

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.Civ.P.M.D.J. 209  
and Adoption of Pa.R.Civ.P.M.D.J. 504.1**

The Minor Court Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.Civ.P.M.D.J. 209 and adoption of Pa.R.Civ.P.M.D.J. 504.1. The proposal provides for the promulgation of local rules governing mediation in residential landlord-tenant actions for the reasons set forth in the accompanying Publication Report. Pursuant to Pa.R.J.A. 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 report accompanying this proposal was prepared by the Committee to include the rationale for the proposed rulemaking. It will neither 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:

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All communications in reference to the proposal should be received by **September 12, 2023**. 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 Daniel E. Butler, Chair

**Rule 209. Continuances and Stays.**

**[A.](a)** Continuances may be granted for cause or by agreement.

**[B.](b)** Continuances shall be to a specific time and date. The magisterial district judge shall note continuances on the docket and shall promptly give or mail to the parties written notice of continuances.

**[C.](c)** Except for good cause shown~~[,]~~ **or agreement of the parties:**

- (1) not more than one continuance shall be granted to each party, and
- (2) the aggregate of all continuances shall not extend the date of the hearing:

**[(a)](i)** beyond 90 days from the date of filing the plaintiff's complaint in proceedings commenced pursuant to Rule 303, or

**[(b)](ii)** beyond 30 days from the date of filing the landlord's complaint in proceedings commenced pursuant to Rule 502, **including in mediation authorized by local rule.**

**[D.](d)** In all proceedings governed by these rules, the following shall constitute cause for granting a continuance:

- (1) the scheduling of a party's attorney of record to appear at any proceeding under the Pennsylvania Rules of Disciplinary Enforcement, whether

**[(a)](i)** as counsel for a respondent-attorney before a hearing committee, special master, the Disciplinary Board, or the Supreme Court;

**[(b)](ii)** as a special master or member of a hearing committee; or

**[(c)](iii)** as a member of the Disciplinary Board.

- (2) the scheduling of a party's attorney of record to appear at any proceeding involving the discipline of a justice, judge, or

magisterial district judge under Section 18 of Article V of the Constitution of Pennsylvania, whether

**[(a)](i)** as counsel for a justice, judge, or magisterial district judge before the special tribunal provided for in 42 Pa.C.S. § 727, the Court of Judicial Discipline, the Judicial Conduct Board, or any hearing committee or other arm of the Judicial Conduct Board; or

**[(b)](ii)** as a member of the Court of Judicial Discipline, the Judicial Conduct Board, or any hearing committee or other arm of the Judicial Conduct Board.

**[E.](e)** Continuances and stays shall be granted in compliance with federal or state law, such as the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*

**[Official Note] Comment:** This rule was amended in 2005 to consolidate the provisions of former Rules 320 (relating to continuances in civil actions) and 511 (relating to continuances in possessory actions) into one general rule governing continuances. The limitations set forth in subdivision **[C](c)** are intended to ensure that these cases proceed expeditiously. The grounds set forth in **[subdivisions D and E] subdivisions (d) and (e) [of course,]** are not intended to be the only grounds on which a continuance will be granted.

**Subdivision (c)(2)(ii) clarifies that participation in a landlord-tenant mediation program authorized by local rule will not entitle a party to a continuance beyond 30 days from the date the plaintiff filed the complaint unless there has been good cause shown or agreement by the parties. See Pa.R.Civ.P.M.D.J. 504.1 pertaining to landlord-tenant mediation programs authorized by local rule.**

**– The following text is entirely new –**

**Rule 504.1 Mediation.**

- (a) The court of common pleas may promulgate a local rule of procedure pursuant to Pa.R.J.A. 103(d) permitting mediation of residential landlord-tenant actions filed pursuant to Rule 503.
- (b) A local rule promulgated pursuant to this rule shall not require mediation as a precondition to filing a complaint.

**Comment:** As used in this rule, mediation means a process, however labeled, by which a neutral third party assists the parties in attempting to reach a mutually acceptable agreement on issues arising out of a residential landlord-tenant action.

The requirements for the promulgation and amendment of local procedural rules are set forth in Pa.R.J.A. 103(d).

A local rule may address aspects of a mediation program including, but not limited to, whether initial participation in mediation is voluntary or mandatory, types of landlord-tenant actions subject to mediation, *i.e.*, nonpayment of rent, end of lease terms, or breach of conditions of the lease, and entities assisting with mediation or rental assistance programs. See also Pa.R.Civ.P.M.D.J. 209(c)(2)(ii) pertaining to continuances.

This rule does not require a judicial district to create, fund, or staff a mediation program.

