

# FINAL REPORT<sup>1</sup>

## *Amendments to Pa. R.C.P.D.J. No. 302 and Revision to the Official Note to Pa. R.C.P.D.J. No. 314*

### **VENUE; TRANSFER OF CASES TO AND FROM OTHER COURTS WHEN VENUE IS FOUND TO BE IMPROPER IN THE ORIGINATING COURT**

On July 3, 2003, effective January 1, 2004, upon the recommendation of the Minor Court Rules Committee,<sup>2</sup> the Supreme Court of Pennsylvania amended Rule 302 and revised the Official Note to Rule 314 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices.<sup>3</sup>

#### **I. Background**

The Committee undertook a review of Pa. R.C.P.D.J. No. 302 in response to a request from the Administrative Office of Pennsylvania Courts (AOPC). The AOPC reported that it had received an inquiry from the court administrator's office of a suburban Philadelphia county about apparent conflicts between the Rules of Civil Procedure Governing Actions and Proceedings Before District Justices (Pa. R.C.P.D.J.) and the Philadelphia Municipal Court Rules of Civil Practice (Phila.M.C.R.Civ.P.) with regard to the transfer of cases when venue is found to be improper in the originating court. Also, the Committee had received a suggestion from a district justice that raised the question of how and by whom improper venue is to be raised under Rule 302.

After consideration of the issues raised, the Committee concluded that an amendment to Rule 302 was needed, as described below, to clarify that the district justice or the defendant may raise improper venue at any time prior to the conclusion of the hearing, and to provide for the transfer of cases to and from other courts when venue is found to be improper in the originating court. Finally, the Committee identified a need to make other minor correlative, technical, or "housekeeping" amendments to Rule 302 and the Official Note to Rule 314.

---

<sup>1</sup> 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.

<sup>2</sup> Recommendation No. 3 Minor Court Rules 2003.

<sup>3</sup> Supreme Court of Pennsylvania Order No. 196, Magisterial Docket No. 1, Book No. 2 (July 3, 2003).

## II. Objection to Venue

As a result of the suggestion that it had received, the Committee discussed how and by whom improper venue is to be raised under Rule 302.

Venue in civil matters at the common pleas level is generally governed by Pa.R.C.P. No. 1006(e), which states, *inter alia*, “[i]mproper venue shall be raised by preliminary objection and if not so raised shall be waived.” The Committee noted, however, that the district justice venue rule (Rule 302) differed from the common pleas rule in that Rule 302 was not clear as to who must raise an objection to venue, and did not appear to provide for a waiver of venue. Prior to the current amendment, Pa. R.C.P.D.J. No. 302H stated, “[i]f *the district justice* in the magisterial district in which the complaint was filed finds that venue in that magisterial district is improper, he *shall* transfer the complaint to a magisterial district having proper venue.” (Emphasis added.) It became apparent to the Committee that some district justices were construing this rule to mean if, during the hearing, the district justice makes a *sua sponte* determination that venue is improper the issue cannot be waived, the hearing must cease, and the case must be transferred to another district justice court with proper venue.

In light of these findings, the Committee recommended that Rule 302 be amended to clarify that the district justice or the defendant may raise improper venue at any time prior to the conclusion of the hearing. The Committee determined that the defendant should be given until the end of the hearing to raise the objection because the face of the complaint might not give the defendant enough information about the claim to raise to the objection earlier, given the simplified notice pleadings used in district justice civil cases. The Committee believes that allowing either the district justice or the defendant to raise improper venue affords protections against possible abuses of the system in a case in which an unsophisticated *pro se* defendant might not know to raise an objection to venue.

In addition, the Committee recommended that Rule 302 provide that the district justice *may* transfer the case if he or she finds venue to be improper. The Committee believes the decision to transfer the case best be left to the district justice. The Committee contemplated situations in which the district justice might choose to transfer the case to prevent abuses of the system by a plaintiff seeking a convenient forum in which to file claims. Conversely, the Committee contemplated situations in which the district justice might choose not to transfer the case, such as where the parties are present in court and agree to proceed, and it would create a hardship to require the parties to reconvene in another court at another time.

## III. Transfer of Cases When Venue is Found to be Improper

In its request, the AOPC asked that the Committee consider the following issues:

- a. Whether a district justice court has the authority to accept a civil case transferred from the Philadelphia Municipal Court?

- b. Whether a district justice court has the authority to transfer a civil case to the Philadelphia Municipal Court when the district justice finds that venue properly lies with the Municipal Court?
- c. If transfers between the district courts and the Municipal Court are permissible, whether either party is required to pay additional filing costs?

