

**SUPREME COURT OF PENNSYLVANIA
Minor Court Rules Committee**

NOTICE OF PROPOSED RULEMAKING

**Proposed Amendment of Pa.R.C.P.M.D.J. No. 301, 302, and 321 and
Proposed Adoption of Pa.R.C.P.M.D.J. No. 350**

The Minor Court Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P.M.D.J. No. 301, 302, and 321 and the adoption of Pa.R.C.P.M.D.J. No. 350. This proposal provides procedural rules for appeals under 75 Pa.C.S. § 3369(j)(4), relating to violations issued via automated work zone speed enforcement systems for the reasons set forth in the accompanying Publication 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.

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

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All communications in reference to the proposal should be received by **September 27, 2021**. 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,

Honorable Margaret A. Hunsicker
Chair

Rule 301. Definition; Scope

A. As used in this chapter, [1] “action” means a civil action brought before a magisterial district judge.

B. Civil action includes any action within the jurisdiction of a magisterial district judge except an action by a landlord against a tenant for the recovery of the possession of real property.

C. As used in this chapter, “complaint” or [C]civil [A]action shall include, where applicable, the attached and completed Civil Action Hearing Notice form.

Official Note: Civil action includes actions formerly denominated “assumpsit” or “trespass” **(commonly called contract and tort cases, respectively)** and civil claims for fines and penalties. See [Section 1515(a)(3) of the Judicial Code,] 42 Pa.C.S. § 1515(a)(3) prescribing the jurisdiction of magisterial district judges.

The rules in this chapter [will] apply to all civil actions before magisterial district judges except an action by a landlord against a tenant for the recovery of possession of real property, which [are] is governed by Chapter 500 of these rules.

Except as otherwise provided in Rule 350, the rules in this chapter apply to de novo appeals filed pursuant to 75 Pa.C.S. § 3369(j)(4), relating to automated work zone speed enforcement violations.

Statutes authorizing a civil fine or penalty include [the following: (1) Section 10.1 of the Act of April 27, 1927, P.L. 465, No. 299, added by section 2 of the Act of December 21, 1988, P.L. 1315, No. 168, 35 P.S. § 1230.1 relating to clean indoor air; and Sections 617.1 and 817-A of the Act of July 31, 1968, P.L. 805, No. 247, as added by sections 62 and 77 of the Act of December 21, 1988, P.L. 1329, No. 170,] 53 P.S. §§ 10617.1[,] and 10817-A relating to violations of zoning and joint municipal zoning ordinances.

[1 Rules in 300 Series.]

Rule 302. Venue

Official Note: This rule **[replaces the temporary venue provisions of § 14 of the Schedule to Article V, Pennsylvania Constitution, 1968. It]** combines, with some minor changes, the Pennsylvania Rules of Civil Procedure relating to venue. See:

- (1) Individuals: Pa.R.C.P. No. 1006(a).
- (2) Partnerships: Pa.R.C.P. No. 2130(a).
- (3) Corporations: Pa.R.C.P. No. 2179(a).
- (4) Insurance Policies: Pa.R.C.P. No. 2179(b).
- (5) Unincorporated Associations: Pa.R.C.P. No. 2156(a).
- (6) Political Subdivisions: Pa.R.C.P. No. 2103(b).

This rule is not intended to repeal special statutory venue provisions, **[not included therein (see Rule 382(3)),]** such as the: **(1) venue provisions [of the Goods and Services Installment Sales Act, Act of October 28, 1966, P.L. 7, Art. XII, § 1205, 69 P.S. § 2205,] for actions involving installment sales of goods and services, 12 Pa.C.S. § 6307; (2) [nor is it intended to contravene the special] venue provisions [of § 811] of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692i, pertaining to actions brought by debt collectors against consumers; and (3) venue provisions for appeals from automated work zone speed enforcement violations, 75 Pa.C.S. § 3369(i)(4). See Pa.R.C.P.M.D.J. No. 382(1).**

For a definition of “transaction or occurrence,” see *Craig v. W.J. Thiele & Sons, Inc.*, **[395 Pa. 129,]** 149 A.2d 35 (**Pa.** 1959).

