terminated or the bankruptcy stay is lifted.

D. A written request for reissuance of the order for possession filed after an appeal[ , writ of certiorari, ] or supersedeas is stricken, dismissed, or otherwise termi-

nated, or a bankruptcy stay is lifted, must be accompanied by a copy of the court order or other documentation striking, dismissing, or terminating the appeal[ , writ of certiorari, ] or supersedeas, or lifting the bankruptcy stay.

**Official Note:** The order for possession deals only with delivery of possession of real property and not with a levy for money damages. A plaintiff who seeks execution of the money judgment part of the judgment must proceed under Rule 521A, using the forms and procedure there prescribed. The reason for making this distinction is that the printed notice requirements on the two forms, and the procedures involved in the two matters, differ widely.

Subdivision B provides for reissuance of the order for possession for one additional 60 day period. However, pursuant to subdivision C, in cases arising out of a residential lease, the request for reissuance of the order for possession must be filed within 120 days of the date of the entry of the judgment or, in a case in which the order for possession is issued and subsequently superseded by an appeal, [ writ of certiorari, ] supersedeas, or a stay pursuant to a bankruptcy proceeding, only within 120 days of the date the appeal[ , writ of certiorari, ] or supersedeas is stricken, dismissed, or otherwise terminated, or the bankruptcy stay is lifted. The additional 60 day period need not necessarily immediately follow the original 60 day period of issuance. The written request for reissuance may be in any form and may consist of a notation on the permanent copy of the request for order for possession form, "Reissuance of order for possession requested," subscribed by the plaintiff. The magisterial district judge shall mark all copies of the reissued order for possession, "Reissued. Request for reissuance filed \_\_\_\_\_ (time and date)." A new form may be used upon reissuance, those portions retained from the original being exact copies although signatures may be typed or printed with the mark "/s/." There are no filing costs for reissuing an order for possession, for the reissuance is merely a continuation of the original proceeding. However, there may be additional server costs for service of the reissued order for possession.

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**CHAPTER 800. MINORS AND INCOMPETENTS AS PARTIES**

**Rule 820. Appellate Proceedings.**

A guardian of a party who is a minor or an incompetent may initiate in an appropriate court of common pleas an appeal[ , certiorari proceedings ] or a statement of objection to Rule 420 and Rule 519.1 orders and determinations.

**Official Note:** It was thought advisable to include a provision giving guardians of minors and incompetents, as defined in Rule 801(3), the right to initiate appeals[ , certiorari proceedings ] and statements of objection to Rule 420 and Rule 519.1 orders and determinations. In doing so, of course, they will have to comply with applicable provisions of the rules governing appellate proceedings. Once the case is in the court of common pleas, however, provisions of the Rules of Civil Procedure relating to guardians ad litem and other procedures will apply.

## CHAPTER 1000. APPEALS

APPELLATE PROCEEDINGS WITH RESPECT TO  
JUDGMENTS AND OTHER DECISIONS OF  
MAGISTERIAL DISTRICT JUDGES IN CIVIL  
MATTERS**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) [ (3) *Supersedeas*—A prohibition against any further execution processes on the judgment affected thereby.

[ (5) ] (4) *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) ] (5) *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) ] (6) *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) ] (7) *Service by certified or registered mail*—The mailing of properly addressed certified or registered mail.

[ (9) ] (8) *Proof of service*—A verified written statement that service was made by personal service or by certified or registered mail, with the sender's receipt for certified or registered mail attached thereto if service was made by mail.

**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. **Writs of certiorari are not permitted on judgments of magisterial district courts. The Supreme Court of Pennsylvania was specifically empowered to abolish such writs by rule. See Pa. Const. Art. V, Schedule, § 26; 42 Pa.C.S. § 934; Pa.R.Crim.P. No. 460, Comment. Any claim that would have previously been made on a praecipe for a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002—1008.**

[ Under subdivision (3), certiorari 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. 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. 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) ] (3) points out the proper office and limited nature of a supersedeas. See also [ Rules 1008 and 1013 ] Rule 1008 and the notes thereto.

