

**SUPREME COURT OF PENNSYLVANIA
MINOR COURT RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.C.P.M.D.J. Nos. 501, 514-515, 1001-1002 and 1005

The Minor Court Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P.M.D.J. Nos. 501, 514-515, 1001-1002 and 1005, providing for a 20-day appeal period for tenants who are victims of domestic violence in actions involving residential leases, for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

**Pamela S. Walker, Counsel
Minor Court Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9526
minorrules@pacourts.us**

All communications in reference to the proposal should be received by January 30, 2018. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Minor Court Rules Committee,

Anthony W. Saveikis
Chair

REPORT

Proposed Amendment of Pa.R.C.P.M.D.J. Nos. 501, 514-515, 1001-1002 and 1005

APPEALS BY VICTIMS OF DOMESTIC VIOLENCE IN RESIDENTIAL LEASE ACTIONS

I. Introduction

The Minor Court Rules Committee (“Committee”) is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P.M.D.J. Nos. 501, 514-515, 1001-1002 and 1005. These rules will provide a 20-day appeal period in residential lease actions for tenants who are victims of domestic violence.

II. Discussion

The Committee continues its work on the procedural rules governing appeals from judgments of magisterial district courts in an effort to provide additional time for appeal to victims of domestic violence when a judgment arises out of a residential lease and contains an award of possession. The Committee has sought to incorporate certain provisions of the Landlord and Tenant Act of 1951 (“Act”), Act of April 6, 1951, P.L. 69, *as amended*, 68 P.S. § 250.513(b), into the rules. This section specifically provides that “within thirty days after a judgment by a lower court arising out of a nonresidential lease or a residential lease involving a victim of domestic violence, either party may appeal to the court of common pleas” 68 P.S. § 250.513(b) (emphasis added). Provisions to incorporate a 30-day appeal period for victims of domestic violence in residential lease actions were included in prior proposed rules that the Committee published in the *Pennsylvania Bulletin* in 2012 and 2014. See 42 Pa.B. 7525 (December 15, 2012); 44 Pa.B. 4342 (July 12, 2014). These publications also addressed other aspects of the appeals process that are no longer under consideration. However, the Committee has continued working on a proposal to extend the appeal period for victims of domestic violence in residential lease actions, and most recently published a third proposal earlier this year. See 47 Pa.B. 2324 (April 22, 2017).

The Committee’s approach in the April 2017 publication was to permit a victim of domestic violence to file a newly-created domestic violence affidavit with the magisterial district court within 10 days after the date of the entry of judgment so as to prohibit the issuance of an order for possession during the 30-day appeal period. Prohibiting the issuance of the order for possession would permit the defendant who filed the domestic violence affidavit to appeal the magisterial district court judgment within the allowed 30-day period without the risk of eviction. If the defendant did not file the affidavit with the magisterial district court within the 10-day period after the date of the entry of judgment, any further filings by the defendant to assert the 30-day appeal period due to domestic

violence status would be made with the prothonotary, including requests for *nunc pro tunc* relief. Additionally, any challenges by the plaintiff to the domestic violence affidavit would have to be made to the court of common pleas. The Committee's goal with this approach was to create a mechanism for the defendant to put the magisterial district court and the plaintiff on notice that the defendant is asserting the 30-day appeal period due to domestic violence status.

The Committee received feedback on the proposal that led it to reevaluate its approach. First, the Committee reconsidered the content of the domestic violence affidavit, and agreed to take a more restrictive approach to the affidavit, eliminating the requirement that the defendant provide the dates, locations and descriptions of domestic violence, and any protection from abuse orders sought or obtained against the perpetrator. The affidavit will now request only the name of the perpetrator and the perpetrator's relationship to the victim. The domestic violence affidavit will still require verification by the defendant. The domestic violence affidavit has been designated as a confidential document, and will not be publically accessible. See *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts*, Section 6.0(a)(3). The Committee hopes this reduction in the amount and type of information collected, as well as the designation of the affidavit as a confidential document, will be seen as less intrusive for defendants, while still providing plaintiffs with adequate information on which to determine any further action.