Subdivision G is intended to take care of indistinct, “center line” or other confusing boundaries in the respects mentioned. When a complaint is transferred under subdivision H, it is treated as if originally filed in the transferee court on the date first filed in a court. If service of the complaint has already been made, no new service may be necessary, but the transferee court must set a new date, time and place for the new hearing and notify the parties thereof. It is the intent of this rule that cases may be transferred to any Pennsylvania court with appropriate jurisdiction and venue, including the Philadelphia Municipal Court. Likewise, nothing in this rule prohibits a court other than a magisterial district court from transferring a case to a magisterial district court with proper jurisdiction and venue, in accordance with the procedural rules of the transferring court. The

jurisdictional limits of the magisterial district courts and the Philadelphia Municipal Court are governed by **[Sections 1515 and 1123 of the Judicial Code, respectively.]** 42 Pa.C.S. §§ 1515 and 1123, respectively.

There are no costs for transfer of the complaint and no additional filing costs when a case is transferred from one magisterial district court to another magisterial district court. There are no additional filing costs when a case is transferred from the Philadelphia Municipal Court to a magisterial district court.

There may be additional service costs when a case is transferred.

Rule 321. Hearings and Evidence

The magisterial district judge shall be bound by the rules of evidence, except that a bill, estimate, receipt, or statement of account **[which] that** appears to have been made in the regular course of business may be introduced in evidence by any party without affidavit or other evidence of its truth, accuracy, or authenticity.

Official Note: The exception to the rules of evidence provided by this rule was inserted because the Pennsylvania statutes making certain business entries admissible in evidence **[(see the Judicial Code, § 6108, 42 Pa.C.S. § 6108)]** apparently do not apply to bills, receipts, and the like **[which] that** are made in the regular course of business but are not made as “records.” **See 42 Pa.C.S. § 6108.** The fact that this exception permits the introduction of these items of evidence without affidavit or other evidence of their truth, accuracy, or authenticity does not, of course, preclude the introduction of evidence contradicting them. The exception was deemed necessary because the items of evidence made admissible thereby are probably the proofs most commonly used in minor judiciary proceedings. **See Rule 350D(2) for additional exceptions applicable to appeals from automated work zone speed enforcement violations.**

[This is an entirely new Rule.]

Rule 350. Automated Work Zone Speed Enforcement Violation Appeals

A. As used in this rule:

(1) “Appellant” means the owner of a vehicle who has requested the appeal of a determination by a hearing officer pursuant to 75 Pa.C.S. § 3369(j)(4).

(2) “Appellee” means the Pennsylvania Department of Transportation, the Pennsylvania Turnpike Commission, or the system administrator designated by those agencies pursuant to 75 Pa.C.S. § 3369(h)(3)(i).

B. **Venue.** An appeal filed pursuant to this rule shall only be filed in the magisterial district court in the magisterial district where the violation of 75 Pa.C.S. § 3369(c) occurred.

C. **Notice of Appeal.**

(1) An appellant may appeal a determination of a hearing officer pursuant to 75 Pa.C.S. § 3369(j)(4) by filing a notice of appeal on a form prescribed by the State Court Administrator together with a copy of the hearing officer’s determination.

(2) The appellant shall pay all costs for filing and service of the notice of appeal at the time of filing, or if without the financial resources to pay the costs of litigation, the appellant shall file a petition to proceed *in forma pauperis* pursuant to Rule 206E.

(3) After setting the hearing date pursuant to Rule 305, the magisterial district judge shall serve the notice of appeal on the appellee by mailing a copy to the appellee at the address listed on the hearing officer’s determination by certified mail or comparable delivery method resulting in a return receipt in paper or electronic form. The return receipt shall show that the notice of appeal was received by the appellee.