Under subdivision [ (9) ] (8), 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.**

\* \* \* \* \*

B. A party aggrieved by a judgment for the delivery of possession of real property 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 appeal from an aggrieved party which is presented for filing more than ten (10) days after the date of entry of judgment without leave of court and upon good cause shown.

**C. This rule shall provide the exclusive means of appealing a judgment. Courts of common pleas shall not issue writs of certiorari in such cases.**

**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.

The method of appeal is by filing with the prothonotary a "notice of appeal" on a form to be prescribed by the State Court Administrator. Copies of this same form will be used for service under Pa.R.C.P.M.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.

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.

Writs of certiorari are not permitted on judgments of magisterial district courts. The Supreme Court of Pennsylvania was specifically empowered to abolish such writs by rule. See Pa. Const. Art. V, Schedule, § 26; 42 Pa.C.S. § 934; Pa.R.Crim.P. No. 460, Comment. Any claim that would have previously been made on a praecipe for a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002—1008.

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

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**Official Note:** Subdivision A 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. This copy, when received by the magisterial district judge, may operate as a supersedeas under Rule 1008. As to subdivision 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) ] 1001(8) 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. Subdivision C prescribes 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.

**CERTIORARI**

**Rule 1009. [ Praecipe for Writ of Certiorari ] (Rescinded).**

[ A. Unless he was the plaintiff in the action before the magisterial district judge, 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 lack of jurisdiction over the parties or subject matter, improper venue or such gross irregularity of procedure as to make the judgment void. If the party aggrieved by the judgment was the plaintiff in the action before the magisterial district judge, he may file a praecipe for a writ of certiorari only on the last mentioned ground.

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.

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.

D. The praecipe and the writ shall be on a form which shall be prescribed by the State Court Administrator.

**Official Note:** Subdivision 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, 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, the praecipe for the writ of certiorari must be filed within thirty days after the date 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 praecipe after the thirty day period has run can be heard only on the question of jurisdiction (if permitted to raise that question under subdivision A) even though he claims improper venue or gross irregularity along with his claim of lack of jurisdiction. ]

**Official Note:** All rules pertaining to writs of certiorari are rescinded. Any claim that would have previously been made on a praecipe for a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002—1008.

**Rule 1010. [ Bond for Writ of Certiorari ] (Rescinded).**

[ No bond or other security shall 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. ]

**Official Note:** All rules pertaining to writs of certiorari are rescinded. Any claim that would have previously been made on a praecipe for a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002—1008.

**Rule 1011. [ Issuance and Service of Writ of Certiorari ] (Rescinded).**

[ 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 the record of the proceedings containing the judgment is filed. The writ shall be delivered for service to the party who filed the praecipe.

B. 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 address as listed on the complaint form filed



in the office of the magisterial district judge or as otherwise appearing in the records of that office. 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.

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. Service and proof of service may be made by attorney or other agent.

*Official Note:* The provisions as to service of the writ parallel those for service of notices of appeal. Subdivision 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. ]

*Official Note:* All rules pertaining to writs of certiorari are rescinded. Any claim that would have previously been made on a praecipe for a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002—1008.

Rule 1012. [ Return by Magisterial District Judge ] (Rescinded).

[ The magisterial district judge to whom the writ of certiorari is directed shall, within ten (10) days after its receipt by him, make return to the writ by transmitting to the prothonotary a certified true copy of the record of the proceedings containing the judgment.

*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. ]

*Official Note:* All rules pertaining to writs of certiorari are rescinded. Any claim that would have previously been made on a praecipe for a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002—1008.

Rule 1013. [ Writ of Certiorari as Supersedeas ] (Rescinded).

[ A. Receipt of the writ of certiorari by the magisterial district judge to whom it was directed shall operate as a supersedeas, except as provided in subdivisions B and C of this rule.