The Committee also reconsidered its approach to the 30-day appeal period for domestic violence victims. Part of the difficulty in crafting an extended appeal period has been that unless the defendant asserts domestic violence status early in the 30-day appeal period, the plaintiff is able to seek an order for possession on the 11th day after entry of the judgment, and regain possession of the property on the 11th day after service of the order for possession, *i.e.*, as soon as the 22nd day after the entry of the judgment. See Rules 515, 519. Practically speaking, without a notice mechanism to a court, the defendant could lose possession of the property before the extended 30-day appeal period has run, or could be required to pursue emergency relief at the court of common pleas to stay the eviction. Currently, § 513 of the Landlord and Tenant Act of 1951 (Act No. 1995-33, approved July 6, 1995) is suspended insofar as the Act is inconsistent with the rules, by the Court's Order of March 28, 1996. With the 30-day appeal period suspended for inconsistency with the rules, the Committee is considering if an alternative 20-day appeal period for victims of domestic violence will create a simpler and more streamlined process.

Changing the appeal period for victims of domestic violence from 10 days to 20 days will give defendants who are victims of domestic violence an additional 10 days in which to appeal a judgment for possession, and will require only one filing to the prothonotary, rather than the two-step approach set forth in the earlier publication. Even if the defendant does not file the appeal until the 20th day after the entry of the judgment, he or she is not at risk of immediate eviction because the order for

possession cannot be executed upon until the 11th day after service of the order for possession, *i.e.*, no earlier than the 22nd day after the entry of the judgment. A 20-day appeal period will also eliminate the need for multiple filings, as there will be no need for the affidavit mechanism to protect against evictions in the case of appeals made between the 22nd and 30th days after entry of the judgment.

As reflected in the three publications over the last five years, the Committee has labored with crafting procedures to give domestic violence victims the full benefit of the 30-day appeal period enacted by the General Assembly in 1995. However, existing procedural hurdles continue to make implementing the 30-day appeal period difficult. The Committee hopes that using a 20-day, one-step appeal with a simplified affidavit form will provide relief to defendants who are victims of domestic violence.

III. Proposed Changes

Rule 501: The definition of “victim of domestic violence” has been added to Rule 501, as well as a reference in the note to 68 P.S. § 250.513 and Rule 1202. The Committee also proposes stylistic changes to Rule 501.

Rule 514: A provision is added to Rule 514D to require the magisterial district judge to provide notice of the 20-day appeal period for domestic violence victims on the written notice of judgment, as well as instructions for properly making such an appeal. The Committee also proposes stylistic changes to Rule 514.

Rule 515: A reference to the 20-day appeal period for victims of domestic violence is added to the note. The statutory citation regarding constable fees has been updated. The Committee also proposes stylistic changes to Rule 515.

Rule 1001: The definitions have been alphabetized with corresponding changes to references in the note. A definition of “victim of domestic violence” has been added. The Committee also proposes stylistic changes to Rule 1001.

Rule 1002: New paragraph C provides that a defendant who is a victim of domestic violence shall appeal the judgment within 20 days after the date of entry of the judgment by filing the notice of appeal and the domestic violence affidavit with the prothonotary. The note sets forth the content for the domestic violence affidavit, and designates the affidavit as a confidential document. The Committee also proposes stylistic changes to Rule 1002.

Rule 1005: An updated citation to a definition is made in the note, as well as stylistic changes. The note provides that the notice of appeal includes all documents filed with the prothonotary, including the domestic violence affidavit if applicable.

Rule 501. Definition

[A.] As used in this chapter[,]:

(1) [“action”] “Action” means an action by a landlord against a tenant for the recovery of possession of real property brought before a magisterial district judge.

[B.](2) [As used in this chapter, “complaint”] “Complaint” shall include, where applicable, the attached and completed Recovery of Real Property Hearing Notice form.

(3) “Victim of domestic violence” means a person who has obtained a protection from abuse order against another individual or can provide other evidence of abuse.

Official Note: Distress for rent will not be covered in rules of civil procedure for magisterial district judges, for it is not an action or proceeding before a magisterial district judge and any constable carrying out the “landlord’s warrant” is acting as an agent of the landlord and not as an officer serving process of a magisterial district judge. **[See] See** § 302 of **[t]The Landlord and Tenant Act of 1951, 68 P.S. § 250.302.** Actions for rent (§ 301 of the Act, 68 P.S. § 250.301) and to defalcate (§ 307 of the Act, 68 P.S. § 250.307) are not included in this chapter, for these are actions of assumpsit. **[See also] See also** § 572 of the Act, added by Act of May 3, 1968, P.L. 107, No. 56, § 1, 68 P.S. § 250.512. A number of trespass actions are also detailed in **[t]The Landlord and Tenant Act of 1951 ([see] see §§ 311-313, 68 P.S. §§ 250.311-250.313),** and these would be brought under the rules pertaining to trespass actions. Consequently, this chapter will be concerned only with the action for the recovery of possession of real property. **[But see] But see** Rules 503C(8) and 508 as to joinder of actions and cross-complaints.