With regard to the first issue, the Committee noted that Phila.M.C.R.Civ.P. No. 108(c) states, “[i]f objection to venue is sustained and there is a court of proper venue within Pennsylvania, the action shall not be dismissed but shall be transferred to the appropriate District Justice Court or Court of Common Pleas.” The Committee agreed that, under this rule, the Municipal Court may transfer, and a district justice may accept, a civil case where venue is found to be improper in the Municipal Court (assuming, of course, that the amount in controversy is within the jurisdictional limit of the district justice court).<sup>4</sup>

As to the second issue, however, the Committee noted that prior to the current amendment Pa. R.C.P.D.J. No. 302H stated, “[i]f the district justice in the magisterial district in which the complaint is filed finds that venue in that magisterial district is improper, he shall transfer the complaint to a *magisterial district* having proper venue.” (Emphasis added.) It was the Committee’s opinion that the rule restricted district justices to transferring cases only to other magisterial district courts, and did not give authority to transfer cases to courts outside the district justice system, including the Philadelphia Municipal Court. The Committee further concluded that if a district justice found that venue lay with a court outside the district justice system, such as the Philadelphia Municipal Court, the district justice’s only alternative might have been to dismiss the case without prejudice and require the plaintiff to refile the case in the appropriate court. In so concluding, the Committee was mindful that the plaintiff could be barred from refileing if the case was dismissed after the statute of limitations had run.

Consideration of the third issue, with regard to the payment of additional filing costs, resulted in the most discussion within the Committee. The Committee noted that when a case is transferred between district justice courts, the transferring court sends the filing costs along with the case to the receiving court. Further, prior to the current revision the Note to Pa. R.C.P.D.J. No. 302, with regard to transfers between district justice courts, stated, “[t]here is no fee for transfer of the complaint and no additional

---

<sup>4</sup> The jurisdictional limit in civil cases in the Municipal Court (\$10,000) is different from that of the district justice courts (\$8,000). See 42 Pa.C.S. § 1123(a)(4) and 42 Pa.C.S. § 1515(a)(3). This does not create a problem with regard to the transfer of cases from the Municipal Court, as that court’s Rule 108(c) provides for transfer to the “appropriate District Justice Court or Court of Common Pleas.” Phila.M.C.R.Civ.P. No. 108(c) (emphasis added).

filing fee.” The Committee was aware, however, that the disposition of filing costs has created confusion and problems when cases have been transferred to a district justice court from Municipal Court, especially since the statutorily set district justice court filing costs are different than Municipal Court costs. After discussion, the Committee agreed that the current procedure of transferring costs between district justice courts should remain the same. As for transfers to and from Municipal Court, the Committee concluded that no additional filing costs are to be collected when a case is transferred from Municipal Court to a district justice court. Further, any procedure regarding costs collected by the Municipal Court when a case is transferred from a district justice court to the Municipal Court is governed by the Municipal Court rules.

#### **IV. Discussion of Rule Changes**

##### **A. *Rule 302***

###### **1. Objection to Venue**

As stated above, the Committee recommended that an amendment to Rule 302 was needed to clarify that the district justice or the defendant may raise improper venue at any time prior to the conclusion of the hearing. Further, the amended rule gives the district justice discretion to transfer the case or not, in the interest of justice.

###### **2. Transfer of Cases When Venue is Found to be Improper; Costs**

The Committee further recommended that the Note to Rule 302 be revised to make clear that it is the intent of the rule that cases may be transferred to any Pennsylvania court with appropriate jurisdiction and venue, including the Philadelphia Municipal Court. Likewise, nothing in the Rule prohibits a court outside of the district justice system from transferring a case to a district justice court with proper jurisdiction and venue, in accordance with the procedural rules of the transferring court. The Rule and Note have been amended to delete the references to “magisterial district” and replace them with more generic references to “court.” Finally, the Committee recommended that the Note be revised to make clear that there are no costs for transfer of a complaint and no additional filing costs when a case is transferred from one district justice court to another district justice court. Also, there are no additional filing costs when a case is transferred from the Philadelphia Municipal Court to a district justice court.

##### **B. *Correlative Revision to the Note to Rule 314***

In light of the amendment to Rule 302 regarding improper venue, the Committee deemed it advisable to add a cross-reference to Rule 302 in the Note to Rule 314. Rule 314C provides that “[t]he appearance of a defendant . . . shall be deemed a waiver of

any defect in service *but not a waiver of a defect in venue.*" Pa. R.C.P.D.J. No. 314C (emphasis added).

**C. Technical and "Housekeeping" Amendments**

In conjunction with the amendments to Rule 302 discussed above, the Committee also recognized the need for minor changes to the rule to address gender neutrality issues, to correct or add appropriate citations and cross references, and to conform with modern drafting style.