

FINAL REPORT¹

Amendments to Rules 202, 207, 315, 318, 324, 421, and 514, and Adoption of New Rule 207.1 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

DEFINITIONS; REPRESENTATION IN MAGISTERIAL DISTRICT COURT PROCEEDINGS; ATTORNEYS OF RECORD; NOTICES

On June 1st, 2006, effective October 1, 2006, upon recommendation of the Minor Court Rules Committee,² the Supreme Court of Pennsylvania amended Rules 202, 207, 315, 318, 324, 421, and 514, and adopted new Rule 207.1 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges.³

I. Background

The Minor Court Rules Committee (hereinafter the Committee) undertook a review of the rules relating to representation in magisterial district court proceedings, attorneys of record, and notices to parties and attorneys in response to a number of inquiries and requests for clarification in the rules. As a result of the Committee's review, the Committee is proposing a number of rule changes, as described below, to

- clarify who may represent a party in a magisterial district court proceeding;
- establish a more formal procedure for an attorney to become the attorney of record in a case, and;
- clarify that all notices sent by the magisterial district court should go to all parties of record and all attorneys of record.

II. Discussion

A. Representation in Magisterial District Court Proceedings

A number of correspondents requested that the Committee clarify Pa. R.C.P.M.D.J. No. 207, regarding representation in magisterial district court proceedings. The Committee learned that there has been confusion and a lack of uniformity in the magisterial district courts as to who may represent certain parties. Of particular note, the Committee received inquiries about property managers or similar agents

¹ 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.

² Recommendation No. 3 Minor Court Rules 2004.

³ Supreme Court of Pennsylvania Order No. 230, Magisterial Docket No. 1 (June 1, 2006).

“representing” landlords in landlord/tenant hearings. The Committee learned that it is not uncommon for property managers to file landlord/tenant cases on behalf of their landlord clients, to appear at hearings, present testimony, and examine witnesses. The property managers argue that this is a service they should be permitted to perform for their landlord clients because the property managers are paid to handle the day-to-day operations of their clients’ rental properties. Similarly, the Committee also received inquiries regarding a manager or other non-officer employee or agent representing a business entity.

The Committee engaged in extensive discussion of these issues. At the core of this discussion was an attempt to strike a balance between protecting the public by not permitting or sanctioning the unauthorized practice of law on one hand, and recognizing the need to make the magisterial district courts as accessible and “user friendly” as possible on the other. The Committee considered very compelling arguments on both sides of this debate. Some argued that permitting a non-lawyer representative to present a case on behalf of the real party in interest would tacitly sanction the unauthorized practice of law.⁴ Others argued that requiring more parties to be represented by lawyers would diminish the role of the magisterial district court as a forum where litigants can easily and inexpensively resolve disputes.

Initially, the Committee published a version of this proposal that would have expressly restricted appearances and representation in magisterial district court to only the real party in interest or an attorney at law, with only a limited exception for corporate parties.⁵ Upon further consideration however, and after consultation with the Supreme Court, the Committee substantially revised its initial proposal to provide for representation by attorneys as well as, in certain circumstances, by non-lawyer representatives.

In the interest of promoting open access to the courts, the Committee concluded that a party appearing before a magisterial district court should be given the opportunity to be represented by a non-lawyer representative, employee, or agent who has personal knowledge of the subject matter of the litigation. Recognizing the often relatively uncomplicated matters that come before these courts, the Committee and the Court sought to draft a procedure that would permit a non-lawyer representative to appear on behalf of a party, but not to allow a non-lawyer to establish a business in order to represent others before magisterial district courts. For example, the Committee found compelling reasons to allow a property manager to file and present a landlord/tenant case on behalf of a landlord as part of the manager’s broader property management services. The Committee recognized that the property manager is often more familiar with the day-to-day operations of a landlord’s rental properties than is the landlord, and the manager is often in the best position to file and present a case on

⁴ See generally Section 2524 of the Judicial Code (Penalty for unauthorized practice of law), 42 Pa.C.S. § 2524; *In re Campanella*, 207 B.R. 435 (Bankr. E.D. Pa. 1997).

