

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.Civ.P.M.D.J. 321 and 512

The Minor Court Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.Civ.P.M.D.J. 321 and 512, pertaining to hearings and evidence 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 **April 22, 2024**. 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 321. Hearings and Evidence.

The **parties in a hearing before a** magisterial district judge shall be bound by the **[rules of evidence] Rules of Evidence**, except that a bill, estimate, receipt, or statement of account 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.

Comment: The exception to the **[rules of evidence] Rules of Evidence** provided by this rule was inserted because the Pennsylvania statutes making certain business entries admissible in evidence **[apparently]** do not apply to bills, receipts, and the like 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. **However, all other testimony and documents sought to be admitted or excluded shall be subject to the Rules of Evidence upon proper objection. Objections to evidence must be made by the parties.**

See **[Rules 350D(2) and 351(d)] Pa.R.Civ.P. 350D(2) and 351(d)** for additional exceptions applicable to appeals from automated work zone speed enforcement violations and actions filed pursuant to 75 Pa.C.S. § 3345.1(i.1), relating to civil violations for passing a stopped school bus with flashing red signal lights and an activated side stop signal arm.

Rule 512. Hearings and Evidence.

[A.](a) The landlord shall appear at the hearing and present testimony in an action for the recovery of possession of real property.

[B.](b) The **[magisterial district judge] parties** shall be bound by the **[rules of evidence] Rules of Evidence**, except that a bill, estimate, receipt, or statement of account 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: Subdivision A of this rule] Comment: Subdivision (a) is intended to make clear that the magisterial district judge shall not enter a default judgment in a possessory action, including a judgment for money only. The landlord shall appear and give testimony to prove the complaint even when the tenant fails to appear for the hearing. **[See Rule 514A and Note. See also Section 503(a) of the Landlord and Tenant Act of 1951, 68 P.S. § 250.503(a).] See Pa.R.Civ.P.M.D.J. 514A, cmt.; see also 68 P.S. § 250.503(a).** When the landlord fails to appear at the hearing, the magisterial district judge may continue the hearing for cause or dismiss the complaint without prejudice.

[Subdivision B of this rule is the same as Rule 321 of the civil action rules.] The exception to the Rules of Evidence provided by subdivision (b) was inserted because the Pennsylvania statutes making certain business entries admissible in evidence do not apply to bills, receipts, and the like 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. However, all other testimony and documents sought to be admitted or excluded shall be subject to the Rules of Evidence upon proper objection. Objections to evidence must be made by the parties.

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Minor Court Rules Committee**

PUBLICATION REPORT

Proposed Amendment of Pa.R.Civ.P.M.D.J. 321 and 512

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. 321 and 512 relating to hearings and evidence.

While reviewing a separate matter, the Committee discussed a plaintiff’s responsibility to meet the evidentiary burden of proof in all cases. However, the comment to Pa.R.Civ.P.M.D.J. 321 and 512 largely addresses the introduction of business records into evidence. The exception to the general business records rule is intended to permit a party to present documentation related to a claim without having to call a witness, *e.g.*, a mechanic or insurance adjuster. In contrast, Pa.R.E. 803(6) requires testimony from a records custodian or a certification that the record meets the definition of a “business record.” *See also* 42 Pa.C.S. § 6108(b) (requiring the custodian or other qualified witness to testify as to the record’s identify, mode of preparation, and if it was made in the regular course of business). The Committee believed that Pa.R.Civ.P.M.D.J. 321 and 512 would benefit from attention to other aspects of the rules of evidence.

First, the Committee is considering proposing rule amendments to make clear that the parties are bound by the Rules of Evidence. Other stylistic amendments appear throughout the rules.

Second, the Committee is considering proposing an amendment to the comments to Pa.R.Civ.P.M.D.J. 321 and 512 to emphasize that the business records exception does not waive the obligation of the parties to comply generally with the Pennsylvania Rules of Evidence. For example, while it is not necessary to produce the mechanic to certify the authenticity of a bill for services, it is necessary to call the mechanic as a witness to testify as to condition of a vehicle’s brakes before a car accident.

Finally, the Committee thought it would be beneficial to alert parties, particularly *pro se* parties, that objections must be made by the parties. When the Pennsylvania Rules of Conduct, Office Standards and Civil Procedure for Justices of the Peace were first promulgated in 1969, they included an Explanatory Comment from the Committee:

In drafting these rules, the guiding policy was to provide a framework, insofar as the Pennsylvania constitutional system would permit, for a modern, workable small claims procedure, realizing that many justices of the peace would not be lawyers and that members of the public using the

system would be largely unrepresented by legal counsel. Thus, an attempt was made throughout these rules to achieve simplicity of phraseology, uncomplicated administration and as much standardization in the handling of civil actions by justice of the peace as is possible.

See Order of October 15, 1969, No. 513, Misc. Docket No. 16. Notwithstanding the salutary goal of establishing procedural rules for small claims courts that are understandable and accessible to lay people, adherence to the rules of evidence is needed to ascertain the truth and secure a just determination. See Pa.R.E. 102, cmt. By proposing these amendments, the Committee intends to inform litigants of their evidentiary responsibilities should they decide on self-representation.

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