The definition of a victim of domestic violence is derived from 68 P.S. § 250.513. For additional definitions related to victims of domestic violence and abuse, see Rule 1202.

Rule 514. Judgment; Notice of Judgment or Dismissal and the Right to Appeal

A. If it appears at the hearing that the complaint has been proven, the magisterial district judge shall enter judgment against the defendant that the real property be delivered up to the plaintiff and shall enter judgment by separate entries:

- (1) for the amount of rent, if any, which remains due,
- (2) for the amount of damages, if any, for unjust detention,
- (3) for the physical damages, if any, to the leasehold premises, and
- (4) for the costs of the proceeding;

less any amount found due the defendant on any cross-complaint filed by the defendant.

In addition, the magisterial district judge shall make an entry identifying the sum of money found by the magisterial district judge to constitute the monthly rental for the leasehold premises.

B. A money judgment may be rendered for the defendant on a cross-complaint filed by the defendant if the amount found due thereon exceeds any amount found due the plaintiff on the plaintiff's complaint.

C. (1) Judgment shall be given at the conclusion of the hearing or within three days thereafter.

(2) Upon the entry of the judgment, the magisterial district **[court] judge** shall promptly give or mail to the parties written notice of judgment or dismissal.

D. The written notice of judgment or dismissal shall contain:

(1) notice of the right of the parties to appeal, the time within which the appeal must be taken, and that the appeal is to the court of common pleas,

(2) **notice that a defendant in a residential lease action who is a victim of domestic violence may appeal the judgment within 20 days of the date of entry of judgment, as well as filing instructions for asserting such an appeal,**

(3) notice that, except as otherwise provided in the rules, if the judgment holder elects to enter the judgment in the court of common pleas, all further process must come from the court of common pleas and no further process may be issued by the magisterial district judge, and

[(3)](4) notice that unless the judgment is entered in the court of common pleas anyone interested in the judgment may file a request for entry of satisfaction with the magisterial district judge if the debtor pays in full, settles, or otherwise complies with the judgment.

Official Note: Paragraph A of this rule requires that the plaintiff appear and give testimony to prove the complaint before the magisterial district judge can enter judgment against the defendant, even when the defendant fails to appear for the hearing. The magisterial district judge may not enter a default judgment in a possessory action, including a judgment for money only. **[See]** See Rule 512A and Note. The various issues that the magisterial district judge must determine at the hearing include: whether notice to quit was given to the defendant in accordance with law or that no notice was required under the terms of the lease; the amount or rent due, if any; damages to the leasehold premises, if any; the amount found to constitute the monthly rental~~[,];~~ and~~[:];~~ the amount of the security deposit held by the landlord, if any.

As to the notice to quit requirement, **[see]** see Section 501 of The Landlord and Tenant Act of 1951, 68 P.S. § 250.501. **[See also]** See also *Patrycia Bros., Inc. v. McKeefrey*, 38 Pa. D. & C.2d 149 (Delaware County C.P. 1966).

The separate entries provided in paragraph A are made necessary as a result of the rental deposit provisions for appeal or **[certiorari]** certiorari contained in Rules 1008B and 1013B, as well as the wage attachment provisions contained in Section 8127 of the Judicial Code, 42 Pa.C.S. § 8127.

[Subdivision] **Paragraph** B of this rule makes provision for a money judgment for the defendant if the defendant prevails in a greater amount on the defendant's cross-complaint.

For procedure for entry of satisfaction of money judgments, **[see]** see Rule 341.

Paragraph D of this rule provides for certain notices the magisterial district court shall include in the written notice of judgment or dismissal.

