

THE COURTS

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 300]

Proposed Amendment of Pa.R.C.P.M.D.J. No. 314

The Minor Court Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P.M.D.J. No. 314, providing that a complaint may not be reinstated under certain circumstances, 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 September 11, 2017. 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

ANTHONY W. SAVEIKIS,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 300. CIVIL ACTION

Rule 314. Return, Waiver and Failure of Service; Reinstatement.

A. The person serving the complaint shall, at or before the time of the hearing, make proof of service which shall show (1) the manner of service, (2) the date, time, and place of service and, (3) the name and relationship or title, if any, of the person on whom the complaint was served. The proof of service shall be filed with the original complaint.

B. When service is made by certified mail or comparable delivery method resulting in a return receipt in paper or electronic form, the return receipt shall be filed with the original complaint.

C. The appearance of a defendant in person or by representative or the filing by a defendant of a claim in the case shall be deemed a waiver of any defect in service but not a waiver of a defect in venue.

D. If the complaint is not served on the defendant in time to permit holding a hearing within 60 days of the filing of the complaint, the magisterial district judge shall dismiss the complaint without prejudice.

[E. Upon written request of the plaintiff, a complaint that has been dismissed without prejudice for failure to make service pursuant to subdivision D of this rule may be reinstated at any time and any number of times.] E.(1) When the complaint is dismissed without prejudice for failure to make service pursuant to paragraph D of this rule as to all defendants, upon written request of the plaintiff the complaint may be reinstated at any time and any number of times. The date of reinstatement shall be the date upon which the request for reinstatement is filed.

(2) When the complaint has been filed against multiple defendants and subsequently dismissed without prejudice for failure to make service pursuant to paragraph D of this rule as to less than all defendants, any further action against an unserved defendant after a hearing on the merits or the entry of a default judgment must be initiated by the filing of a new complaint.

Official Note: The provision concerning appearance not being a waiver of venue was inserted in [**subdivision**] **paragraph C** of this rule to prevent the concentration of business in the office of a favorable magisterial district judge. Also, the public cannot generally be expected to be aware of venue provisions. See Rule 302H regarding improper venue.

[**Subdivision**] **Paragraph D** is intended to prevent the accumulation of stale claims in the office of the magisterial district judge.

[**Subdivision E**] **Subparagraph E(1)** provides for the reinstatement, upon written request of the plaintiff, of a complaint that has been dismissed without prejudice for failure to make service under [**subdivision D**] **paragraph D against all defendants.** Compare Pa.R.C.P. No. 401(b). The written request for reinstatement may be in any form and may consist of a notation on the permanent copy of the complaint form, "Reinstatement of complaint requested," subscribed by the plaintiff. The magisterial district judge shall mark all copies of the reinstated complaint, "Complaint reinstated. Request for reinstatement filed on _____ (date)." If it is necessary to use a new form for the reinstated complaint, the reinstated complaint, except for service portions thereof, shall be an exact copy of the original complaint, although signatures may be typed or printed with the mark "/s/" indicating an actual signature. The language in [**subdivision E**] **subparagraph E(1)** that a complaint may be reinstated "at any time" will permit reinstatement after a faulty service without waiting for further proceedings in the case. Reinstatement must occur within the period of the statute of limitations from the date of the last filing or reinstatement. The cost for reinstating a complaint is specified in Section 1725.1 of the Judicial Code, 42

Pa.C.S. § 1725.1. In addition, there may be additional server costs for service of the reinstated complaint.

Subparagraph E(2) addresses the scenario involving multiple defendants when timely service is not made upon all defendants, resulting in a dismissal without prejudice as to some defendants. Subparagraph E(2) clarifies that the plaintiff may not reinstate the complaint after the hearing or entry of a default judgment in this circumstance, but must initiate an entirely new action by filing a new complaint, subject to the applicable fees and costs for a new filing.

REPORT

Proposed Amendment of Pa.R.C.P.M.D.J. No. 314

Reinstatement of Complaint

I. Introduction

The Minor Court Rules Committee (“Committee”) is planning to propose the amendment of Pa.R.C.P.M.D.J. No. 314 to the Supreme Court of Pennsylvania. The rule addresses, among other things, reinstatement of a complaint following a dismissal without prejudice for failure to make timely service upon a defendant. The Committee is proposing to distinguish the procedure for cases when the complaint is dismissed as to all defendants from dismissal for only some of the defendants.

II. Discussion

Rule 314 addresses matters relating to service, including the return of service, dismissal of the complaint without prejudice for failure to make timely service on the defendant, and reinstatement of the complaint following a dismissal without prejudice for failure to make timely service.

The Committee received an inquiry regarding dismissal without prejudice and the ability to reinstate the complaint when the complaint names multiple defendants, not all defendants have been served, the complaint is dismissed as to the unserved defendant(s), but the case moves forward against the served defendant(s), and proceeds to a hearing or a default judgment. A concern arises when the plaintiff later locates an unserved defendant and requests reinstatement of the complaint pursuant to Rule 314E. The rule does not address how to handle this scenario, and reinstating an adjudicated case to proceed against the previously unserved defendants raises concerns with maintaining the integrity of the court’s original judgment, including the appeal period applicable to the parties.

The Committee discussed the inquiry, and agreed that it would be appropriate to amend the procedures set forth in Rule 314E to distinguish between scenarios when the complaint has been dismissed as to all defendants and when the complaint has been dismissed as to less than all defendants.