B. When the writ of certiorari involves a judgment for the possession of real property, receipt of the writ by the magisterial district judge 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 (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 the praecipe for writ of certiorari ("praecipe"), as determined by the magisterial district judge, and, thereafter, de-

posits 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 writ are pending in the court of common pleas, such additional deposits to be made within thirty (30) days following the date of the filing of the praecipe, and each successive thirty (30) day period thereafter.

Upon application by the landlord, the court shall release appropriate sums from the escrow account on a continuing basis 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 the ensuing proceeding (in the event the writ is granted).

In the event that the party filing the praecipe 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 praecipe for writ of certiorari, shall terminate the supersedeas. Notice of the termination of the supersedeas shall be forwarded by first class mail to attorneys of record, or, if a party is unrepresented 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 praecipe, 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. Indigent Tenants

(1) Residential tenants who seek to file a praecipe involving a magisterial district court judgment for possession and who do not have the ability to pay the lesser of three months' rent or the full amount of the magisterial district court judgment for rent shall file with the office of the prothonotary a tenant's affidavit, as set forth in subdivision (2).

(2) The tenant's affidavit shall be substantially in one of the following two forms:

[ Caption ]

#### TENANT'S SUPERSEDEAS AFFIDAVIT (NON-SECTION 8)

I, \_\_\_\_\_ (print name and address here), have filed a praecipe for a writ of certiorari to review a magisterial district court judgment awarding to my landlord possession of real property that I occupy, and I do not have the financial ability to pay the lesser of three (3) times my monthly rent or the judgment for rent awarded by the magisterial district court. My total household income does not exceed the income limits set forth in the instructions for obtaining a stay pending issuance of a writ of certiorari and I have completed an in forma pauperis (IFP) affidavit to verify this. I have/have not (cross out the one that does not apply) paid the rent this month.

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

\_\_\_\_\_  
Date SIGNATURE OF TENANT

OR

[ Caption ]

#### SECTION 8 TENANT'S SUPERSEDEAS AFFIDAVIT

I, \_\_\_\_\_ (print name and address here), have filed a praecipe for a writ of certiorari to review a magisterial district court judgment awarding my landlord possession of real property that I occupy, and I do not have the financial ability to pay the lesser of three (3) times my monthly rent or the actual rent in arrears. My total household income does not exceed the income limits set forth in the Instructions for obtaining a stay pending issuance of writ of certiorari and I have completed an in forma pauperis (IFP) affidavit to verify this. I have/have not (cross out the one that does not apply) paid the rent this month.

The total amount of monthly rent that I personally pay to the landlord is \$\_\_\_\_\_. I hereby certify that I am a participant in the Section 8 program and I am not subject to a final (i.e., non-appealable) decision of a court or government agency which terminates my right to receive Section 8 assistance based on my failure to comply with program rules.

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

\_\_\_\_\_  
Date SIGNATURE OF TENANT

(3)(a) If the rent has already been paid to the landlord in the month in which the praecipe is filed, the tenant shall pay into an escrow account with the prothonotary the monthly rent in thirty (30) day intervals from the date the praecipe was filed; or

(b) If the rent has not been paid at the time of filing the praecipe, the tenant shall pay:

(i) at the time of filing the praecipe, a sum of money equal to one third (1/3) of the monthly rent;

(ii) an additional deposit of two thirds (2/3) of the monthly rent within twenty (20) days of filing the praecipe; and

(iii) additional deposits of one month's rent in full each thirty days after filing the praecipe. The amount of the monthly rent is the sum of money found by the magisterial district judge to constitute the monthly rental for the leasehold premises pursuant to Rule 514A. However, when the tenant is a participant in the Section 8 program, the tenant shall pay the tenant share of the rent as set forth in the "Section 8 Tenant's Supersedeas Affidavit" filed by the tenant.

(4) The prothonotary's office of the Court of Common Pleas in which the praecipe is filed shall provide residential tenants who have suffered a judgment for possession with a "Supplemental Instructions for Obtaining a Stay of Eviction" as it appears on the website of the Minor Court Rules Committee.