Subparagraph D(2) reflects the 20-day appeal period for a victim of domestic violence in a case arising out of a residential lease. See Rule 1002C. The 20-day appeal period for victims of domestic violence is derived from Section 513 of The Landlord and Tenant Act of 1951 (Act No. 1995-33, approved July 6, 1995) (Act No. 1995-33 was suspended by the Pennsylvania Supreme Court on March 28, 1996 by Order of Court insofar as the Act is inconsistent with the rules governing proceedings in magisterial district courts); 68 P.S. § 250.513. The appeal period for victims of domestic violence is 20 days (rather than the 30-day period in Section

513) to streamline the appeal process and avoid conflicts with other procedural rules regarding service and execution of an order of possession. See Rules 515, 519. Implementing a 20-day appeal period and requiring all notices to be filed with the prothonotary ensures that a victim of domestic violence will be able to initiate the appeal process before a plaintiff can enforce an order for possession.

As to paragraph D[(2)](3), [see] see Rule 402D and Note. As to paragraph D[(3)](4), [see] see Rule 341.

Rule 515. Request for Order for Possession

A. If the magisterial district judge has rendered a judgment arising out of a non-residential lease that the real property be delivered up to the plaintiff, the plaintiff may, after the 15th day following the date of the entry of the judgment, file with the magisterial district judge a request for an order for possession. The request shall include a statement of the judgment amount, return, and all other matters required by these rules.

B. (1) Except as otherwise provided in subparagraph **B**(2), if the magisterial district judge has rendered a judgment arising out of a residential lease that the real property be delivered up to the plaintiff, the plaintiff may after the 10th day but within 120 days following the date of the entry of the judgment, file with the magisterial district judge a request for an order for possession. The request shall include a statement of the judgment amount, return, and all other matters required by these rules.

(2) In a case arising out of a residential lease, if before the plaintiff requests an order for possession,

(a) an appeal or writ of **[certiorari] certiorari** operates as a **[supersedeas] supersedeas**; or

(b) proceedings in the matter are stayed pursuant to a bankruptcy proceeding; and

(c) the **[supersedeas] supersedeas** or bankruptcy stay is subsequently stricken, dismissed, lifted, or otherwise terminated so as to allow the plaintiff to proceed to request an order for possession,

the plaintiff may request an order for possession only within 120 days of the date the **[supersedeas] supersedeas** or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated.

Official Note: The **[fifteen] 15** days in **[subdivision] paragraph** A of this rule, when added to the 16-day period provided for in Rule 519A, will give the defendant time to obtain a **[supersedeas] supersedeas** within the appeal period. **[See] See** Rules 1002, 1008, 1009, and 1013.

The 1995 amendment to section 513 of The Landlord and Tenant Act of 1951, 68 P.S. § 250.513, established a **[ten]10**-day appeal period from a judgment for possession of real estate arising out of a residential lease[;]. **Rule 1002 provides for a 20-day appeal period for defendants who are victims of domestic violence.[therefore,] In most cases,** the filing of the request for **an** order for possession in subparagraph B(1) **[is not permitted] will not occur** until after the appeal period has expired. **If the defendant**

is a victim of domestic violence, it is possible that the filing of the request for an order of possession may occur prior to the expiration of the 20-day appeal period. However, in that scenario, the order for possession cannot be executed prior to the expiration of the 20-day appeal period. In cases arising out of a residential lease, the request for **an** order for possession generally must be filed within 120 days of the date of the entry of the judgment.

Subparagraph B(2) provides that in a case arising out of a residential lease, if a **[supersedeas] supersedeas** (resulting from an appeal or writ of **[certiorari] certiorari**) or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated, thus allowing the plaintiff to proceed with requesting an order for possession, the request may be filed only within 120 days of the date the **[supersedeas] supersedeas** or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated.

The time limits in which the plaintiff must request an order for possession imposed in **[subdivision] paragraph** B apply only in cases arising out of residential leases and in no way affect the plaintiff's ability to execute on the money judgment. **[See] See** Rule 516, Note, and Rule 521A.

At the time the plaintiff files the request for an order for possession, the magisterial district **[judge]** court should collect server fees for all actions through delivery of possession. Thereafter, if the order for possession is satisfied 48 hours or more prior to a scheduled delivery of possession, a portion of the server costs may be refundable. **[See] See** Rules 516 through 520 and **[Section 2950(d) of the Judicial Code, 42 Pa.C.S. § 2950(d)] 44 Pa.C.S. § 7161(d).**

Rule 1001. Definitions

As used in this chapter:

[(1) “Judgment” means a judgment rendered by a magisterial district judge under Rule 319, 322 or 514.