D. **Hearing; Evidence.**

(1) The proceeding shall be conducted *de novo* in accordance with these rules as if the action was initially commenced in a magisterial district court with the appellee having the burden of proof.

(2) The hearing is subject to the standards of evidence set forth in Rule 321, except that photographs, videos, vehicle titles, police reports, and records of the Pennsylvania Department of Transportation may also be entered as evidence by any party without affidavit or other evidence of their truth, accuracy, or authenticity.

Official Note: 75 Pa.C.S. § 3369 established a program to provide for automated speed enforcement systems in active work zones on certain highways under the jurisdiction of the Pennsylvania Department of Transportation and the Pennsylvania Turnpike Commission. This rule was adopted to address the provisions of the statute that permits a *de novo* appeal to a magisterial district court from a determination of a hearing officer following an administrative hearing to contest an alleged violation of 75 Pa.C.S. § 3369(c). Because these actions are *de novo* appeals, they shall proceed as any other civil action commenced in a magisterial district court except as provided by this rule.

Insofar as other procedures under these rules may be applicable, the appellant shall be deemed the “defendant” and the appellee shall be deemed the “plaintiff.”

The initiating document in an appeal filed pursuant to Rule 350 is the notice of appeal, which shall be used in lieu of a complaint.

Photographs, videos, vehicle titles, police reports, and records of the Pennsylvania Department of Transportation were added to the existing business record exceptions in Rule 321 because they are the proofs most likely to be used to support the permitted defenses to 75 Pa.C.S. § 3369(c).

The appellant shall pay civil fines incurred pursuant to 75 Pa.C.S. § 3369(e) to the appellee and not to the magisterial district court. See Pa.R.C.P.M.D.J. No. 323. If the magisterial district judge enters judgment in favor of the appellant, *i.e.*, the vehicle owner, the appellant is entitled to recover taxable costs from the appellee. See Pa.R.C.P.M.D.J. No. 206B (“the prevailing party in magisterial district court proceedings shall be entitled to recover taxable costs from the unsuccessful party. Such costs shall consist of all filing, personal service, witness, and execution costs authorized by Act of Assembly or general rule and paid by the prevailing party”). Procedures for enforcement of judgments, including judgments in favor of the appellant for taxable costs from the appellee, are set forth in Rules 401 *et seq.*

See Rules 1001 *et seq.* for procedures to appeal a judgment rendered by a magisterial district judge or to file a *praecipe* for a writ of *certiorari* in civil actions, including actions brought pursuant to this rule.

SUPREME COURT OF PENNSYLVANIA
Minor Court Rules Committee

PUBLICATION REPORT

**Proposed Amendment of Pa.R.C.P.M.D.J. No. 301, 302, and 321 and
Proposed Pa.R.C.P.M.D.J. No. 350**

The Minor Court Rules Committee (“Committee”) is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P.M.D.J. No. 301, 302, and 321 and the adoption of Pa.R.C.P.M.D.J. No. 350. This proposal would establish procedural rules for appeals under 75 Pa.C.S. § 3369(j)(4), relating to violations issued via automated work zone speed enforcement systems (“AWZSES”).

Background

Act 86 of 2018 (“Act”) authorized the use of AWZSES in active work zones along the Pennsylvania Turnpike and “[f]ederal aid highways only under the jurisdiction of the Pennsylvania Department of Transportation.” See 75 Pa.C.S. § 3369(a). It also established civil penalties for a speeding offense in a highway work zone recorded by an AWZSES. If the AWZSES records a speeding violation in an active work zone, a system administrator (*i.e.*, agency vendor) will prepare and send a violation notice to the registered vehicle owner identified by the system. See *id.* § 3369(d). The vehicle owner may request a hearing before a hearing officer to contest the alleged violation. See *id.* § 3369(j)(1). The Act permits a vehicle owner to appeal the hearing officer’s decision before a magisterial district judge:

If the owner requests in writing that the decision of the hearing officer be appealed, the system administrator shall file the notice of violation and supporting documents with the office of the magisterial district judge for the magisterial district where the violation occurred, and the magisterial district judge shall hear and decide the matter *de novo*.