*Official Note:* The website of the Minor Court Rules Committee is part of the home page of the Administrative Office of Pennsylvania Courts at [www.pacourts.us](http://www.pacourts.us). The Supplemental Instructions include both instructions and income limits.

The income limits are stated in monthly amounts and are based upon the most recent poverty income guidelines issued by the Federal Department of Health and Human Services.

(5) When the requirements of paragraphs (2) and (3) have been met, the prothonotary shall issue a supersedeas.

(6) Upon application by the landlord, the court shall release appropriate sums from the escrow account on a continuing basis 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 the ensuing proceeding (in the event the writ is granted).

(7) If the tenant fails to make monthly rent payments to the prothonotary as described in paragraph (3), the supersedeas may be terminated by the prothonotary upon praecipe by the landlord or other party to the action. Notice of the termination of the supersedeas shall be forwarded by first class mail to attorneys of record, or, if a party is unrepresented, to the party's last known address of record.

(8) If the Court of Common Pleas determines, upon written motion or its own motion, that the averments within any of the tenant's affidavits do not establish that the tenant meets the terms and conditions of paragraph (1), supra, the Court may terminate the supersedeas. Notice of the termination of the supersedeas shall be forwarded by first class mail to attorneys of record, or, if a party is unrepresented, to the party's last known address of record.

D. If a writ of certiorari is stricken, dismissed 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.

*Official Note:* As in appeals (see Pa.R.C.P.M.D.J. No. 1008), certiorari operates as an automatic supersedeas in civil actions when the writ is received by the magisterial district judge. 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 only if money is paid or a bond is filed conditioned as stated in the rule. This Rule has been amended to require a payment equal to the lesser of three month's 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.M.D.J. No. 1008. (Appeal as Supersedeas). A



new subdivision (C) was created in 2008 to provide a praecipe for writ of certiorari process for indigent residential tenants who are unable to meet the bond requirements of subdivision (B).

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 when it became due" and will be signed by landlord. The prothonotary will then note upon the praecipe: "Upon confirmation of failure of the party filing the writ to deposit the monthly rent when it became due 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.M.D.J. No. 515 may be made.

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

**Official Note:** All rules pertaining to writs of certiorari are rescinded. Any cause of action that would have previously been filed on a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002—1008.

Rule 1014. [ Orders of Court in Certiorari Proceedings ] (Rescinded).

[ 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. If the court of common pleas finds against the party obtaining the writ, it shall enter an order that the writ is dismissed.

**Official Note:** Subdivision 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).

Subdivision B provides for dismissal of the writ if the finding is against the party obtaining it. This leaves the judgment below in full force and effect. See Rule 1013C. ]

**Official Note:** All rules pertaining to writs of certiorari are rescinded. Any claim that would have previously been made on a praecipe for a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002—1008.

Rule 1015. [ Certiorari and Appeal Not Permitted ] (Rescinded).

[ 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 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 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). 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. ]

**Official Note:** All rules pertaining to writs of certiorari are rescinded. Any claim that would have previously been made on a praecipe for a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002—1008.

*(Editor's Note: In the Pennsylvania Code, the Supplemental Instructions for Obtaining a Stay of Eviction follow 246 Pa. Code Rule 1013. See serial pages (363307) to (363308) and (370085).)*

#### SUPPLEMENTAL INSTRUCTIONS FOR OBTAINING A STAY OF EVICTION

\* \* \* \* IMPORTANT \* \* \* \*

#### PLEASE READ THESE INSTRUCTIONS CAREFULLY!

This document contains important information about your case. Failure to comply with any instructions provided in these materials may cause you to be evicted before your appeal or writ is heard.

1. FOR TENANTS—SUPERSEDEAS: If you are a tenant and you filed the notice of appeal [ or praecipe for writ of certiorari ], you must pay money into an escrow account to remain in the property until your appeal [ or writ ] is decided. This is called a "supersedeas." The supersedeas will suspend the magisterial district court judgment and will prevent your eviction until your case is heard by a judge and a final decision is made on the appeal [ or writ ]. IF YOU FAIL TO PAY YOUR MONTHLY RENT INTO ESCROW IN FULL AND ON TIME, YOU COULD BE EVICTED BEFORE YOUR APPEAL [ OR WRIT ] IS HEARD.