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

**PUBLICATION REPORT**

**Proposed Amendment of Pa.R.Civ.P.M.D.J. 209 and  
Adoption of Pa.R.Civ.P.M.D.J. 504.1**

The Minor Court Rules Committee (“Committee”) is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.Civ.P.M.D.J. 209 and the adoption of Pa.R.Civ.P.M.D.J. 504.1 providing for local rules governing mediation in residential landlord-tenant actions in magisterial district courts.

**Background**

The Committee was first asked to consider developing rules to facilitate eviction diversion programs in 2021. Housing advocates suggested the Committee should consider making rule recommendations that would support local eviction diversion/mediation programs and encourage informal settlement of landlord-tenant disputes by, *e.g.*, requiring or encouraging landlords to seek mediation prior to the filing of an eviction complaint.

In support of local rulemaking, the Committee was informed that court programs across the Commonwealth were encouraging landlords and tenants to resolve their differences prior to the entry of a judgment for possession. The rationale for developing informal resolution procedures for landlord-tenant disputes is that it could remove the stigma on tenants of an eviction judgment when seeking new housing, serving the interest of judicial economy by diverting cases to mediation programs, and addressing a then-anticipated increase in landlord-tenant cases following expiration of COVID-related eviction moratoria. Housing advocates favored local rulemaking, observing that such a change would enable local communities to maximize the impact of resources created to support tenants with rental assistance, aid landlords in actually recouping missed rental income, and ease strain on already over-burdened emergency resources.

Allegheny and Philadelphia Counties both developed landlord-tenant diversion programs. In Allegheny County, such programs operated in Allegheny County during 2020 and 2021 pursuant to orders issued during the judicial emergency. *See, e.g.*, Order of August 6, 2021, No. 23 WM 2020. Representatives from the Allegheny County Department of Human Services attended landlord-tenant hearings and distributed information about emergency rental assistance funds to landlords and tenants. It is the Committee’s understanding that magisterial district judges continued cases as necessary to accommodate disbursement of emergency funds.

The Philadelphia Municipal Court (“PMC”) has an existing form of mediation, “judgment by agreement,” available in civil and landlord-tenant matters. In summary, a judgment by agreement is a judgment entered into by the parties after negotiation or mediation at the time of trial. In addition to judgment by agreement, both PMC and Philadelphia city government took steps to require parties to participate in eviction diversion programs. Following the expiration of the federal moratorium, PMC sought, and the Court granted, interim orders extending the PMC Landlord-Tenant Diversion Program through December 31, 2021. See Orders of July 2, 2021, August 16, 2021, October 28, 2021, and November 15, 2021, No. 21 EM 2020. Philadelphia City Council later passed, and the mayor signed, an ordinance requiring a landlord to participate in the eviction diversion program for at least 45 days prior to filing an eviction complaint. See Phil. Code § 9-811. The ordinance was originally effective through December 31, 2022 but was later extended through June 30, 2024. Under the amended ordinance, landlord participation in the program is required for at least 30 days, down from 45 days.

Housing advocates also cited pilot programs in other judicial districts intended to refer willing parties to mediation through outside agencies, such as the United Way and other non-profits. While outside the scope of mediation programs, other programs provided tenants with legal representation in possessory actions.

## **Discussion**

Initially, the Committee discussed whether a statewide rule permitting mediation of landlord-tenant actions required enabling legislation. The Committee first reviewed the voluntary mediation rules contained in Pa.R.Civ.P. 1940.1–.9 governing child custody actions. Those rules were authorized by 23 Pa.C.S. § 3901(a) (“A court may establish a mediation program for actions brought under this part or Chapter 53 (relating to custody)”). However, mediation in Commonwealth Court pursuant to 210 Pa. Code § 69.501 does not appear to have statutory underpinning.

The Committee was also informed by the relatively recent Pennsylvania Rule of Orphans’ Court Procedure 1.6 that authorizes mediation by local rule. See Pa.R.O.C.P. 1.6 (“All parties having an interest in a matter may participate by written agreement, or the court by local rule or order in a particular matter may provide for the parties to participate, in private mediation or in court-supervised mediation.”). That rule, effective September 1, 2016, was adopted without enabling legislation and has resulted in the promulgation of local mediation rules in several judicial districts.

Accordingly, the Committee was of the opinion that the Court may authorize, by procedural rule, the use of mediation following the commencement of a landlord-tenant action. Yet, the Committee acknowledges that this authority may not be exclusive to the Court. Notwithstanding the lack of a statute, Philadelphia turned to its local government authority to enact ordinances requiring mediation efforts between the parties in landlord-

tenant proceedings. The Committee invites further comments on the need for statutory authority for court-based authorized programs or perceived impact on existing statutes.

