

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

NOTICE OF PROPOSED RULEMAKING

**Proposed Amendment of Pa.R.C.P.M.D.J. No. 210, 305, 504, 506, and 507
and Proposed Adoption of Pa.R.C.P.M.D.J. No. 513.1**

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. 210, 305, 504, 506, and 507 and the adoption of Pa.R.C.P.M.D.J. No. 513.1, relating to the right of an individual to intervene in a landlord-tenant action and updating notices to defendants and tenants 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 **May 19, 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 210. Practices Prohibited

The following practices are specifically prohibited:

- (1) The use of depositions or interrogatories for discovery or use at a hearing.
- (2) Adding parties after the complaint is filed, **except as provided by Rule 513.1.**
- (3) Attachment proceedings previous to judgment.
- (4) Entry of a judgment by warrant of attorney or by confession of judgment.

Official Note: In keeping with the policy of making the procedures in actions before magisterial district judges as simple and nontechnical as possible and in view of the time limitations imposed elsewhere in these rules, it was thought desirable to prohibit specifically the practices mentioned in the four subdivisions of this rule. See *also* Rules 204 and 381.

Rule 513.1 permits an individual to file an intervention request in a landlord-tenant action.

Rule 305. Setting the Date for Hearing; Delivery for Service; **Notice to Defendant; Form**

The magisterial district judge, at the time the complaint is filed, shall:

- (1) Set a hearing date which shall be not less than 12 or more than 60 days from the date the complaint is filed.
- (2) Insert the hearing time and date and the address of the magisterial district court in the complaint form.
- (3) Deliver a copy of the complaint form with hearing time and date thereon to the plaintiff.
- (4) Deliver a copy of the complaint form with hearing time and date thereon for service on the defendant as hereinafter set forth, which copy shall contain the following notice:

[(a) If you intend to enter a defense to this complaint you should so notify this office immediately.

(b) If you have a claim against the plaintiff which is within magisterial district court jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five days before the date set for the hearing.

(c) YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT.]

Notice to Defendant

You have been sued in court. If you wish to appear at the hearing and defend against the claims set forth in the complaint, you should notify the court in writing. A Notice of Intent to Defend form is enclosed for your convenience. If you do not intend to dispute this claim, you do not need to appear in court and a judgment will be entered against you in your absence.

Failure to appear at the scheduled hearing will result in a judgment entered against you, and you may lose money or property or other rights important to you.

If you have a claim against the plaintiff that is within magisterial district court jurisdiction and that you intend to assert at the hearing, you must file it on a complaint form at this office at least five days before the date set for the hearing.

(5) The copy of the complaint form delivered for service upon the defendant shall be accompanied by a Notice of Intent to Defend on a form that shall be prescribed by the State Court Administrator.

Official Note: The 60-day limitation in subdivision (1) of this rule was considered to provide sufficient time in which to effect service under the requirement of Rule 307 that service be made at least ten days before the hearing. See Rule 314E as to reinstatement of complaints dismissed because of lack of service. The copies required in subdivisions (3) and (4) are provided by the Magisterial District Judge Automated System. **[Giving the notice mentioned in subdivision (4)(a) is necessary if the defendant is to obtain judgment under Rule 319A because of the plaintiff's failure to appear. Subdivision (4)(b) gives notice of the right to file a cross-claim within magisterial district court jurisdiction. The procedure for filing such a claim is set forth in Rule 315, and the Note to that rule indicates possible procedures as to counterclaims not within magisterial district court jurisdiction. Subdivision (4)(c) provides for a warning concerning a default judgment, which may be rendered under Rule 319B.]**

Subdivision (4) sets forth the notice that must be provided to a defendant with a complaint, advising the defendant to notify the court if the defendant intends to appear at the hearing, the consequences of failing to appear at the hearing, and the right of the defendant to file a cross-complaint against the plaintiff within magisterial district court jurisdiction. See Rule 315 for procedures to file a cross-complaint. The defendant must notify the court of his or her intention to defend against the complaint in order for the defendant to obtain judgment because of the plaintiff's failure to appear. See Rule 319A.

