

FINAL REPORT¹

Amendments to Pa. R.C.P.D.J. Nos. 202 and 421; Adoption of Entirely New Pa. R.C.P.D.J. Nos. 213 and 214; and Rescinding Pa. R.C.P.D.J. Nos. 317 and 510

DEFINITIONS; SUBPOENAS TO ATTEND AND TESTIFY IN CIVIL AND LANDLORD/TENANT MATTERS

On September 3, 2003, effective January 1, 2004, upon the recommendation of the Minor Court Rules Committee,² the Supreme Court of Pennsylvania amended Rules 202 and 421, adopted entirely new Rules 213 and 214, and rescinded Rules 317 and 510 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices.³

I. Background

The Minor Court Rules Committee initially undertook a review of Rule 421 when it came to the Committee's attention that Rule 421C, that provides for the issuance of subpoenas in determination of property claims hearings (Rule 420 hearings), was not consistent with Rule 317 (relating to subpoena of witnesses in civil actions) and Rule 510 (relating to subpoena of witnesses in landlord/tenant actions). The Supreme Court had previously approved amendments to Rules 317 and 510 to provide for the issuance of subpoenas duces tecum. In recommending these amendments the Committee apparently overlooked the subpoena provision in Rule 421. The Committee had initially proposed that Rule 421 be amended to provide for the issuance of subpoenas duces tecum in Rule 420 hearings to make it consistent with the other subpoena rules. See 31 *Pa.B.* 2920 (June 9, 2001).

Upon consideration of comments received in response to that initial proposal, however, the Committee revised its proposal. The Committee received comments suggesting that three separate rules governing subpoenas caused unnecessary duplication and confusion. The Committee agreed. Accordingly, the Committee recommended the addition of two new general rules governing subpoenas in the 200 Series (RULES OF CONSTRUCTION; GENERAL PROVISIONS). Further, the Committee recommended that Rules 317 and Rule 510 be rescinded, and that Rule 421 be amended to delete the references to subpoenas.

¹ The Committee's Final report should not be confused with the official Committee Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee's Notes or the contents of the Committee's explanatory Final Reports.

² Recommendation No. 4 Minor Court Rules 2003.

³ Supreme Court of Pennsylvania Order No. 204, Magisterial Docket No. 1, Book No. 2 (September 3, 2003).

In addition, the Committee recommended amendments to Rule 202 (Definitions) to add five new definitions, as described below.

Finally, in conjunction with the amendments to Rules 202 and 421, the Committee also recognized the need for several technical or “housekeeping” amendments to these rules.

The Committee’s revised proposal was published for public comment at 31 *Pa.B.* 7028 (December 29, 2001). The Committee received no comments regarding the revised proposal.

II. Discussion of Rule Changes

A. *Rule 202*

As indicated above, the Committee recommended that Rule 202 be amended to add five new definitions of words or phrases that are currently used in the rules or are used in the new subpoena rules. Relating to the subpoena rule changes, the Committee recommended that the terms “competent adult” and “subpoena” be defined.

- The Committee recommended the same definition for “competent adult” as is used in Pa.R.C.P. No. 76 be adopted in Pa. R.C.P.D.J. No. 202. New Rule 214C provides that subpoenas be served by a competent adult.⁴
- Likewise, the Committee recommended that substantially the same definition for “subpoena” as is used in Pa.R.C.P. No. 234.1 be adopted in Pa. R.C.P.D.J. No. 202. The definition provides for subpoenas to attend and testify as well as subpoenas duces tecum.

In addition, the Committee noted that the words “adult” and “verified” are used in the rules but were not defined.

- The Committee thought it important to distinguish between “adult” and “competent adult” since the latter term is used in New Rule 214C. The Committee recommended the same definition for “adult” as is used in Pa.R.C.P. No. 76 be adopted in Pa. R.C.P.D.J. No. 202.
- Upon review of the three instances where the word “verified” currently is used in the rules, the Committee determined that it also should be defined. The

⁴ See discussion *infra* Part II.C.

Committee recommended that the same definition for “verified” as is used in Pa.R.C.P. No. 76 be adopted in Pa. R.C.P.D.J. No. 202.⁵

Finally, the Committee recommended that the term “incapacitated person” be defined because it is used in the definition of “competent adult” and elsewhere in the rules. The Committee recommended that the term be defined as it is in 20 Pa.C.S. § 5501 (relating to meaning of incapacitated person).⁶

In conjunction with the amendment to the rule to add the five definitions described above, the Committee also recognized the need for two technical amendments to this rule.

