

# FINAL REPORT<sup>1</sup>

## *Amendment to Rule 112 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges*

### **AVAILABILITY AND TEMPORARY ASSIGNMENT OF MAGISTERIAL DISTRICT JUDGES IN CIVIL AND POSSESSORY ACTIONS**

On April 18, 2007, effective May 18, 2007, upon recommendation of the Minor Court Rules Committee,<sup>2</sup> the Supreme Court of Pennsylvania amended Rule 112 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges.<sup>3</sup>

#### **I. Background**

The Minor Court Rules Committee (the Committee) undertook a review of Rule 112 (Temporary Assignments of Magisterial District Judges) at the direction of the Supreme Court of Pennsylvania and in response to a recommendation of the Special Courts Administration Subcommittee of the Supreme Court's Intergovernmental Task Force to Study the District Justice System (the Task Force Subcommittee).<sup>4</sup> In its report to the Supreme Court, the Task Force Subcommittee recommended that the rules of civil procedure for magisterial district courts provide for the "continuous availability, during regular business hours, of at least one [magisterial] district [judge] in the judicial district to handle routine civil matters, such as the issuance of orders of execution or orders for possession, so that such matters are handled in a timely manner even in the absence of the proper issuing authority."<sup>5</sup> In response to this recommendation, the Supreme Court referred the matter to the Committee for its consideration, and the Committee recommended that Rule 112 be amended as explained below.

#### **II. Discussion and Rule Changes**

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

<sup>2</sup> Recommendation No. 3 Minor Court Rules 2006.

<sup>3</sup> Supreme Court of Pennsylvania Order No. 236, Magisterial Docket No. 1 (April 18, 2007).

<sup>4</sup> The Intergovernmental Task Force to Study the District Justice System was convened on May 30, 2001 "to examine the current state of the district justice court system" and to "propose clear standards for the decennial magisterial district reestablishment, identify immediate and long-term system problems and needs, and formulate solutions to ensure the prudent and effective administration of the district justice courts." Report of the Intergovernmental Task Force to Study the District Justice System vii (October 2001) (available online at <http://www.courts.state.pa.us/>) [hereinafter Task Force Report].

<sup>5</sup> *Id.* at 49.

In its report to the Supreme Court, the Task Force Subcommittee noted that “while the continuous availability of at least one [magisterial] district [judge] in each judicial district is required by Pa.R.Crim.P. 132,<sup>6</sup> no similar rule existed requiring availability of a [magisterial] district [judge] to handle routine civil matters in the absence of the [judge] who would normally be required to handle the matters. The [Task Force] Subcommittee was informed that parties in civil and landlord/tenant actions, particularly judgment holders, are often frustrated by delays in the issuance of judgments, orders of execution, or orders for possession when the proper issuing authority is unavailable because of vacation, illness, attendance at mandatory continuing education classes, etc.”<sup>7</sup> The Committee generally agreed with the recommendation of the Task Force Subcommittee, noting that the rights of parties can be adversely affected when a magisterial district judge is not available to sign and issue time sensitive documents in civil and possessory matters.<sup>8</sup>

#### *A. Availability*

A new paragraph (A) addresses the availability issue raised in the Task Force Report. Paragraph (A) requires that the president judge of each judicial district ensure the availability during regular business hours of at least one magisterial district judge to handle routine matters in civil and possessory matters that may require the attention of a judge. The expanded Official Note to the rule provides extensive explanation of new paragraph (A). The note compares these availability provisions with the coverage provisions in the Rules of Criminal Procedure, stressing that the civil availability provisions in Rule 112 are intended to apply only during regular business hours. The note also makes clear that the civil availability provisions are not intended to affect the criminal coverage requirements or the coverage requirements for the issuance of emergency relief under the Protection From Abuse Act.<sup>9</sup> In addition, the note cross-references the Older Adult Protective Services Act<sup>10</sup> to put president judges and

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<sup>6</sup> The after-hours coverage provisions of Pa.R.Crim.P. 132 were removed and such matters are now governed by Pa.R.Crim.P. 117, effective August 1, 2006. See 35 *Pa.B.* 3901 (July 16, 2005).