(2) “Appeal” means an appeal from a judgment to the court of common pleas.

(3) “Certiorari” means an examination by the court of common pleas of the record of proceedings before a magisterial district judge to determine questions raised under Rule 1009A.

(4) “Supersedeas” means a prohibition against any further execution processes on the judgment affected thereby.

(5) “Court of common pleas” means the court of common pleas of the judicial district in which is located the magisterial district wherein the questioned action of the magisterial district judge took place.

(6) “Claimant” includes a defendant with respect to a defendant's cross-complaint or supplementary action filed pursuant to Rule 342 in the action before the magisterial district judge.

(7) “Defendant” includes a plaintiff with respect to the defendant's cross-complaint or supplementary action filed pursuant to Rule 342 in the action before the magisterial district judge.]

(1) “Appeal” means an appeal from a judgment to the court of common pleas.

(2) “Certiorari” means an examination by the court of common pleas of the record of proceedings before a magisterial district judge to determine questions raised under Rule 1009A.

(3) “Claimant” includes a defendant with respect to a defendant's cross-complaint or supplementary action filed pursuant to Rule 342 in the action before the magisterial district judge.

(4) “Court of common pleas” means the court of common pleas of the judicial district in which is located the magisterial district wherein the questioned action of the magisterial district judge took place.

(5) “Defendant” includes a plaintiff with respect to the defendant’s cross-complaint or supplementary action filed pursuant to Rule 342 in the action before the magisterial district judge.

(6) “Judgment” means a judgment rendered by a magisterial district judge under Rules 319, 322 or 514.

(7) “Proof of service” means a verified written statement that service was made by personal service or by certified or registered mail, with the sender’s receipt for certified or registered mail attached thereto if service was made by mail.

(8) Service “by certified or registered mail” means the mailing of properly addressed certified or registered mail.

(9) “Supersedeas” means a prohibition against any further execution processes on the judgment affected thereby.

(10) “Victim of domestic violence” means a person who has obtained a protection from abuse order against another individual or can provide other evidence of abuse.

Official Note: Although one of the purposes of the definitions in this rule is to avoid needless repetition throughout these appellate rules, some of the definitions are intended to state or clarify the law as well.

In connection with the definition of “appeal” in **[subdivision] paragraph [(2)](1)**, **[see also] see also** Rule 1007 and the **[n]Note** thereto.

Under **[subdivision] paragraph [(3)](2)**, **[certiorari] *certiorari*** is restricted to an examination of the record of the proceedings before the magisterial district judge, which will appear on the complaint forms prescribed by the State Court Administrator. **[See] See** *Flaherty v. Atkins*, **[189 Pa.Super. 550,]** 152 A.2d 280 (**Pa. Super.** 1959). This is a narrow form of **[certiorari] *certiorari***, both with respect to procedure and the matters which can be considered under Rule 1009A. Since an aggrieved party will be entitled to a broad form of appeal **[de novo] *de novo*** under these rules, there seems to be no justification for providing also for a broad form of **[certiorari] *certiorari***. These restrictions on the writ of **[certiorari] *certiorari*** are authorized by § 26 of the Schedule to Article V of the 1968 Constitution. The writ of error, which at common law was probably available only to review the proceedings of a court of record (**[see] see** *Beale v. Dougherty*, 3 Binn. 432 (1811)), is not a form of appellate process permitted by these rules. **[See also] See also** *County of Carbon v. Leibensperger*, **[439 Pa. 138,]** 266 A.2d 632 (**Pa.** 1970) (court of common pleas cannot issue writ of prohibition).

[The definition of “supersedeas” in subdivision (4) points out the proper office and limited nature of a supersedeas. See also Rules 1008 and 1013 and the notes thereto.]

Under **[subdivision] paragraph [(9)](7)**, there is no requirement that the sender's receipt for certified mail be postmarked. There is no return receipt requirement for certified or registered mail. It is no longer necessary that the proof of service be under oath or affirmation; however, the statement is now made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

The definition of “supersedeas” in paragraph (9) points out the limited nature of a supersedeas. See also Rules 1008 and 1013 and the Notes thereto.

