

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

NOTICE OF PROPOSED RULEMAKING

**Proposed Rescission of Pa.R.C.P.M.D.J. Nos. 1009-1015, and Proposed
Amendment of Pa.R.C.P.M.D.J. Nos. 206, 403, 515-516, 820, 1001-1002, 1005, the
Official Notes to Pa.R.C.P.M.D.J. Nos. 514 and 1005, and the Supplemental
Instructions for Obtaining a Stay of Eviction**

The Minor Court Rules Committee is planning to propose to the Supreme Court of Pennsylvania the rescission of Pa.R.C.P.M.D.J. Nos. 1009-1015, governing writs of certiorari, as well as the amendment of Pa.R.C.P.M.D.J. Nos. 206, 403, 515-516, 820, 1001-1002, the Official Notes to Pa.R.C.P.M.D.J. Nos. 514 and 1005, and the Supplemental Instructions for Obtaining a Stay of Eviction, 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:

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All communications in reference to the proposal should be received by April 15, 2015. 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,

Bradley K. Moss
Chair

REPORT

Proposed Rescission of Pa.R.C.P.M.D.J. Nos. 1009-1015, and Proposed Amendment of Pa.R.C.P.M.D.J. Nos. 206, 403, 515-516, 820, 1001-1002, 1005, the Official Notes to Pa.R.C.P.M.D.J. Nos. 514 and 1005, and the Supplemental Instructions for Obtaining a Stay of Eviction

RESCISSION OF RULES PROVIDING FOR WRITS OF CERTIORARI

I. Introduction

The Minor Court Rules Committee (“Committee”) is planning to propose to the Supreme Court of Pennsylvania the rescission of Pa.R.C.P.M.D.J. Nos. 1009-1015, as well as the amendment of Pa.R.C.P.M.D.J. Nos. 206, 403, 515-516, 820, 1001-1002, the Official Notes to Pa.R.C.P.M.D.J. Nos. 514 and 1005, and the Supplemental Instructions for Obtaining a Stay of Eviction. These rules address writs of certiorari. The Committee is making this recommendation in light of Constitutional and statutory authority, and the requirement, in a certiorari action, that the court of common pleas examine the record of the magisterial district court, a non-record court.

II. Discussion

While conducting routine business, the Committee had the opportunity to review and discuss Rule 1009, which establishes grounds for obtaining a writ of certiorari. Rule 1009A provides, in part:

Unless he was the plaintiff in the action before the magisterial district judge, a party aggrieved by a judgment may file with the prothonotary of the court of common pleas a praecipe for a writ of certiorari claiming that the judgment should be set aside because of lack of jurisdiction over the parties or subject matter, improper venue or such gross irregularity of procedure as to make the judgment void.

See Rule 1009A. Certiorari is defined as “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.” See Rule 1001(3) (emphasis added). The Official Note to Rule 1001 further defines the scope of certiorari, providing that “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 Rule 1001, Official Note (emphasis added). Additionally, Rule 205 provides that a record of the proceedings before a magisterial district judge, including “proof of service, returns, entry of judgment and other matters, appearing on a form prescribed by the State Court Administrator shall for all purposes be considered to be a sufficient record of those proceedings.” See Rule 205A.

A magisterial district court is not a court of record. Unlike litigants in the courts of common pleas, litigants in magisterial district court do not file pleadings or briefs, hearings are not transcribed, and magisterial district judges do not enter findings of fact or law on the docket. A judgment entered by a magisterial district court contains a monetary award and/or an award of possession (in landlord tenant matters); it is not a document from which one could readily discern errors of fact or law, and is consistent with the status of the magisterial district court as a non-record court.

The Pennsylvania Constitution guarantees appeals as of right. “There shall be a right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court...” See Pa. Const. Art. V, § 9. The judgment of a magisterial district court in a civil or landlord-tenant case is appealable to a court of common pleas, and such an appeal is made de novo. See 42 Pa.C.S. § 932; Rules 1002, 1007A. In other words, an appeal is made as if it was initially commenced in a court of common pleas, with no regard to the proceedings at the magisterial district court. See Rule 1007A.