Begin by looking at the income limits attached to these instructions.

If your income is below the income limits, complete a Tenant's Affidavit, pursuant to Pa.R.C.P.M.D.J. No. 1008(C)(2) [ or 1013(C)(2) ]. These affidavits are available on the website of the [ **Administrative Office of Pennsylvania Courts (www.aopc.org)** ] **Unified Judicial System of Pennsylvania at http://www.pacourts.us/forms/for-the-public**. Then follow the instructions for low-income tenants below. There are several different options available; pick the option (A, B, or C) that best describes your situation.

If your income is higher than the income limits attached to these instructions, follow the instructions for D.

A. If you are a low-income tenant and there was a money judgment entered against you for non-payment of rent, and you HAVE NOT paid rent for the month in which the notice of appeal [ or **praecipe for writ of certiorari** ] is filed, you must:

1. File an in forma pauperis petition (a petition for low-income parties) pursuant to Pa.R.C.P. No. 240;
2. Pay one-third of your monthly rent into an escrow account with the prothonotary's office at the time the notice of appeal [ or **praecipe for writ of certiorari ("praecipe")** ] is filed;
3. Pay the remaining two-thirds (2/3) of your monthly rent into the escrow account within twenty (20) days of the date the notice of appeal [ or **praecipe** ] was filed; and
4. Pay your monthly rent on an ongoing basis into the escrow account in thirty (30) day intervals from the date the notice of appeal [ or **praecipe** ] was filed until the time of your trial.

B. If you are a low-income tenant, and there was a money judgment against you for non-payment of rent, and you HAVE paid rent for the month in which the notice of appeal or [ **praecipe for writ of certiorari ("praecipe")** ] is filed, you do not have to pay rent at the time you file your notice of appeal [ or **praecipe** ]. You must:

1. File an in forma pauperis petition (a petition for low-income parties), pursuant to Pa.R.C.P. No. 240;
2. Pay your monthly rent on an ongoing basis into an escrow account with the prothonotary in thirty (30) day intervals from the date the notice of appeal [ or **praecipe** ] was filed until the time of trial. It is important to count the thirty (30) days exactly because the date of your payment will change depending on the number of days in a given month.

C. If you are a low-income tenant, and no money judgment was entered against you for non-payment of rent, you do not have to pay rent at the time you file your notice of appeal [ or **praecipe for writ of certiorari ("praecipe")** ]. This option is to be used if at the magisterial district court hearing, the judge determined that you owed "zero" or "nothing" in rent. You must:

1. File an in forma pauperis petition (a petition for low-income parties), pursuant to Pa.R.C.P. No. 240;
2. Pay your monthly rent on an ongoing basis into an escrow account with the prothonotary in thirty (30) day intervals from the date the notice of appeal [ or

**praecipe** ] was filed until the time of your trial. It is important to count the thirty (30) days exactly because the date of your payment will change depending on the number of days in a given month.

D. If your income is higher than the income limits on the attached chart, you must:

1. Pay the fee to file a notice of appeal [ or **praecipe for writ of certiorari ("praecipe")** ];
2. Pay the lesser of three (3) months' rent or the amount of rent awarded to the landlord in magisterial district court into an escrow account with the prothonotary's office at the time the notice of appeal [ or **praecipe** ] is filed; and
3. Pay your monthly rent into the escrow account in thirty (30) day intervals from the date the notice of appeal [ or **praecipe** ] was filed until the time of trial. It is important to count the thirty (30) days exactly because the date on your payment will change depending on the number of days in a given month.