Under paragraph (10), the definition of a victim of domestic violence is derived from 68 P.S. § 250.513. For additional definitions related to victims of domestic violence and abuse, see Rule 1202.

Rule 1002. Time and Method of Appeal.

A. A party aggrieved by a judgment for money, or a judgment affecting the delivery of possession of real property arising out of a nonresidential lease, may appeal therefrom within **[thirty (30)] 30** days after the date of the entry of the judgment by filing with the prothonotary of the court of common pleas a notice of appeal on a form **[which] that** shall be prescribed by the State Court Administrator together with a copy of the Notice of Judgment issued by the magisterial district judge. The prothonotary shall not accept an appeal from an aggrieved party **[which] that** is presented for filing more than **[thirty (30)] 30** days after the date of entry of the judgment without leave of court and upon good cause shown.

B. **Except as otherwise provided in paragraph C, [A]** a party aggrieved by a judgment for the delivery of possession of real property arising out of a residential lease may appeal therefrom within **[ten (10)] 10** days after the date of the entry of judgment by filing with the prothonotary of the court of common pleas a notice of appeal on a form **[which] that** shall be prescribed by the State Court Administrator, together with a copy of the Notice of Judgment issued by the magisterial district judge. The prothonotary shall not accept an appeal from an aggrieved party **[which] that** is presented for filing more than **[ten (10)] 10** days after the date of entry of judgment without leave of court and upon good cause shown.

C. **(1) A defendant in a residential lease action who is a victim of domestic violence may appeal from a judgment for the delivery of possession of real property by filing a notice of appeal and a domestic violence affidavit with the prothonotary within 20 days of the date of entry of the judgment.**

(2) (a) The domestic violence affidavit shall be on a form prescribed by the State Court Administrator, and affirm that the defendant is a victim of domestic violence.

(b) The domestic violence affidavit shall contain the name of the victim, the name of the perpetrator, and the perpetrator's relationship to the victim, as well as a verification by the defendant.

(c) The domestic violence affidavit is a confidential document, and shall not be publically accessible.

Official Note: The **[thirty day] 30-day** limitation in **[subdivision] paragraph A** of this rule is the same as that found in the Judicial Code § 5571(b), 42 Pa.C.S. § 5571(b), as amended by § 10(67) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53. The **[ten day] 10-day** limitation in **[subdivision] subparagraph B(1)** of this

rule, as well as the 20-day limitation in paragraph C, is designed to implement the time for appeal set forth in § 513 of [t]The Landlord and Tenant Act of 1951 (Act No. 1995-33, approved July 6, 1995) (Act No. 1995-33 was suspended by the Pa. Supreme Court on March 28, 1996 by Order of Court insofar as the Act is inconsistent with Rules of Civil Procedure Governing Actions and Proceedings Before Magisterial District Judges, as adopted by that Order.) [The two subdivisions of t]This rule [are] is intended to clarify that where the right of possession of residential real estate is at issue, and the tenant is not a victim of domestic violence, the shorter, [ten day] 10-day period for appeal applies; where the appeal is taken from any judgment for money, or a judgment affecting a nonresidential lease, under these rules, the [thirty day] 30-day period of time for appeal applies. Where the appeal is taken from a judgment affecting a residential lease and the defendant is a victim of domestic violence, the 20-day appeal period applies. A party may appeal the money portion of a judgment only within the [thirty day] 30-day appeal period specified in [subsection] paragraph A of this rule. It is the intent of this rule that no supersedeas under [Pa.R.C.P.M.D.J. No.] Rule 1008 shall be issued by the [P]rothonotary after the [ten (10) day] 10-day period for filing an appeal, unless a tenant who is a victim of domestic violence files an appeal within 20 days of the date of entry of judgment or by order of court.

The appeal period for victims of domestic violence in paragraph C is 20 days (rather than the 30-day period in 68 P.S. § 250.513) to streamline the appeal process and avoid conflicts with other procedural rules regarding service and execution of an order of possession. See Rules 515, 519. Implementing a 20-day appeal period and requiring all notices to be filed with the prothonotary ensures that a victim of domestic violence will be able to initiate the appeal process before a plaintiff can enforce an order for possession.

