

## INTRODUCTION

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt amendments to Rule 1002 of the Minor Court Civil Rules. The Committee has not yet submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the Committee's Official Notes to the rules. The Supreme Court does not adopt the Committee's Official Notes or the contents of the explanatory reports.

The text of the proposed changes precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit written suggestions, comments, or objections concerning this proposal to the Committee through counsel,

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Minor Court Rules Committee  
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no later than February 13, 2013.

December 3, 2012

**BY THE MINOR COURT RULES COMMITTEE:**

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**Mary P. Murray, Chair**

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**Pamela S. Walker**  
**Counsel**

## REPORT

### Proposed Amendments to Rule 1002 of the Minor Court Civil Rules

#### TIME AND METHOD OF APPEAL; INCORPORATING ADDITIONAL TIME FOR APPEAL BY VICTIM OF DOMESTIC VIOLENCE IN RESIDENTIAL LANDLORD-TENANT CASE

##### I. Introduction and Background

The Minor Court Rules Committee (the “Committee”) is proposing amendments to the rules of procedure governing appeals taken from judgments entered in magisterial district courts. The goals of these rule changes are (1) to clarify the appeal periods for all civil and landlord-tenant judgments, and (2) to incorporate the additional time provided to a victim of domestic violence when a judgment arises out of a residential lease and contains an award of possession.

The Committee began looking at this issue in 2011, after reviewing the opinion in a Philadelphia Municipal Court case, *Luck Ent. LLC v. Melton*, LT-09-11-03-3436 (Phil. Mun. Ct. 2011)(Moss, J.), after that court “forward[ed] a copy of this Opinion to the Philadelphia Municipal Court, the Minor Court Rules Committee and the Court of Common Pleas of Philadelphia County so that they might review their rules to determine whether or not to refine the language of their rules.” See *Luck Ent. LLC* at 13, n. 8.

##### II. Discussion

In *Luck Ent. LLC*, the court examined the rule making history of Pa.R.C.P.M.D.J. No. 1002 within the context of changes to the Landlord and Tenant Act of 1951, Act of April 6, 1951, P.L. 69 (“Act”). In summary, the court in *Luck* found that although the Supreme Court of Pennsylvania previously suspended Section 513 of the Act (68 P.S. § 250.513), the “final Amendatory Order of February 28, 1996 provided for a thirty-day suspension. Section 513, therefore, has been in effect since April of 1996.” *Luck Ent. LLC* at 6. The Committee agreed with the court’s analysis, and determined that Rule 1002 was in need of refinement, specifically (1) to clarify the appeal periods for all civil and landlord-tenant judgments, (2) to incorporate the additional time provided to a victim of domestic violence when a judgment arises out of a residential lease and contains an award of possession. See Section 513 of the Act.

First, the Committee sought to clarify that an action in a magisterial district court results in one judgment, not multiple judgments that can be parsed and appealed individually. The Committee agreed with the court in *Luck Ent. LLC* that the Committee’s 2001 Explanatory Comment to Rule 1002 suggests that there can be two

separate judgments in a landlord-tenant action, and proposes eliminating those portions of the 2001 Explanatory Comment. See *Luck Ent. LLC* at 11-12. The Committee also proposes patterning the language of Rule 1002 more closely to Section 513 of the Act to reflect the available timeframes for appeal.

Additionally, the Committee proposes adding additional time for a victim of domestic violence to appeal a judgment arising out of a residential lease that contains an award of possession. Such a change is consistent with Section 513(b) of the Act. Rule 1002 currently does not contain such a provision.

### **III. Proposed Rule Changes**

First, the Committee eliminated the phrase “aggrieved by a judgment” from Rule 1002, as that language does not appear in Section 513 of the Act, and could create ambiguity between Rule 1002 and Section 513 of the Act. Rather than determining the appeal period based on the aspect of the judgment that the appealing party is “aggrieved by,” the Committee agreed with the court in *Luck* that it would be clearer to identify the appeal time periods based on the underlying judgment, as set forth in Section 513 of the Act. Accordingly, the Committee recommends setting forth the four different options: (1) an appeal from a judgment arising out of a residential lease that contains an award of possession; (2) an appeal from a money judgment arising out of a residential lease that contains an award of only money; (3) an appeal from a judgment arising out of a nonresidential lease; and (4) and an appeal from a judgment arising out of a civil action.

The Committee also proposes adding the additional time for a victim of domestic violence to appeal a judgment arising out of a residential lease that contains an award of possession. Section 513(b) of the Act provides that a victim of domestic violence has thirty days, rather than the standard ten days, to appeal a judgment arising out of a residential lease that contains an award of possession.

Finally, the Committee proposes changes to the Official Note and the 2001 Explanatory Comment consistent with the proposed rule changes.

Rule 1002. Time and Method of Appeal.

**A.(1) [A party aggrieved by a judgment for money, or a judgment affecting the delivery of possession of real property arising out of a nonresidential lease, may appeal therefrom within thirty (30) days after the date of the entry of the judgment by filing with the prothonotary of the court of common pleas a notice of appeal on a form which shall be prescribed by the State Court Administrator together with a copy of the Notice of Judgment issued by the magisterial district judge. The Prothonotary shall not accept an appeal from an aggrieved party which is presented for filing more than thirty (30) days after the date of entry of judgment without leave of Court and upon good cause shown.] An appeal from a judgment arising out of a residential lease that contains an award of possession shall be filed within 10 days after the entry of the judgment unless the tenant is a victim of domestic violence, in which case an appeal shall be filed within thirty days after the entry of the judgment.**

**(2) An appeal from a judgment arising out a residential lease that contains an award of only money shall be filed within thirty days after the entry of the judgment.**

