

FINAL REPORT

Amendment to Rule 209 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

On September 9, 2008, effective October 1, 2008, upon recommendation of the Minor Court Rules Committee,¹ the Supreme Court of Pennsylvania approved an amendment to Rule 209 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges.²

I. Background

In 2007, several magisterial district judges questioned why the rules of civil procedure did not specifically address continuances for military personnel. Based upon the reported uncertainty of some magisterial district judges in dealing with military personnel's requests for continuances, the Minor Court Rules Committee ("the Committee") recommended an amendment to Rule 209 referencing the Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 501 *et seq.* ("Act"). The Committee believed the amendment would provide a quick statutory reference as well as foster a uniform, statewide practice.

II. Discussion

The Committee determined that its main concern was ensuring that magisterial district judges were aware of the Act and follow it, when appropriate. In its deliberations, the Committee reviewed a sample request for a continuance pursuant to the Act; the Act itself; 51 Pa.C.S.A. § 7314 ("Stay of proceedings when military service affects conduct thereof") and Pa.R.C.P. No. 1920.46 ("Affidavit of Non-military Service").

The Committee decided that the simplest way to achieve its goal of compliance with the Act was through a statutory reference. While the Committee considered including a reference to the Act in the note, rather than the rule, the eventual decision was to draft a new subdivision within the rule itself. The Committee members felt strongly that individuals meeting the criteria of the Act should be granted continuances. By including the language in the rule, the exception for qualifying military personnel becomes mandatory; if simply included in the note, the reference would not be binding, as the Supreme Court of Pennsylvania does not adopt the contents of the Committee's notes to the rules.

¹ Minor Court Rules Committee Recommendation 10-2008.

² Supreme Court of Pennsylvania Order No. 248, Magisterial Docket No. 1 (September 9, 2008).

III. Approved Rule Changes

To address the issues discussed above, the Committee included a new subdivision “E,” directly following the current subdivision “D.” As explained above, the new subdivision “E” provides a statutory reference to the Act.

The note was also amended to clarify that subdivisions D and E are not the exclusive grounds for granting continuances.