⁵ The Committee’s initial proposal was published at Volume 33, *Pennsylvania Bulletin*, page 4892 (October 4, 2003).

behalf of the landlord. In addition, the Committee found merit in allowing a relative, friend, or other interested person with personal knowledge of the subject matter of the litigation to appear on behalf of a party who is elderly, infirm, or who may benefit from having a representative file and appear on their behalf.

The Committee was satisfied that adequate safeguards will be in place to protect parties from receiving and acting upon incorrect “legal advice” from non-lawyer representatives. First, the rules will require that a non-lawyer representative, employee, or agent who appears on behalf of another must have “personal knowledge of the subject matter of the litigation.” The Committee believes this personal knowledge must be of a first-hand nature, and beyond that acquired merely by talking to the represented party. To clarify this, the rules will include a cross-reference to Pa.R.E. 602 (Lack of Personal Knowledge) in order to provide guidance as to the meaning of “personal knowledge of the subject matter of the litigation.” Second, the Official Notes to the rules will stress that that it is not the intent of the rules to permit a non-lawyer to establish a business for the purpose of representing others in magisterial district court proceedings. Finally, the Committee recognized that magisterial district judges are fully capable of conducting hearings in such a manner so as to maintain order and decorum while giving interested persons and their representatives appropriate opportunity to be heard.⁶

B. Attorneys of Record and Notices

In an issue tangentially related to representation in magisterial district court proceedings, the committee considered the rules relating to attorneys of record and notices to parties and attorneys. The Committee noted that the term “attorney of record” is used throughout the rules. There was no definition for the term, however, and no formal procedural mechanism for an attorney to become the attorney of record in a case. In addition, the Committee noted that the rules make reference to notices being sent to the attorney of record in 11 different instances. The rules, however, are somewhat inconsistent as to when a notice is to be given to the party, to the attorney of record, or both.

With regard to the procedure for an attorney to become the attorney of record in a case, the Committee believed it advisable that a more formal procedure be established. The Committee recognized that the rules require important notices, many affecting the rights of parties,⁷ are to be sent to the parties and their representatives.

⁶ See Pa.Rs.Crim.P. 454 *Comment* and 542 *Comment* (“As the judicial officer presiding at the summary trial [or preliminary hearing], the issuing authority controls the conduct of the trial [or preliminary hearing] generally. . . . In the appropriate circumstances, the issuing authority may . . . permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.” Pa.Rs.Crim.P. 454 *Comment* and 542 *Comment*.)

⁷ Examples of such notices include, among others, hearing notices (Rules 305 and 504), judgment notices (Rules 324 and 514), notices regarding property rights determinations (Rule 421), etc.

Without a procedure in place to determine that a party has an attorney of record, some important notices might not get to counsel. At the same time, however, recognizing the relative informality and expedited nature of magisterial district court proceedings, the Committee wanted to avoid a very formal procedure for the “entry of an appearance” as is used in the courts of record. Specifically, the Committee did not want to propose a rule that would require leave of court before an attorney could withdraw as the attorney of record in a matter.

As noted above, the Committee found 11 different instances in the rules that provide for notices being sent to a party or the party’s attorney of record. For example, the Committee discovered, among others, the following instances:

- Pa. R.C.P.M.D.J. No. 421B provides that, “[i]f a party has an attorney of record the written notice shall be given or mailed to the attorney of record instead of to the party.”
- Pa. R.C.P.M.D.J. No. 514C provides that, “. . . if a party has an attorney of record *named in the complaint form*, the written notice shall be given to the attorney instead of to the party. (Emphasis added.)

The Committee found a number of other variations of these notice provisions throughout the rules. While some of these inconsistencies might be necessitated by differences in the procedures addressed in particular rules, the Committee reviewed each instance and attempted to draft procedures that are as consistent as possible in all the rules. Because attorneys often do not become involved in magisterial district court proceedings until later in the court process (e.g., after judgment is entered but before execution of the judgment), the Committee believed it advisable that all notices be sent to all parties of record and all attorneys of record.