**INCOME LIMITS**

[ 2008 ] \_\_\_\_\_ HHS Poverty Income Guidelines

Expressed in Monthly Amounts

Size of Family Unit	Poverty Guideline Monthly Amount
1	[\$ <b>866.66</b> ] _____
2	[ <b>1,166.66</b> ] _____
3	[ <b>1,466.66</b> ] _____
4	[ <b>1,766.66</b> ] _____
5	[ <b>2,066.66</b> ] _____
6	[ <b>2,366.66</b> ] _____
7	[ <b>2,666.66</b> ] _____
8	[ <b>2,966.66</b> ] _____

For each additional person, add [ **300.00** ] \_\_\_\_\_

**REPORT**

**Proposed Rescission of Pa.R.C.P.M.D.J. Nos. 1009—1015, and Proposed Amendment of Pa.R.C.P.M.D.J. Nos. 206, 403, 515—516, 820, 1001—1002, 1005, the Official Notes to Pa.R.C.P.M.D.J. Nos. 514 and 1005, and the Supplemental Instructions for Obtaining a Stay of Eviction**

**Rescission of Rules Providing for Writs of Certiorari**

**I. Introduction**

The Minor Court Rules Committee ("Committee") is planning to propose to the Supreme Court of Pennsylvania the rescission of Pa.R.C.P.M.D.J. Nos. 1009—1015, as well as the amendment of Pa.R.C.P.M.D.J. Nos. 206, 403, 515—516, 820, 1001—1002, the Official Notes to Pa.R.C.P.M.D.J. Nos. 514 and 1005, and the Supplemental Instructions for Obtaining a Stay of Eviction. These rules address writs of certiorari. The Committee is making this recommendation in light of Constitutional and statutory authority, and the requirement, in a certiorari action, that the court of common pleas examine the record of the magisterial district court, a non-record court.

## II. Discussion

While conducting routine business, the Committee had the opportunity to review and discuss Rule 1009, which establishes grounds for obtaining a writ of certiorari. Rule 1009A provides, in part:

Unless he was the plaintiff in the action before the magisterial district judge, 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 lack of jurisdiction over the parties or subject matter, improper venue or such gross irregularity of procedure as to make the judgment void.

See Rule 1009A. Certiorari is defined as “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.” See Rule 1001(3) (emphasis added). The Official Note to Rule 1001 further defines the scope of certiorari, providing that “certiorari 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.” See Rule 1001, Official Note (emphasis added). Additionally, Rule 205 provides that a record of the proceedings before a magisterial district judge, including “proof of service, returns, entry of judgment and other matters, appearing on a form prescribed by the State Court Administrator shall for all purposes be considered to be a sufficient record of those proceedings.” See Rule 205A.

A magisterial district court is not a court of record. Unlike litigants in the courts of common pleas, litigants in magisterial district court do not file pleadings or briefs, hearings are not transcribed, and magisterial district judges do not enter findings of fact or law on the docket. A judgment entered by a magisterial district court contains a monetary award and/or an award of possession (in landlord tenant matters); it is not a document from which one could readily discern errors of fact or law, and is consistent with the status of the magisterial district court as a non-record court.

The Pennsylvania Constitution guarantees appeals as of right. “There shall be a right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court . . .” See Pa. Const. Art. V, § 9. The judgment of a magisterial district court in a civil or landlord-tenant case is appealable to a court of common pleas, and such an appeal is made de novo. See 42 Pa.C.S. § 932; Rules 1002, 1007A. In other words, an appeal is made as if it was initially commenced in a court of common pleas, with no regard to the proceedings at the magisterial district court. See Rule 1007A.

In contrast, certiorari actions are not guaranteed under the Pennsylvania Constitution. The Supreme Court of Pennsylvania is specifically empowered under the Pennsylvania Constitution to abolish such actions by rule.

Unless and until changed by rule of the Supreme Court, in addition to the right of appeal under section nine of this article, the judges of the courts of common pleas, within their respective judicial districts, shall have power to issue writs of certiorari to the municipal court in the City of Philadelphia, [magisterial district judges] and inferior courts not of record and to cause their proceedings to be brought before them, and right and justice to be done.