<sup>7</sup> Task Force Report at 49-50.

<sup>8</sup> The Committee noted that there are many legitimate reasons why a magisterial district judge may be unavailable to sign and issue time sensitive documents. The Task Force Report lists three reasons – “vacation, illness, attendance at mandatory continuing education classes.” Others may include official court-related meetings and absences due to after-hours coverage duty.

<sup>9</sup> 23 Pa.C.S. §§ 6101-6118. See *supra*, note 3 and Pa. R.C.P.M.D.J. Nos. 1201-1211.

<sup>10</sup> Act of Nov. 6, 1987, P.L. 381, No. 79 as amended (35 P.S. §§ 10225.101-10225.5102).

magisterial district judges on notice of the after-hours availability requirements of that Act.<sup>11</sup>

The note provides three examples of matters contemplated under paragraph (A) that may require the attention of a judge – the issuance of orders of execution under Pa. R.C.P.M.D.J. No. 403, stays of execution under Pa. R.C.P.M.D.J. Nos. 410 and 413, and orders for possession under Pa. R.C.P.M.D.J. No. 516 – so that such matters are handled in a timely manner even in the absence of the magisterial district judge to whom the case would ordinarily be assigned. In addition, the note adds that litigants may be required to wait “a reasonable period of time” in order for a magisterial district judge to finish up a court proceeding in progress. Finally, recognizing that many judicial districts may already have in place sufficient systems to provide the coverage required by this paragraph, the note provides that the president judge may continue the established procedures in the judicial district or establish new procedures as needed.

### *B. Temporary Assignment*

A new paragraph (B) provides for and expands upon the provisions of existing paragraph A. New paragraph (B)(1) provides that the president judge or his or her designee may temporarily assign a magisterial district judge to satisfy the requirements of new paragraph (A), when a magisterial district judge disqualifies himself or herself from hearing a matter, or to otherwise provide for the efficient administration of justice. The references in the existing rule to temporary assignments to the Pittsburgh Magistrates Court and the Traffic Court of Philadelphia have been deleted.<sup>12</sup> New paragraph (B)(2) requires that notice of temporary assignments of magisterial district judges be posted in all magisterial district courts affected by the temporary assignment.

New paragraph (B)(3) contains the provisions of existing paragraph B with only minor editorial changes.

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<sup>11</sup> See Recommendation 1 Minor Court Rules 2006 (May 8, 2006) and its accompanying explanatory Report, n.8.

<sup>12</sup> The former Pittsburgh Magistrates Court has been transitioned into the magisterial district court system, and the president judge of the Fifth Judicial District (Allegheny County) has authority to assign magisterial district judges to hear cases that would formerly be heard in the Pittsburgh Magistrates Court and the Pittsburgh Housing Court. Supreme Court of Pennsylvania Order No. 212, Magisterial Docket No. 1 (November 29, 2004) (34 Pa.B. 6507) and Supreme Court of Pennsylvania Order No. 215, Magisterial Docket No. 1 (February 25, 2005) (35 Pa.B. 1662). Temporary assignments of magisterial district judges to the Traffic Court of Philadelphia are accomplished by order of the Supreme Court of Pennsylvania and coordinated by the Administrative Office of Pennsylvania Courts. Accordingly, Rule 112 need not specifically refer to either court.

The expanded Official Note to the rule also provides explanation of paragraph (B). Among other things, the note makes clear that a magisterial district judge may disqualify himself or herself from a matter at the request of a party or *sua sponte*, as is often the case in these matters. The note also makes clear that, as with all judicial officers, a request for disqualification must be made directly to the magisterial district judge.

### *C. Minor Technical Amendments*

In addition to the substantive amendments discussed above, a cross reference to Rule 17 of the Standards of Conduct of Magisterial District Judges is included in the Official Note, along with a statement clarifying that nothing in Rule 112 is intended to conflict with Rule 17. Rule 17 sets forth the president judges' general supervisory authority of the magisterial district courts in the judicial district. Finally, in order to properly describe the expanded content of the rule, the title of the rule has been changed to "Availability and Temporary Assignments of Magisterial District Judges."