The Notice of Intent to Defend form required by subdivision (5) shall be included with the complaint served on the defendant. It provides a convenient method for the defendant to advise the court that he or she intends to appear at the hearing and defend against the claims set forth in the complaint.

Rule 504. Setting the Date for Hearing; Delivery for Service; **Notice to Tenant**

The magisterial district judge, at the time the complaint is filed, shall:

- (1) Set a hearing date that shall be not less than seven or more than fifteen days from the date the complaint is filed.
- (2) Insert the hearing time and date and the address of the magisterial district judge's magisterial district in the complaint form.
- (3) Deliver a copy of the complaint form with hearing time and date thereon to the landlord or the landlord's agent.
- (4) Deliver a copy of the complaint form with hearing time and date thereon for service as hereinafter set forth, which copy shall contain the following notice:

[(a) If you have a defense to this complaint, you may present it at the hearing.

(b) If you have a claim against the landlord arising out of the occupancy of the premises, which is within magisterial district court jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office before the time set for the hearing.

(c) IF YOU DO NOT APPEAR AT THE HEARING, a judgment for possession and costs, and for damages and rent if claimed, may nevertheless be entered against you. A judgment against you for possession may result in YOUR EVICTION from the premises.]

Notice to Tenant

You have been sued in court. You may appear at the hearing and defend against the claims set forth in the complaint. If you do not intend to dispute this claim, you do not need to appear in court and a judgment will be entered against you in your absence.

Failure to appear at the scheduled hearing will result in a judgment entered against you for possession and costs, as well as damages and rent if claimed. A judgment against you for possession may result in your eviction from the premises.

If you have a claim against the landlord arising out of the occupancy of the premises, which is within magisterial district court jurisdiction and that you intend

to assert at the hearing, you must file it on a complaint form at this office before the time set for the hearing.

If you are an occupant of the premises, you may be evicted if you take no action upon receipt of this complaint, even if you are not named in the complaint. You may be able to be added to the case and defend your interests in remaining at the premises. If you are added to the case as a tenant, you may liable for any judgment entered in favor of the landlord, including property damage, back rent, court costs, and fees. See Pa.R.C.P.M.D.J. No. 513.1.

Official Note: The hearing date in subdivision (1) of this rule is required to be set not less than seven days from the filing of the complaint because of the requirement in Rule 506(B) that service be made at least five days before the hearing. It was thought that the requirement that the hearing be held not more than 15 days from the filing of the complaint should provide ample time to make the type of service required in these cases.

The notice for the tenant set forth in subdivision (4) of this rule varies somewhat from the notice required in civil actions under Rule 305. There are a number of reasons for this. First, there can be no default judgment in these possessory actions and, secondly, it was thought that cross-complaints of tenants in these cases should be limited to those arising out of the occupancy of the premises. **The notice in subdivision (4) is also intended for occupants of the property who are not named in the complaint.**

Rule 506. Service of Complaint

A. The magisterial district judge shall serve the complaint by mailing a copy of it to the tenant's last known address by first class mail and noting on the docket the date of such mailing, and by delivering a copy of it for service to the sheriff of, or any certified constable in, the county in which the office of the magisterial district judge is situated. If this service is not available to the magisterial district judge, service may be made by any certified constable of the Commonwealth. The officer receiving the copy shall serve it by handing it to the tenant or to an adult person in charge for the time being of the premises possession of which is sought to be recovered, **if found, [or, if none of the above is found,] and** by posting it conspicuously on those premises.