**(3) An appeal from a judgment arising out of a nonresidential lease shall be filed within thirty days after the entry of the judgment.**

**(4) An appeal from a judgment arising out of a civil action shall be filed within thirty days after the entry of the judgment.**

**B. A party [aggrieved by a] seeking to take an appeal from any judgment [for the delivery of possession of real property arising out of a residential lease may appeal therefrom within ten (10) days after the date of the entry of judgment] described in Subdivision A above shall do so by filing with the prothonotary of the court of common pleas a notice of appeal on a form which shall be prescribed by the State Court Administrator, together with a copy of the Notice of Judgment issued by the magisterial district judge. The prothonotary shall not accept an **untimely notice of appeal [from an aggrieved party which is presented for filing more than ten (10) days after the date of entry of judgment] that is presented for filing** without leave of court and upon good cause shown.**

Official Note

The thirty day [limitation in subdivision A of this rule] appeal period set forth above is [the same as that found in] consistent with the appeal period found in **Section 5571(b)** of the Judicial Code, [**§ 5571(b),**] 42 Pa.C.S. § 5571(b), as amended by § 10(67) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53,

and in the July 6, 1995 amendment (Act No. 1995-33) to Section 513(b) of the Landlord and Tenant Act of 1951 (“Act”), Act of April 6, 1951, P.L. 69, as amended, 68 P.S. 250.513(b). The ten day limitation in [subdivision B] paragraph A(1) of this rule is [designed to implement the time for appeal set forth in § 513 of the Landlord and Tenant Act of 1951 (Act No. 1995-33, approved July 6, 1995) (Act No. 1995-33 was suspended by the Pa. Supreme Court on March 28, 1996 by Order of Court insofar as the Act is inconsistent with Rules of Civil Procedure Governing Actions and Proceedings Before District Justices, as adopted by that Order)] consistent with the time for appeal set forth in the July 6, 1995 amendment. [The two subdivisions of this rule are intended to clarify that where the right of possession of residential real estate is at issue, the shorter, ten day period for appeal applies; where the appeal is taken from any judgment for money, or a judgment affecting a nonresidential lease, under these rules, the thirty day period of time for appeal applies. A party may appeal the money portion of a judgment only within the thirty day appeal period specified in subsection A of this rule. It is the intent of this rule that no supersedeas under Pa.R.C.P.D.J. No. 1008 shall be issued by the Prothonotary after the ten (10) day period for filing an appeal, unless by order of court.]

The intent of the 2012 amendment is to incorporate the additional time provided to a victim of domestic violence when a judgment arises out of a residential lease and contains an award of possession, The 2012 amendment is also intended to clarify that the time for an appeal is thirty days in all cases with the exception of the ten day period that exists in cases arising out of a residential lease when the judgment contains an award of possession and the tenant is not a victim of domestic violence.

In a landlord-tenant action, the court is authorized to enter only one judgment which may contain a monetary award and grant possession of the leasehold to the landlord. See Section 506 of the Act as originally enacted (“[w]ithin five days after the rendition of judgment, either party may appeal to the next court of common pleas upon filing in that court a bond.”) and Section 504 of the Act as originally enacted (the justice of peace could “enter judgment against the tenant that the real property be delivered up to the landlord and for damages, if any, for the unjust detention of the demised premises, as well as for the amount of rent, if any, which remains due and unpaid and for costs of the proceeding.”) (emphasis added). Therefore, any appeal is from one judgment and cannot be parsed at the will of the party taking the appeal.

If a court enters a judgment in a case arising out of a residential lease that includes an award of money and a right to possession, a tenant who is not a victim of domestic violence and wishes to take an appeal must do so within ten days of the entry of the judgment even if the tenant has vacated the leasehold

**after the entry of the judgment. See Section 513(b) of the Act and *Cherry Ridge Development v. Chenoga*, 703 A.2d 1061 (Pa. Super. 1997)(holding that where a magisterial district judge entered a judgment in favor of a landlord for money and possession, the tenant had ten days, not thirty days, to take an appeal).**

The method of appeal is by filing with the prothonotary a “notice of appeal” on a form to be prescribed by the State Court Administrator. Copies of this same form will be used for service under Pa.R.C.P.M.D.J. No. 1005. This permits use of the same form for filing and service. No useful purpose would be served by having two forms, one called an “appeal” for filing and another called a “notice of appeal” for service.

The 1990 amendment is intended to encourage the complete utilization of the hearing process available before the magisterial district judge.

A copy of the Notice of Judgment must be filed since it will contain the separate entries required by Pa.R.C.P.M.D.J. No. 514.A and will be needed by the Prothonotary.

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#### Explanatory Comment - 2001

The January 1, 2001, amendments to Rule 1002(A) and (B) are to make the language within the Rule consistent. Previously, the Rule used the words “date of entry of judgment” and then “date of judgment”. It is the opinion of the Committee that the phrase “date of entry of judgment” should be used and that it should be used consistently throughout the Rule.

**[The amendment to the Note is necessitated because Rule 514 requires that a judgment be rendered for the delivery of possession of the real property to the plaintiff and a separate entry of a judgment for money, whether it be for rent, damages, or costs. The separate entry of the judgment for money should be treated the same as a judgment in a civil action and there are no additional exigencies requiring an accelerated appeal period. The ten (10) day appeal period should only be applicable to the possession judgment and not to the money judgment.**

**The purpose of this amendment to the Note and this Explanatory Comment is to clarify the intent of the Rule to permit an appeal of the money judgment only within the thirty (30) day appeal period. See *Cherry Ridge Development v. Chenoga*, 703 A.2d 1061 (Pa.Super. 1997).]**