- First, the Committee recommended that the introductory language in the rule be amended to more closely mirror that in Pa.R.C.P. No. 76 so as to more clearly state how terms in the rules are to be defined and construed.
- In addition, the Committee recommended that the rule be restructured to remove the numbered list of definitions and to list the definitions in alphabetical order. The Committee believes that this technical change will present the list of defined terms in a more logical order and will better facilitate future additions to or deletions from the list.

B. New Rule 213

As noted above, the Committee recommended an entirely new rule, Pa. R.C.P.D.J. No. 213, to generally provide for subpoenas in civil and landlord and tenant matters.

The new rule imposes limitations on the use of subpoenas. Subdivision A makes clear that subpoenas may be used to command a person to attend and to produce documents or things only at a trial or hearing in an action or proceeding pending before the district justice. Subdivision B makes clear that subpoenas may not be used to compel a person to appear or produce documents or things *ex parte*.

⁵ A proposal to add the word “verified” to the Rule 202 definitions, and to make other format changes to Rule 202, was previously published at 31 *Pa.B.* 5938 (October 27, 2001). The Committee did not make any changes to that proposal, however it was incorporated into this recommendation as both proposals affected Rule 202.

⁶ 20 Pa.C.S. § 5501 defines “incapacitated person” as “an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety.”

The Official Note to the new rule cross references Pa.R.C.P. No. 234.1 and Pa. R.C.P.D.J. Nos. 202 and 210. It also makes clear that the district justice has discretion to limit the scope of subpoenas to persons, documents, or things that are relevant to the cause of action before the district justice. A similar provision had been included in the Note to Rule 317, which has been rescinded.

C. *New Rule 214*

The Committee also recommended an entirely new Pa. R.C.P.D.J. No. 214 to further provide for the issuance and service of subpoenas.

Subdivision A of the new rule makes clear that district justices may issue subpoenas throughout the Commonwealth.

Subdivision B provides that upon request of a party, the district justice may issue a subpoena. This subdivision also specifies what information must be contained in the subpoena, including the name and service address of the person being subpoenaed; the date, time, and place at which the person is to appear; and a description of any documents or things the person is to produce. These procedures differ from practice in the courts of common pleas in two significant ways. First, the rule and Note make clear that a district justice *may* issue a subpoena and that the district justice has discretion to limit the scope of subpoenas to persons, documents, or things that are relevant to the cause of action. This differs from Pa.R.C.P. No. 234.2(a), which provides that the prothonotary *shall* issue a subpoena at the request of a party. The Committee was concerned that *pro se* parties may attempt to subpoena irrelevant persons or things; and recognized that there is no procedural mechanism for quashing a subpoena at the district justice level. Secondly, these procedures differ from common pleas practice in that certain information must be contained in the subpoena at the time of issuance. The Committee thought it inadvisable that district justices issue subpoenas in blank.

Subdivision C provides for service of subpoenas. Under the new rule, subpoenas may be served by a “competent adult” making personal service on the person being subpoenaed or another adult. The Committee specified that service be made by a “competent adult” (an adult who is not an incapacitated person, not a party, and not a relative or employee of a party) because of the close relationships between parties that are often seen in district justice cases. In addition, given the expedited nature of civil and landlord and tenant proceedings at the district justice level, the Committee did not believe that any form of service by mail is advisable.

The Official Note to the new rule cross-references Pa.R.C.P. Nos. 234.2 and 402(a), and Pa. R.C.P.D.J. No. 202. The Note also contains the same provision as in the Note to Rule 213 regarding the district justice’s discretion to limit the scope of subpoenas.

D. Rules 317 and 510

In light of new Rules 213 and 214, the Committee further recommended that Rule 317 (relating to subpoena of witnesses in civil actions) and Rule 510 (relating to subpoena of witnesses in landlord and tenant actions) be rescinded.

E. Rule 421

The Committee recommended a number of amendments to Rule 421. First, regarding subpoenas, the Committee recommended that subdivision C, relating to subpoenas in determination of property claim hearings, be rescinded.

Secondly, in subdivision B, the Committee recommended minor changes to make the notice of determination requirement consistent with the notice requirement in Rule 324 relating to notice of judgment in civil actions.

Third, in subdivision D, the Committee recommended that the time period for filing a Statement of Objection run from “the date of entry of the order or determination” to make this time period consistent with the general appeal periods in civil and landlord/tenant actions that run from the date of entry of the judgment.

Finally, the Committee recommended minor changes to the rule to address gender neutrality issues, to correct cross-references in the Note, and to conform to modern drafting style.