B. The copy shall be served at least five days before the hearing.

Official Note: Under subdivision A of this rule, service must be made both by first class mail and delivery for service in the manner prescribed. **It is expected that the officer serving the complaint will exercise due diligence when attempting personal service upon the tenant. This may be demonstrated by, among other things, attempting service at varying times of day, making a reasonable number of knocks upon the tenant's door, knocking at all available doors of the premises, or announcing the officer's presence. Posting is required in all cases to facilitate notice to an occupant of the property.**

In actions where wage garnishment may be sought under Pa.R.C.P. No. 3311, the landlord may authorize the sheriff or constable to make personal service upon the tenant. **[If a tenant is not present at the property the sheriff or constable is authorized to post the complaint so that the underlying landlord-tenant action may proceed.]** The landlord may authorize the sheriff or constable to make additional attempts to effectuate personal service upon the tenant so the landlord can later prove such service if attempting to garnish wages under Pa.R.C.P. No. 3311. Additional service attempts by the sheriff or constable may result in additional fees.

Rule 507. Notation and Return of Service; Waiver of Service

A. The magisterial district judge shall note on the docket the date that a service copy of the complaint was mailed to the tenant, and the sheriff or constable serving a copy of the complaint shall, at or before the time of the hearing, make proof of service on the form provided, which shall show the manner of service and the day, hour, and place thereof, **as well as any unsuccessful attempts at service.**

B. The appearance of a tenant in person or by representative or the filing of a claim in the case shall be deemed a waiver of any defect in service but not a waiver of a defect in venue.

Official Note: This rule parallels the provisions of Rule 314A and C.

[This is an entirely new Rule.]

Rule 513.1 Intervention

A. An individual may file an intervention request with the magisterial district court in an action commenced pursuant to Rule 502 at any time before the hearing on the complaint.

B. The intervention request shall be on a form prescribed by the State Court Administrator, verified by the requester, and contain the following averments:

- (1) the requester is a tenant of the property;
- (2) the length of time the requester has occupied the property;
- (3) to whom the requester paid rent for the property; and
- (4) whether the requester is a party to a lease of the property.

C. The magisterial district court shall enter the intervention request on the docket of the action commenced pursuant to Rule 502.

D. The magisterial district court shall serve a copy of the intervention request by mailing it to the parties at the addresses as listed on the complaint form in the action or by handing it to the parties or the attorneys of record, if any. Notice of an intervention request shall constitute grounds for a continuance by the plaintiff.

E. The requester shall appear at the hearing and present evidence in support of the intervention request.

F. If the magisterial district judge finds that the requester is a tenant of the property, the requester shall be added to the action as a defendant, and the action shall proceed pursuant to Rule 512.

Official Note: This Rule establishes procedures for an individual to file an intervention request in an action commenced pursuant to Rule 502 and present a defense to the complaint.

While Rule 210(2) generally prohibits the addition of a party after the complaint is filed, Rule 513.1 permits the addition of a party in the limited circumstance of an individual requesting to intervene in an action. Allowing the magisterial district court to consider such matters serves the general interests of the parties by avoiding delays that could occur by seeking relief at the court of common pleas.

At the hearing, the magisterial district judge will first consider and decide the request to intervene in the action. The requester must present evidence and testimony at the hearing in support of the request to intervene. See Rule 512. Examples of evidence include, but are not limited to, a written lease, copies of cancelled checks, and receipts. If the magisterial district judge grants the intervention request, the requester shall be added to the action as a defendant and the hearing shall proceed on the underlying action.

If the requester is added to the case as a tenant, he or she may be liable for any judgment entered in favor of the landlord, including property damage, back rent, court costs and fees.

SUPREME COURT OF PENNSYLVANIA
Minor Court Rules Committee

PUBLICATION REPORT

**Proposed Amendment of Pa.R.C.P.M.D.J. No. 210, 305, 504, 506, and 507
and Proposed Adoption of Pa.R.C.P.M.D.J. No. 513.1**

The Minor Court Rules Committee (“Committee”) is considering proposing to the Supreme Court of Pennsylvania the amendment of Rules 210, 305, 504, 506, and 507 of the Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings before Magisterial District Judges (“Rules”) and the adoption of Rule 513.1. This proposal relates to the right of an individual to intervene in a landlord-tenant action and also updates notices to defendants and tenants given with service of the complaint.

