

## INTRODUCTION

*The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 214 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges to provide for notification of parents and/or guardians when a subpoena is issued to a person under the age of eighteen. 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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Supreme Court of Pennsylvania  
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***no later than May 31, 2008.***

*April 24, 2008*

***BY THE MINOR COURT RULES COMMITTEE:***

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*M. Kay DuBree, Chair*

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*Paula Knudsen Burke  
Counsel*

## REPORT

### *Proposed Amendment to Rule 214 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges*

#### PARENTAL NOTIFICATION WHEN CHILD SUBPOENAED

##### **I. Background**

The Minor Court Rules Committee (“Committee”) was prompted to suggest the following changes based upon a February 28, 2008 order of the Pennsylvania Supreme Court<sup>1</sup>. The Court, upon recommendation of the Juvenile Court Procedural Rules Committee, promulgated changes in the Rules of Juvenile Court Procedure that, *inter alia*, would require parental notification when a subpoena is issued to a person under the age of eighteen.

##### **II. Discussion**

The Committee reviewed the Feb. 28, 2008 order adopting the Juvenile Court Procedural Rules Committee’s recommendation<sup>2</sup>. The Committee discussed the benefits of the Juvenile Court Procedural Rules Committee’s proposal. Providing a parent or guardian with important information about his or her child’s whereabouts was one of the chief benefits recognized by the Committee in considering adopting similar rule language. In addition, the Committee felt that consistency throughout Pennsylvania’s courts is important, and that if one set of court rules was undergoing a change, the measure should be seriously considered by the Committee. Ultimately the Committee agreed that they should follow the proposal outlined by the Juvenile Court Procedural Rules Committee.

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

To address the issues discussed above, the Committee proposes amending Rule 214 to include a new paragraph (E) that closely tracks the Juvenile Court Procedural Rules Committee’s recommendation to the Court.

In addition, the Committee is recommending several other changes. In paragraph (B), the Committee would insert several new terms. The paragraph currently states only that subpoenas may be issued “upon the request of a party.” The Committee proposes

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<sup>1</sup> Supreme Court of Pennsylvania Order No. 438, Supreme Court Rules Docket No. 1.

<sup>2</sup> The recommendation was published before adoption at 37 Pa.B. 1306 (March 24, 2007), in the Atlantic Reporter (Second Series Advance Sheets, Vol. 915, March 16, 2007) and on the Juvenile Court Procedural Rules Committee’s website.

adding language clarifying that a magisterial district judge may also issue subpoenas upon the request of an “authorized representative” or “attorney of record.” In 2006, the Supreme Court adopted a Committee recommendation that permits an individual with personal knowledge of the subject matter to appear on behalf of a party. See Rule 207(A)(1). The current language of paragraph (B) would also be changed to emphasize that a party representing him or herself (*pro se*) can request issuance of a subpoena. The Committee also advocates additions to paragraph (B) to make clear *who* is requesting the subpoenaed witness’ testimony, as well as the procedure for obtaining and serving the subpoena.

**The Committee suggests adding a new paragraph (D) to provide for return of service forms’ submission to the magisterial district court. Finally, the note to Rule 214 would be amended to include supplemental information about the new paragraphs (D) and (E) as well as providing other helpful information with regard to subpoenas in civil actions before magisterial district judges.**

Rule 214. Subpoena; Issuance; Service.

**[A.] (A)** Magisterial district judges may issue subpoenas throughout the Commonwealth.

**[B.] (B)** Upon the request of a party proceeding pro se, the authorized representative of a party, or an attorney of record, the magisterial district judge may issue a subpoena signed and under the seal of the magisterial district judge. The magisterial district judge shall specify in the subpoena the name and address for service of the person subpoenaed; the name of the party on whose behalf the person is being ordered to testify; the date, time, and place at which the person is to appear; and a description of the documents or things that the person is to produce, if any.

**(a) The party, authorized representative, or attorney of record requesting the subpoena shall provide the magisterial district court with the information required in paragraph (B).**

**(b) If the subpoena is to be issued, the magisterial district court shall fill in the information provided and return it to the requestor for service.**

**[C.] (C)** A subpoena may be served upon any person within the Commonwealth by a competent adult

(1) by handing a copy to the person; or

(2) by handing a copy

(a) at the residence of the person to an adult member of the family with whom the person resides; but if no adult member of the family is found, then to an adult in charge of such residence; or

(b) at the residence of the person to the clerk or manager of the hotel, inn, apartment house, boarding house, or other place of lodging at which the person resides; or

(c) at any office or usual place of business of the person to the person's agent or other person for the time being in charge thereof.

**(D) The person making service of a subpoena must file a return of service form in the magisterial district court in which the hearing is pending within 48 hours of service, and in no event later than the commencement of the hearing. Filing under this paragraph may be accomplished by sending a copy by facsimile transmission.**

**(E) If a subpoenaed witness is under the age of 18, the parent or guardian of the witness shall be served with a copy of the subpoena in the same manner as prescribed in paragraph (C).**

*Note:* [ See Rule 202 for definition of "subpoena." Compare Pa.R.C.P. Nos. 234.2 and 402(a). ]

**[ The ] When issuing a subpoena, the** magisterial district judge has discretion to limit the scope of **[ subpoenas ] the subpoena** to persons, documents, or things that are relevant to the cause of action before the magisterial district judge.

Magisterial district judges may not issue subpoenas in blank.

**Paragraph (D) provides for filing by facsimile transmission. It is the intent of these rules that filing documents by facsimile transmission is permitted only when expressly provided for in the rules. Paragraph D also provides for use of a form promulgated by the Court Administrator of Pennsylvania.**

**Paragraph (E) provides that parties choosing to subpoena witnesses under the age of 18 must alert the magisterial district court of the witness' age and are responsible for any additional service costs.**

**See Rule 202 for definitions of "subpoena" and "attorney of record." Compare Pa.R.C.P. Nos. 234.2 and 402(a) and Pa.R.Crim.P. 107. See also Rule 207 regarding representation by an authorized representative.**

**For the scope of the contempt powers of magisterial district judges, see 42 Pa.C.S. § 4137. See also Pa.R.Crim.P. 140-142.**

Adopted Sept. 3, 2003, effective Jan. 1, 2004. Amended Jan. 6, 2005, effective Jan. 29, 2005. **Amended \_\_\_\_\_, 2008, effective \_\_\_\_\_.**