

INTRODUCTION

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 209 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges to specify that military personnel shall be granted continuances in civil actions under certain circumstances. 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 Notes to the rules. The Supreme Court does not adopt the Committee's Notes or the contents of the explanatory reports.

The text of the proposed changes precedes the Report. Additions are shown in bold and are underlined.

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
Supreme Court of Pennsylvania
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Fax: 717-795-2175
or email to: minorcourt.rules@pacourts.us*

no later than May 31, 2008.

April 21, 2008

BY THE MINOR COURT RULES COMMITTEE:

M. Kay DuBree, Chair

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REPORT

Proposed Amendment to Rule 209 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

I. Background

In 2007, several magisterial district judges questioned why the rules of civil procedure did not specifically address continuances for military personnel. Based upon the reported uncertainty of some magisterial district judges in dealing with military personnel's requests for continuances, the Minor Court Rules Committee ("the Committee") is recommending an amendment to Rule 209 referencing the Servicemembers Civil Relief Act ("Act"). The Committee believes the amendment will provide a quick statutory reference as well as foster a uniform, statewide practice.

II. Discussion

The Committee determined that its main concern was ensuring that magisterial district judges are aware of the Act and follow it, when appropriate. In its deliberations, the Committee reviewed a sample request for a continuance pursuant to the Act; the Act itself; 51 Pa.C.S.A. § 7314 ("Stay of proceedings when military service affects conduct thereof") and Pa.R.C.P. No. 1920.46 ("Affidavit of Non-military Service").

The Committee decided that the simplest way to achieve its goal of compliance with the Act was through a statutory reference. While the Committee considered including a reference to the Act in the note, rather than the rule, the eventual decision was to draft a new subdivision within the rule itself. The Committee members felt strongly that individuals meeting the criteria of the Act should be granted continuances. By including the language in the rule, the exception for qualifying military personnel becomes mandatory; if simply included in the note, the reference would not be binding as the Supreme Court of Pennsylvania does not adopt the contents of the Committee's notes to the rules.

III. Proposed Rule Changes

To address the issues discussed above, the Committee proposes including a new subdivision "E," following directly after the current subdivision "D." As explained above, the new subdivision "E" will provide a statutory reference to the Act.

Rule 209. Continuances

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(E) Continuances shall be granted in compliance with the Servicemembers Civil Relief Act., 50 App. U.S.C.A. § 501.

Note: 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 are intended to ensure that these cases proceed expeditiously. The grounds set forth in subdivision D, of course, are not intended to be the only grounds on which a continuance will be granted.

Adopted March 15, 1994, effective April 2, 1994. Amended Dec. 16, 2004, effective July 1, 2005; Jan. 6, 2005, effective Jan. 29, 2005. **Amended _____, 2008, imd. effective.**