The method of appeal is by filing with the prothonotary a “notice of appeal” on a form to be prescribed by the State Court Administrator. Copies of this same form will be used for service under [Pa.R.C.P.M.D.J. No.] Rule 1005. This permits use of the same form for filing and service. No useful purpose would be served by having two forms, one called an “appeal” for filing and another called a “notice of appeal” for service.

The domestic violence affidavit set forth in Paragraph C shall be on a form to be prescribed by the State Court Administrator. The domestic violence affidavit shall contain the name of the victim, the name of the perpetrator, and the perpetrator’s relationship to the victim. The affidavit shall contain the defendant’s verification that the statements made in the affidavit are true and correct to the best of the defendant’s knowledge, information, and belief, and that any false statements are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities. Any subsequent action by a plaintiff to strike a domestic violence affidavit shall be conducted in accordance with the relevant Rules of Civil Procedure.

The domestic violence affidavit is a confidential document because of the sensitive nature of the information contained in it, and it shall not be publically accessible. See *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts*, Section 6.0(a)(3).

The 1990 amendment is intended to encourage the complete utilization of the hearing process available before the magisterial district judge.

A copy of the Notice of Judgment must be filed since it will contain the separate entries required by [Pa.R.C.P.M.D.J. No.] Rule 514[.]A and will be needed by the [P]rothonotary.

Rule 1005. Service of Notice of Appeal and Other Papers.

A. The appellant shall by personal service or by certified or registered mail serve a copy of **[his] the** notice of appeal upon the appellee and upon the magisterial district judge in whose office the judgment was rendered. If required by Rule 1004B to request a rule upon the appellee to file a complaint, **[he] the appellant** shall also serve the rule by personal service or by certified or registered mail upon the appellee. The address of the appellee for the purpose of service shall be **[his]the** address as listed on the complaint form filed in the office of the magisterial district judge or as otherwise appearing in the records of that office. If the appellee has an attorney of record named in the complaint form filed in the office of the magisterial district judge, the service upon the appellee may be made upon the attorney of record instead of upon the appellee personally.

B. The appellant shall file with the prothonotary proof of service of copies of **[his] the** notice of appeal, and proof of service of a rule upon the appellee to file a complaint if required to request such a rule by Rule 1004B, within **[ten (10)] 10** days after filing the notice of appeal.

C. In lieu of service and proof of service pursuant to **[sub]paragraphs A[.] and B[.]** of this **[R]rule**, the court of common pleas may, by local rule, permit or require that the appellant file with the notice of appeal a stamped envelope pre-addressed to the appellee at **[his] the** address as listed on the complaint form filed in the office of the magisterial district judge or as otherwise appearing in the records of that office, or the attorney of record, if any, of the appellee, and a stamped envelope pre-addressed to the magisterial district judge in whose office the judgment was rendered. Copies of the notice of appeal, and Rule pursuant to 1004B, if applicable, shall thereupon be mailed by the prothonotary or court by first class mail, with such service and any return being noted on the court's docket.

D. The party filing a complaint under Rule 1004 shall forthwith serve it upon the opposite party in the appeal by leaving a copy for or mailing a copy to **[him at his] the** address as shown in the magisterial district court records mentioned in **[subdivision] paragraph A** of this rule. If the opposite party has an attorney of record either in the magisterial district court or court of common pleas proceeding, service upon the opposite party may be made upon the attorney of record instead of upon the opposite party personally.

E. Service and proof of service may be made by attorney or other agent.

Official Note: **[Subdivision] Paragraph A** requires service of a copy of the notice of appeal upon the magisterial district judge as well as upon the appellee, or **[his] the**

appellee's attorney of record. **The notice of appeal includes all documents filed with the prothonotary, including a domestic violence affidavit, if applicable.** This copy, when received by the magisterial district judge, may operate as a supersedeas under Rule 1008. As to **[subdivision] paragraph** B, there is no return receipt requirement for service by certified or registered mail and consequently no such receipt need be filed with the prothonotary, although if service is by certified or registered mail the sender's receipt must be attached to the proof of service. **[See] See** Rule 1001**[(9)](7)** and the last paragraph of the **[n]Note** to Rule 1001. The notice of appeal and the proof of service may be filed simultaneously. **[See also] See also** Rule 1006 and its **[n]Note**. **[Subdivision] Paragraph** C prescribes a pleading type service of the complaint, which may be made by ordinary mail, upon the opposite party in the appeal or **[his] the party's** attorney of record.