See Pa. Const. Art. V, Schedule, § 26; see also 42 Pa.C.S. § 934 (“Unless and until changed by general rule, the judges of the courts of common pleas, within their respective judicial districts, shall have power, in addition to the right of appeal under [Pa. Const. Art. V, § 9], to issue writs of certiorari to the minor judiciary.”) The Supreme Court has already taken such action with respect to the issuance of writs of certiorari in summary criminal matters. “This rule [providing for appeals] shall provide the exclusive means of appealing from a summary guilty plea or conviction. Courts of Common Pleas shall not issue writs of certiorari in such cases.” See Pa.R.Crim.P. No. 460(E). The Comment to Pa.R.Crim.P. 460 further provides:

Certiorari was abolished by the Criminal Rules in 1973 pursuant to Article V Schedule Section 26 of the Constitution of Pennsylvania, which specifically empowers the Supreme Court to do so by rules. This Schedule section is still viable, and the substance of this Schedule section has also been included in the Judicial Code, 42 Pa.C.S. § 9347. The abolition of certiorari continues with this rule.

See Pa.R.Crim.P. 460, Comment.

While Rules 1009–1015 have provided for a limited form of certiorari to date, the Committee finds that this remedy is inconsistent with the very definition of certiorari as a review of the record below. The rescission of these rules and abolition of this action is necessary, given the lack of a record before a court of common pleas. The Committee does not find it feasible for a court of common pleas to make findings on personal or subject matter jurisdiction, or venue, based on the extremely limited nature of the record available to that court. For example, it seems that a court of common pleas examining a question of personal jurisdiction may need to look beyond the record of the magisterial district court to establish the existence of minimum contacts between the parties and the Commonwealth. Similarly, it is questionable that venue based on the location where a transaction or occurrence took place could be established by the limited record available to a court of common pleas. See Rule 302. For these reasons, the Committee plans to recommend rescission of the certiorari rules to the Court.

### III. Proposed Rule Changes

The Committee plans to propose the following rescissions and amendments:

- *Rule 206, 403, 514–516, 820*: Delete all references to certiorari and certiorari rules.
- *Rule 206*: Remove parallel citation to *Brady v. Ford*, in keeping with current drafting practices.
- *Rule 515*: Update reference to constable fee schedule to reflect 2009 statutory changes.
- *Rule 1001*: Delete definition of certiorari; renumber remaining definitions; add paragraph to Official Note clarifying that writs of certiorari have been abolished by the Court and that appeals are the exclusive remedy.
- *Rule 1002*: Add Subdivision C to clarify that writs of certiorari have been abolished by the Court and that appeals are the exclusive remedy.
- *Rule 1005*: Amend the Official Note to reflect the reordering of the definitions in Rule 1001.
- *Rules 1009–1015*: Rescind Rules; add paragraph to Official Note clarifying that writs of certiorari have been abolished by the Court and that appeals are the exclusive remedy.



• *Supplemental Instructions for Obtaining a Stay of Eviction:* Delete all references to certiorari and certiorari rules; amend Income Limits form to remove 2008 HHS Poverty Income Guideline dollar amounts, and instead leave blank to reflect that amounts change yearly.

[Pa.B. Doc. No. 15-353. Filed for public inspection February 27, 2015, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### SOMERSET COUNTY

Consolidated Rules of Court; Som.R.Crim.P. 00.1-2015. 552; Administrative Order No. 1; No. 11 Misc. 2015

#### Amended Adopting Order

Now, this 9th day of February, 2015, it is hereby Ordered:

1. Som.R.Crim.P. 00.1-2015. 552, a copy of which follows, is hereby amended and adopted as Som.R.Crim.P. 00.1-2015. 552 and is effective thirty (30) days after publication in the *Pennsylvania Bulletin* and on the Unified Judicial System Portal.

2. The Somerset County Court Administrator is directed to:

A. File one (1) certified copy of this Order and the following local Rule with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order along with electronic copy to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order with the Pennsylvania Criminal Procedural Rule Committee.

D. File proof of compliance with this Order in the docket for this Order, which shall include a copy of each transmittal letter.