Preliminarily, the concept of informal resolution is not foreign in magisterial district courts. Judges, in their neutral capacity, often solicit the parties' positions and attempt to facilitate settlement prior to a hearing. The courtroom may be the first opportunity for the parties to calmly meet and discuss after a complaint has been filed. A difference between a settlement conference and mediation is the facilitator. The use of a mediator permits *ex parte* communications with the mediator, unlike communications with a magisterial district judge. Further, successful mediation often will produce agreements that conditionally postpone eviction proceedings provided that the terms are met. Indeed, the "pay and stay" concept is not new to landlord-tenant actions. See Pa.R.Civ.P.M.D.J. 518 (Satisfaction of Order by Payment of Rent and Costs).

The potential merits of mediation reported to the Committee are that it generally results in fewer evictions, which reduces homelessness and trauma, terminates litigation without judicial intervention, preserves judicial resources, and avoids eviction judgements, which can be a barrier for tenants when applying for future leases. Moreover, mediation can provide an opportunity for tenants to access resources to either maintain their current housing or ease transition to new housing. Other merits have been suggested, such as faster results through mediation than through the judicial process, savings of further court costs attributed to posting and forceful eviction, and preservation of a harmonious relationship between parties. However, while these benefits may be realized in certain instances, the Committee is not persuaded that the benefits accrue in all circumstances. It waits to be seen whether merits of mediation can be sustained long term, *i.e.*, whether an eviction deferral results in a lasting reprieve or merely delays possession.

Members agreed that a successful mediation program is often contingent on the knowledge, experience, and expertise of the mediators, which necessarily raises the issue of resources. The Committee invites further comments on the need for minimum qualifications of mediators and whether such minimum qualifications should be established by statewide or local rule.

The Committee is mindful that the costs of any a mediation program cannot be imposed on judicial districts as an unfunded mandate. It is anticipated that successful mediation programs must be funded in whole or in part by non-judicial entities and not the courts. Whether a portion of the filing fee for the complaint may be used to fund a mediation program is beyond the scope of this proposal.

Related to the cost of mediation programs, an additional factor is the availability of third-party resources to offset rent arrears when nonpayment is the basis for eviction.

This factor can be significant to obtain landlord participation and commitment to the mediation process.

The Committee discussed potential concerns of landlords if mediation is viewed as merely delaying possession. Of course, this scenario presumes that mediation will not or did not result in a mutually satisfactory agreement. The countervailing view is that successful mediation will result in a benefit to landlords, such as payment of arrearages. However, there may be situations when a landlord seeks possession rather than arrears or reformed conduct, e.g., the tenant refuses to vacate following the expiration of term. These discussions focused on whether initial participation in mediation should be mandatory or voluntary. One view was that, if mediation was mutually beneficial to all parties, participation would not have been mandated. Another view was that parties lack knowledge about mediation and the most effective means of education is through mandatory participation. Moreover, judicial districts, through local rules, could identify which bases for eviction are subject to mediation. See 68 P.S. § 250.501(a) (setting forth circumstances for repossession: “(1) Upon the termination of a term of the tenant, (2) or upon forfeiture of the lease for breach of its conditions, (3) or upon the failure of the tenant, upon demand, to satisfy any rent reserved and due.”). The Committee invites comments on whether courts of common pleas should have the discretion to make initial participation in mediation mandatory.

## **Proposed Rules**

The Committee has developed amendments to Rule 209 (Continuances) and a new Rule 504.1 (Mediation) to authorize the promulgation of local rules governing mediation in residential landlord-tenant actions. Proposed Rule 504.1(a) delegates procedural responsibility to individual judicial districts via local rulemaking. This approach is intended to provide maximum flexibility so mediation programs can be designed and implemented based upon local resources and need. Additionally, the non-specific statewide rule would have minimal impact on existing programs in operation.

Subdivision (b) requires the filing of a complaint prior to mediation. This action was considered necessary to subject the parties to the court’s jurisdiction and any requirement for mediation. A prefiling mediation requirement operates as a barrier for an aggrieved party to access the courts. The Committee believed that any prefiling requirement should be a matter of public policy reserved for a legislative body rather than one of procedure by the judiciary.

The commentary accompanying proposed Rule 504.1 emphasizes that mediation should involve a neutral third party. This language is intended to address concerns that mediation programs may be tilted in favor of either the tenant or landlord.



A key concern relating to mediation is the potential for conflict with Rule 209 (Continuances). Current Rule 209C provides that, except for good cause shown, the aggregate of all continuances in landlord-tenant matters shall not extend beyond 30 days from the date of filing the landlord-tenant complaint. The Committee agrees it would be prudent to reflect explicitly that continuances may extend beyond current limits when agreed to by the parties. See proposed Pa.R.Civ.P.M.D.J. 209(c). The Committee also proposes limiting mediation beyond 30 days except by agreement of the parties. See proposed Pa.R.Civ.P.M.D.J. 209(c)(2)(ii). Therefore, mediation by local rule will not unduly postpone the hearing if not agreed to by the parties.

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