III. Approved Rule Changes

To address the issues discussed above, the Committee proposed and the Court adopted the following rule changes.⁸

A. Rule 202

The Committee proposed that two new definitions, for “attorney at law” and “attorney of record” be added to Rule 202. The approved definition of “attorney at law” is similar, but not identical to the definition in Pa.R.C.P. No. 76.

⁸ In addition to the substantive changes discussed here, the Committee proposes minor technical changes to address gender neutrality issues, add or correct cross-references, and to conform to modern drafting style.

B. Rule 207

The Committee proposed a complete rewrite of Rule 207. New paragraph (A) will specify the manner in which individuals (paragraph (A)(1)), partnerships (paragraph (A)(2)), and corporations or similar entities and unincorporated associations (paragraph (A)(3)) may be represented in magisterial district court proceedings. All three paragraphs will provide for representation by an attorney at law or by a non-lawyer representative, employee, or authorized agent with personal knowledge of the subject matter of the litigation. In addition, all three paragraphs will require that a non-lawyer representative, employee, or authorized agent have written authorization from the party to be represented.

New paragraph (B) will make clear that the written authorization required in paragraph (A) must be filed with the court before the non-lawyer representative, employee, or authorized agent may take any action on behalf of the party. For example, if a property manager wishes to file a landlord/tenant complaint on behalf of a landlord, the property manager will be required to file the written authorization of the landlord contemporaneously with filing the complaint.

As noted above, the Official Note to the rule will make clear that it is the intent of the rule to permit a non-lawyer representative to appear on behalf of a party, but not to allow a non-lawyer to establish a business in order to represent others before magisterial district courts. In addition, the Official Note will make clear that it is intended that the designation of a non-lawyer representative, employee, or authorized agent to represent a party is to apply only on a case-by-case basis, and a party may not give blanket authorization for a non-lawyer representative, employee, or authorized agent to represent the party in all cases involving the party. The Official Note will also contain the cross-reference to Pa.R.E. 602 and Comment discussed above, and it will make clear that a business organized as a sole proprietorship may be represented in the same manner as an individual under paragraph (A)(1).

C. New Rule 207.1

The Committee proposed an entirely new Rule 207.1 (Attorney of Record; Notices) to provide a procedure for an attorney to become and withdraw as the attorney of record in a case, and provide for notices. Paragraph (A) of the new rule will establish the procedure for becoming attorney of record, essentially requiring that the attorney file a written document with the magisterial district court. Paragraph (B) will provide for the withdrawal of the attorney of record. Paragraph (C) will serve as a blanket provision requiring that all notices sent from the magisterial district court be sent to all parties of record and all attorneys of record or non-lawyer representatives.

The Official Note will cross reference Pa.R.C.P. No. 1012(b). Also, given the relative ease with which an attorney can withdraw, the Note will make clear that nothing in the rule is intended to affect an attorney's ethical duty to his or her client.⁹

D. Correlative Amendments to Rules 315, 318, 324, 421, and 514

The Committee proposed that Rules 315, 318, 324, 421, and 514 be amended to delete the duplicative and inconsistent notice provisions.¹⁰ These notice provisions are no longer necessary because of the blanket provision in new Rule 207.1 requiring that "when a party has an attorney of record or is represented by a non-lawyer representative under Rule 207, and when a rule specifies that a notice is to be given or mailed to the party, a copy of the notice shall also be given or mailed to the attorney of record or the non-lawyer representative."

⁹ See Rule 1.16 of the Rules of Professional Conduct.

¹⁰ As noted in Section II.B., *supra*, there are additional instances in which the rules require a notice be sent to a party or attorney of record. These instances, however, relate to appeals in the courts of common pleas and must be dealt with in a slightly different context. These instances will be addressed in a separate proposal.