JOHN M. CASCIO,  
President Judge

#### Som.R.Crim.P. 00.1-2015. 552. Administrative Processing and Identification.

(A) In all cases in which a defendant has been charged with an offense graded as a misdemeanor or greater, the defendant shall be required to appear [ **at the Pennsylvania State Police Barracks, if arrested by a member of the Pennsylvania State Police or, if arrested by an arresting authority other than the Pennsylvania State Police,** ] at the Somerset County Regional Booking Center (RBC), located in the **Somerset County Jail** or at such other location designated, in writing, by the President Judge of the Somerset County Court of Common Pleas, for photographing, fingerprinting and processing.

(B) Pursuant to 18 Pa.C.S.A. § 9112, an arresting authority shall be responsible for taking the fingerprints of persons arrested for misdemeanors, felonies or summary offenses which become misdemeanors on a second arrest after conviction of that summary offense. The [ **Regional Booking Center** ] RBC shall serve as the designated fingerprinting and processing site for all ar-

resting authorities in Somerset County. [ **The State Police Barracks shall serve as the designated fingerprinting site for the Pennsylvania State Police.** ]

(C)(1) In cases in which a defendant has been arraigned before a Magisterial District Judge and fails to post bond, the defendant shall be fingerprinted and photographed at the RBC [ **or the State Police Barracks** ] prior to his or her commitment at the Somerset County Jail.

(2) In cases in which a defendant has been arrested during night hours of regular business days between 10 p.m. and 8:30 a.m. prevailing time, or during weekend or holiday hours, unless the charges proceed by summons, the defendant shall be **fingerprinted and photographed at the RBC and taken [ to an appropriate facility for video arraignment and then taken directly to the RBC or the State Police Barracks for a video arraignment and booking procedure, before being committed if bond is not posted ] to and committed at the Somerset County Jail where a video arraignment will be conducted by the on duty Magisterial District Judge at 8:30 A.M.**

(3) In cases of private prosecutions, the defendant may only be fingerprinted and photographed after conviction of a misdemeanor, felony or summary offense which becomes a misdemeanor on a second arrest after conviction of that summary offense. An order shall be issued from the Court of Common Pleas after such conviction directing the Defendant to report to the RBC to be fingerprinted and photographed.

(4) In cases which proceed by issuance of a summons, the Magisterial District Judge presiding at the scheduled Preliminary Hearing shall order the defendant to submit to the RBC **for processing, photographing and fingerprinting** within five (5) days following the date of issuance of such order.

(D) A booking fee of one hundred dollars (\$100.00) shall be assessed and collected by the Somerset County Clerk of Courts after sentencing upon conviction of or plea to a misdemeanor or felony offense or acceptance into the Accelerated Rehabilitative Disposition Program.

(E) This fee will not apply to those Defendants whose cases are dismissed by the Magisterial District Judge, withdrawn or nolle prossed by the Commonwealth or who enter a guilty plea to a summary offense **after withdrawal of all other misdemeanor and/or felony charges in the complaint** at the time of the preliminary hearing.

(F) Pursuant to 42 Pa.C.S.A. § 6308(c), law enforcement officers shall have the authority to take or cause to be taken the fingerprints and/or photographs of any juvenile who is alleged to have committed an act designated as a misdemeanor or felony under the laws of the Commonwealth or of another state, if the act occurred in that state, or under federal law. **The RBC shall serve as the designated fingerprinting and processing site for those purposes in Somerset County. No processing fee shall be charged to any juvenile.**

[ (F) ] (G) The RBC shall also serve as a processing center for [ **all** ] parties required to be registered and processed under the provisions of 42 Pa.C.S.A. § 9791, et. seq., commonly known as [ **“Megan’s Law”** ] SORNA pursuant to 42 Pa.C.S.A. § 9795.2(d), if determined by

the Pennsylvania State Police to be an “approved registration site” pursuant to 42 Pa.C.S.A. § 9799.12.

CREDIT(S)

See 42 Pa.C.S.A. § 1725.5, et. seq.

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