In contrast, certiorari actions are not guaranteed under the Pennsylvania Constitution. The Supreme Court of Pennsylvania is specifically empowered under the Pennsylvania Constitution to abolish such actions by rule.

Unless and until changed by rule of the Supreme Court, in addition to the right of appeal under section nine of this article, the judges of the courts of common pleas, within their respective judicial districts, shall have power to issue writs of certiorari to the municipal court in the City of Philadelphia, [magisterial district judges] and inferior courts not of record and to cause their proceedings to be brought before them, and right and justice to be done.

See Pa. Const. Art. V, Schedule, § 26; see also 42 Pa.C.S. § 934 (“Unless and until changed by general rule, the judges of the courts of common pleas, within their respective judicial districts, shall have power, in addition to the right of appeal under [Pa. Const. Art. V, § 9], to issue writs of certiorari to the minor judiciary.”) The Supreme Court has already taken such action with respect to the issuance of writs of certiorari in summary criminal matters. “This rule [providing for appeals] shall provide the exclusive means of appealing from a summary guilty plea or conviction. Courts of Common Pleas shall not issue writs of certiorari in such cases.” See Pa.R.Crim.P. No. 460(E). The Comment to Pa.R.Crim.P. 460 further provides:

Certiorari was abolished by the Criminal Rules in 1973 pursuant to Article V Schedule Section 26 of the Constitution of Pennsylvania, which

specifically empowers the Supreme Court to do so by rules. This Schedule section is still viable, and the substance of this Schedule section has also been included in the Judicial Code, 42 Pa.C.S. §9347. The abolition of certiorari continues with this rule.

See Pa.R.Crim.P. 460, Comment.

While Rules 1009-1015 have provided for a limited form of certiorari to date, the Committee finds that this remedy is inconsistent with the very definition of certiorari as a review of the record below. The rescission of these rules and abolition of this action is necessary, given the lack of a record before a court of common pleas. The Committee does not find it feasible for a court of common pleas to make findings on personal or subject matter jurisdiction, or venue, based on the extremely limited nature of the record available to that court. For example, it seems that a court of common pleas examining a question of personal jurisdiction may need to look beyond the record of the magisterial district court to establish the existence of minimum contacts between the parties and the Commonwealth. Similarly, it is questionable that venue based on the location where a transaction or occurrence took place could be established by the limited record available to a court of common pleas. See Rule 302. For these reasons, the Committee plans to recommend rescission of the certiorari rules to the Court.

III. Proposed Rule Changes

The Committee plans to propose the following rescissions and amendments:

- **Rule 206, 403, 514-516, 820:** Delete all references to certiorari and certiorari rules.
- **Rule 206:** Remove parallel citation to *Brady v. Ford*, in keeping with current drafting practices.
- **Rule 515:** Update reference to constable fee schedule to reflect 2009 statutory changes.
- **Rule 1001:** Delete definition of certiorari; renumber remaining definitions; add paragraph to Official Note clarifying that writs of certiorari have been abolished by the Court and that appeals are the exclusive remedy.
- **Rule 1002:** Add Subdivision C to clarify that writs of certiorari have been abolished by the Court and that appeals are the exclusive remedy.
- **Rule 1005:** Amend the Official Note to reflect the reordering of the definitions in Rule 1001.

- **Rules 1009-1015:** Rescind Rules; add paragraph to Official Note clarifying that writs of certiorari have been abolished by the Court and that appeals are the exclusive remedy.
- **Supplemental Instructions for Obtaining a Stay of Eviction:** Delete all references to certiorari and certiorari rules; amend Income Limits form to remove 2008 HHS Poverty Income Guideline dollar amounts, and instead leave blank to reflect that amounts change yearly.