III. Proposed Changes

The Committee plans to propose the amendment of Rule 314 by expanding Rule 314E to contain two subparagraphs. Subparagraph E(1) provides that when the complaint is dismissed without prejudice as to all defendants for failure to make timely service, the complaint may be reinstated. Subparagraph E(2), in contrast, provides that when the complaint has been dismissed without prejudice for failure to make timely service as to less than all defendants, any further action against an unserved defendant must be initiated by filing a new complaint. The

Official Note provides that the new action in subparagraph E(2) is subject to all applicable fees and costs for a new filing.

The Committee also proposes minor stylistic changes throughout Rule 314.

[Pa.B. Doc. No. 17-1244. Filed for public inspection July 28, 2017, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1793 S 1989

Order

And Now, this 17th day of July 2017, Dauphin County Local Rule 1901.3(c) is rescinded.

Rule 1901.3. Protection from Abuse Filings.

(a) All attorneys who represent a client in Protection from Abuse matters shall be registered with the Protection From Abuse Database (PFAD) system.

(b) All petitions and motions shall be generated by the PFAD system and subsequently filed with the Prothonotary.

(c) **[Attorneys who have been directed by the Court to prepare orders shall generate such orders on the PFAD system and present them to the Court for review and signature and entry into the PFAD system no later than twenty-four (24) hours after the hearing. Failure to do so may give rise to sanctions. The definition of order as used in this local rule shall include, inter alia, final orders, continuance orders and orders extending the temporary order.]**

This amendment shall be effective thirty (30) days from date of publication.

By the Court

RICHARD A. LEWIS,
President Judge

[Pa.B. Doc. No. 17-1245. Filed for public inspection July 28, 2017, 9:00 a.m.]

TIOGA COUNTY

Certification for Approval of Police Complaints by Attorney for the Commonwealth Pursuant to Pa.R.Crim.P. 507; No. 110 MS 2017

Rule L.R. 507. Approval of Police Complaints by Attorney for the Commonwealth.

The District Attorney of Tioga County having filed a certification pursuant to Pa.R.Crim.P. 507, criminal complaints by Police Officers, as defined in the Rules of Criminal Procedure, charging felony crimes shall not hereafter be accepted by any Judicial Officer unless the complaint has the approval of an Attorney for the Commonwealth prior to filing.

GEORGE W. WHEELER,
President Judge

And Now, this 11th day of May, 2017, comes the Commonwealth of Pennsylvania, by and through Krista L. Deats, Tioga County District Attorney, in the previous case and files the following in request for Certification for Approval of Police Complaints:

1. According to the Pennsylvania Rules of Criminal Procedure, the District Attorney of any county may require that criminal complaints, arrest warrant affidavits, or both filed in the county by Police Officers, as defined in these rules, have the approval of an Attorney for the Commonwealth prior to filing. Pa.R.Crim.P. 507.

2. If the District Attorney elects to proceed under paragraph (A) of Rule 507, the District Attorney shall file a certification with the Court of Common Pleas.

3. As the Tioga County District Attorney, I am requesting Certification for Approval of Police Complaints under this Rule.

4. Pursuant to this Local Rule, Prior Approval of Police Complaints charging any felony crime shall be approved by an Attorney for the Commonwealth.

5. This Local Rule shall come into effect on Monday May 22, 2017, or, if not approved by this date, immediately upon the Certification of the Court of Common Pleas.

KRISTA L. DEATS,
District Attorney

[Pa.B. Doc. No. 17-1246. Filed for public inspection July 28, 2017, 9:00 a.m.]

SUPREME COURT

Reestablishment of the Magisterial Districts within the 10th Judicial District; No. 356 Magisterial Rules Doc.

Amended Order

Per Curiam

And Now, this 11th day of July, 2017, the Orders dated May 9, 2013 and July 3, 2013 which provide for the elimination of Magisterial District 10-2-08 of the 10th

Judicial District (Westmoreland County) of the Commonwealth of Pennsylvania effective January 1, 2018, and the realignment of Magisterial Districts 10-2-01, 10-3-08, 10-3-09, and 10-3-11 effective January 1, 2018 are hereby *Amended* as follows: Magisterial District 10-2-08 shall not be eliminated and Magisterial Districts 10-2-01, 10-3-08, 10-3-09, and 10-3-11 shall not be realigned. The Orders of May 9, 2013 and July 3, 2013 shall remain in effect in all other respects.

The Magisterial Districts shall be as follows:

Magisterial District 10-2-01	South Greensburg Borough
Magisterial District Judge	Southwest Greensburg
L. Anthony Bompiani	Borough
	Youngwood Borough
	Hempfield Township (Voting
	Districts Bovard,
	Eastview, Foxhill,
	Hannastown, Luxor,
	Maplewood, Todd,
	University, Weaver's Old
	Stand, West Point)

Magisterial District 10-2-08	Latrobe Borough
Magisterial District Judge	Youngstown Borough
Michael R. Mahady	Unity Township
Magisterial District 10-3-08	Derry Borough
Magisterial District Judge	New Alexandria Borough
Mark Bilik	Derry Township
Magisterial District 10-3-09	Bolivar Borough
Magisterial District Judge	Laurel Mountain Borough
Denise Snyder Thiel	Ligonier Borough
	New Florence Borough
	Seward Borough
	Cook Township
	Fairfield Township
	Ligonier Township
	St. Clair Township
	Donegal Borough
	Donegal Township

Magisterial District 10-3-11	Mt Pleasant Township
Magisterial District Judge	Mt Pleasant Borough
Roger Eckels	

[Pa.B. Doc. No. 17-1247. Filed for public inspection July 28, 2017, 9:00 a.m.]