Intervention

The Committee considered the situation of an individual in possession of a property who is not named in the complaint when a landlord-tenant action is commenced. Because the individual is not named in the complaint, he or she will not receive service of the complaint and may be unaware of the landlord’s efforts to recover possession of the property. Even if the individual becomes aware of the action, Rule 206(2) specifically prohibits adding a party to an action after the complaint has been filed. *Cf.* Pa.R.C.P. No. 2327 (establishing grounds for a party to intervene). The Committee discussed if a limited exception should be added to Rule 206(2) permitting an individual to file an intervention request in a landlord-tenant action for the purpose of defending his or her interests in remaining in the property.

The Committee recognizes that individuals can be in possession of property under myriad circumstances, ranging from squatting to being a named party on a lease. Individuals on this continuum will have varying degrees of rights consistent with their status. For example, a squatter will have no statutory or due process rights relative to the property while a tenant who is a party to a lease will have all the protections of the Landlord and Tenant Act, 68 P.S. §§ 250.101–250.602, as well as due process protections. The Committee is exploring whether an occupant of property who is a party to a landlord-tenant relationship should be permitted to intervene in the action and assert their rights even if the occupant is not named in the complaint.

Proposed new Rule 513.1 would permit the filing of an intervention request in a landlord-tenant action. The requester must aver that he or she is a tenant of the property, the length of time the requester has occupied the property, to whom the requester has paid rent for the property, and if the requester is a party to a lease for the property. See proposed Rule 513.1B. The requester may file the intervention request up to the time of

the hearing. See proposed Rule 513.1A. Upon receipt of the intervention request, the magisterial district court will serve the request upon the parties to the action. See proposed Rule 513.1D.

The magisterial district court will hold a hearing on the request to intervene in the action. See proposed Rule 513.1E. The requester must testify and present evidence demonstrating that he or she has a landlord-tenant relationship with the landlord and is entitled to intervene in the matter. If the magisterial district judge grants the request to intervene in the action, the requester will be added to the action as a defendant and the action will proceed on the underlying action. See proposed Rule 513.1F. However, a requester who is added as a defendant in an action may be liable for any judgment in favor of the landlord, e.g., property damage, back rent, court costs and fees.

This proposal also includes amendments to Rules 206, 504, and 506 relative to intervention requests. The proposed amendment to Rule 206 establishes an exception to the general rule prohibiting the addition of parties after the complaint is filed and cites proposed new Rule 513.1. The proposed amendment to Rule 504 adds a provision to the hearing notice advising an occupant that he or she may be evicted from the property if no further action is taken on their part. The proposed amendment to Rule 506 would require conspicuously posting the complaint on the premises in all instances, even when personal service on a tenant is achieved. Posting all complaints is intended to provide an occupant with a reasonable opportunity to learn of a possessory action. However, the Committee recognizes that this would be a significant change from current practice and especially welcomes comments on this aspect of the proposal. The proposed amendment to the Comment to Rule 506 provides examples of minimally expected efforts to obtain personal service upon a tenant. Finally, proposed Rule 507 would require the sheriff or constable to document unsuccessful efforts at personal service in an effort to provide greater transparency.

Notices to Defendants and Tenants

The Committee examined measures intended to increase the numbers of defendants and tenants who timely respond to the complaint and notify the court of their intent to appear at the hearing, as well as to clarify some of the notice language. In civil cases, the Committee proposes amendments to the notice set forth in Rule 305(4) to help defendants understand that they should notify the court regarding their intentions to defend against the complaint and the ramifications of failing to appear for the hearing. Additionally, the notice has been updated to advise the defendant that they do not need to appear in court if they do not intend to defend against the claim and that a judgment will be entered against them in their absence. Proposed Rule 305(5) would require the magisterial district court to include a Notice of Intent to Defend form with the copy of the complaint form served on the defendant. Doing so will give the defendant a convenient mechanism to notify the court in writing that he or she intends to appear at the hearing.

The Committee is also considering proposing similar changes to the Notice to Tenant in Rule 504(4). The Notice of Intent to Defend is not referenced in Rule 504 because the landlord must appear at the hearing. See Rule 512B.

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