See *id.* § 3369(j)(4). The Pennsylvania Department of Transportation and the Pennsylvania Turnpike Commission implemented AWZSES and it is operational. In anticipation of appeals from hearing officer determinations filed pursuant to 75 Pa.C.S. § 3369(j)(4), the Committee is considering proposing to the Supreme Court of Pennsylvania changes to the Rules of Civil Procedure before Magisterial District Judges to (1) clarify that Pa.R.C.P.M.D.J. No. 301–382 apply to AWZSES violation appeals; and (2) provide certain exceptions for these actions due to their unique nature as *de novo* appeals from hearing officer determinations. The Committee previously published a proposal relating to AWZSES appeals for public comment at 50 Pa.B. 3104 (June 27, 2020) and accepted

comments through August 4, 2020. The Committee has made revisions to the proposal based on feedback received.

Proposal

In Rule 301, the Committee proposes adding a paragraph to the Note advising the Rules apply to AWZSES appeals, except as otherwise provided by new Rule 350. Next, the Committee proposes amending the Note to Rule 302 to include AWZSES appeals to the list of actions with special venue provisions, as well as other amendments to enhance readability. In the Note to Rule 321, the Committee adds a cross-reference to proposed new Rule 350D(2), providing exceptions to evidentiary requirements for AWZSES appeals. These proposed amendments are virtually identical to the rule amendments published in 2020.

The Committee proposes new Rule 350, containing a special venue rule and evidentiary exceptions, and clarifying the nature of the parties and proceeding in an AWZSES violation appeal. Proposed Rule 350 requires a vehicle owner appealing from a hearing officer determination to file a notice of appeal along with a copy of the hearing officer determination with the magisterial district court. The notice of appeal takes the place of a complaint as the initiating document in the civil action. The vehicle owner is the appellant in the action and the agency or its designee is the appellee. To the extent other procedural rules are applicable to these appeals, the parties may also be deemed the defendant and plaintiff, respectively. The vehicle owner is responsible for remitting the filing fee with the notice of appeal unless they concurrently file a petition to proceed *in forma pauperis* pursuant to Rule 206E. Notably, the Act does not address the payment of court costs and fees for appeal to the magisterial district court from the determination of the hearing officer. In a civil matter, the costs for filing and service of the complaint are paid at the time the complaint is filed. See Pa.R.C.P.M.D.J. No. 206A. Filing fees and court costs are established by statute. See, e.g., 42 Pa.C.S. §§ 1725.1(a)(1), 3733, and 3733.1. Currently, filing fees and courts costs in these actions would be about \$96.00, not including service.

Finally, proposed Rule 350 provides that if the vehicle owner is successful on appeal, then they are entitled to recover taxable costs. While it unusual for a state agency or its designee to be a party in a civil matter in magisterial district court, the Legislature has designated the AWZSES appeals as civil rather than criminal actions. There are no provisions in the Act exempting the parties from filing fee requirements pursuant to 42 Pa.C.S. § 1725.1(a) or from the awarding of costs to a successful appellant pursuant to 42 Pa.C.S. § 1726. See *also* Pa.R.C.P.M.D.J. No. 206B. Procedures for a prevailing litigant to enforce a judgment are set forth at Rules 401 *et seq.*

The courts of common pleas have jurisdiction of appeals from the magisterial district courts. “Except as otherwise prescribed by any general rule adopted pursuant to

section 503 (relating to reassignment of matters), each court of common pleas shall have exclusive jurisdiction of appeals from final orders of the minor judiciary established within the judicial district.” See 42 Pa.C.S. § 932. An appeal from a judgment rendered by a magisterial district court should be made to the court of common pleas for the judicial district. See Pa.R.C.P.M.D.J. No. 1001 *et seq.*

The Committee invites all comments, concerns, and suggestions regarding this proposal.