

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

NOTICE OF PROPOSED RULEMAKING

**Proposed Adoption of Pa.R.Civ.P.M.D.J. 210.1 and
Amendment of Pa.R.Civ.P.M.D.J. 320**

The Minor Court Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.Civ.P.M.D.J. 210.1 and the amendment of Pa.R.Civ.P.M.D.J. 320, pertaining to (1) prohibitions on *ex parte* communications and (2) stipulated judgments, respectively, for the reasons set forth in the accompanying Publication Report. Pursuant to Pa.R.J.A. 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 report accompanying this proposal was prepared by the Committee to include the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be officially adopted by the Supreme Court.

Additions to the text 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 **June 18, 2024**. 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 James R. Edgcomb
Chair

– This is an entirely new rule –

Rule 201.1. *Ex Parte* Communication.

- (a) Unless otherwise authorized by law or state court rule, no person shall communicate with the magisterial district judge in any way regarding matters pending before the magisterial district judge unless all parties:
 - (1) are present or have been copied if the communication is written or in electronic form; or
 - (2) have waived their presence or right to receive the communication.
- (b) If the magisterial district judge receives any unauthorized *ex parte* communication, the magisterial district judge shall inform all parties of the communication and its content.

Comment: Generally, communications should include all parties. No unauthorized *ex parte* communications with the magisterial district judge are to occur. Authorized *ex parte* communications include those made in connection with proceedings for emergency protective orders, *i.e.*, Pa.R.Civ.P.M.D.J. 1201 – 1211, which are *ex parte* proceedings. See Pa.R.Civ.P.M.D.J. 1207. Certain *ex parte* communications for scheduling, administrative, or emergency purposes that do not address substantive matters are permissible. See Rule 2.9(A)(1) of the Rules Governing Standards of Conduct of Magisterial District Judges.

Attorneys are bound by Rule 3.5 of the Rules of Professional Conduct. Magisterial district judges are bound by Rule 2.9 of the Rules Governing Standards of Conduct of Magisterial District Judges.

Attorneys and judges understand the impropriety of *ex parte* communications regarding matters pending before the magisterial district court but many participants are not attorneys or judges. This rule ensures that all parties receive the same information that is being presented to the magisterial district judge so that it may be challenged or supplemented.

Rule 320. Request to Withdraw Complaint; [Settlement] Settlements.

[A(1)](a) Withdrawal of Complaint.

(1) A plaintiff may withdraw **[the] a** complaint prior to **[the] a** commencement of **[the] a** hearing by filing a written notice of withdrawal with the magisterial district court. Upon receipt of such notice, the magisterial district court shall **[note]**:

(i) **mark** the withdrawal of the complaint on the docket~~[,];~~

(ii) cancel any scheduled hearing, ~~[(]except for a consolidated hearing on a cross-complaint pursuant to [Rule 315B),] Pa.R.Civ.P.M.D.J. 315B;~~ and

(iii) notify the parties in writing that the complaint has been withdrawn.

~~[(2)](2)~~A withdrawal of **[the] a** complaint filed prior to **[the] a** commencement of **[the] a** hearing shall be deemed to be without prejudice. The plaintiff may file a new complaint on the same cause of action upon payment of all applicable fees and costs.

[B(1)](b) Settlements.

(1) Settlement Without Stipulated Judgment.

(i) **[The] If the parties do not request the entry of a stipulated judgment pursuant to a settlement agreement, the** parties may file a written notice of settlement of the complaint with the magisterial district court at any time prior to the entry of judgment. Upon receipt of such notice, **the magisterial district judge shall:**

(A) **[the magisterial district court shall note the case settled on the docket,] mark the settlement of the case on the docket;**

(B) cancel any scheduled hearing ~~[(],~~ except for a consolidated hearing on a cross-complaint pursuant to **[Rule 315B),] Pa.R.Civ.P.M.D.J. 315B;** and

- (C) notify the parties in writing that the complaint has been marked settled.

[(2)](ii)[Where the parties have filed a notice of settlement with the magisterial district court] If the magisterial district court has previously marked the civil action as settled pursuant to subdivision (b)(1)(i) and a subsequent breach of the settlement agreement occurs, a party may file a new complaint citing breach of the settlement agreement as the cause of action.

(2) Settlement with Stipulated Judgment.

(i) The parties may file a written notice of a stipulated judgment as part of a settlement agreement at any time prior to the entry of judgment.

(ii) The notice shall be made on a form promulgated by the State Court Administrator that shall include:

(A) the amount of the stipulated judgment, which shall include fees and interest, but not court costs;

(B) a notice to the defendant:

(I) to review the settlement agreement to ensure familiarity with and acceptance of its terms;

(II) that a judgment will be entered against the defendant on the docket of the magisterial district court; and

(III) the plaintiff shall have the right to request execution of the judgment if the defendant fails to make payments as agreed; and

(C) the signatures of the parties.

(iii) Upon receipt of a notice compliant with the requirements of subdivision (b)(2)(ii), the magisterial district court shall:

- (A) mark the entry of the stipulated judgment on the docket;
- (B) cancel any scheduled hearing, except for a consolidated hearing on a cross-complaint pursuant to Pa.R.Civ.P.M.D.J 315B; and
- (C) notify the parties in writing that the complaint has been marked settled.

[C(1)](c) Cross-complaints.

- (1) **[The] A withdrawal or settlement of the plaintiff's complaint pursuant to subdivision (a) or (b) shall not affect the right of the defendant to proceed with a cross-complaint filed pursuant to [Rule 315A] Pa.R.Civ.P.M.D.J. 315A, unless it includes the cross-complaint.**
- (2) The defendant may file a written notice of withdrawal of the cross-complaint in the manner set forth in **[subdivision A] subdivision (a).**
- (3) The parties may file a written notice of settlement **or stipulated judgment** of the cross-complaint in the manner set forth in **[subdivision B] subdivision (b).**

[Note:] Comment: A complaint filed pursuant to **[subparagraph A(2) or B(2)] subdivision (a)(2) or (b)(1)(ii)** **[shall not be treated as] is not** a “reinstatement” of the underlying action[,] and is subject to all prescribed fees and costs for filing and service of a complaint. Compare with **[Rule 314E] Pa.R.Civ.P.M.D.J. 314E**, which provides for reinstatement of the complaint under the limited circumstance of failure to make timely service.

This rule also applies to the withdrawal or settlement of a cross-complaint. Moreover, a cross-complaint will survive the withdrawal or settlement of the corresponding complaint **if it is not included in a notice filed pursuant to this rule.**

For purposes of this rule, “stipulated judgment” means a judgment that is entered by the magisterial district court without a hearing and at the request of and with the agreement of the parties. See Pa.R.Civ.P.M.D.J. 210.1 prohibiting unauthorized ex parte communication with the magisterial district judge.

[Prior Rule 320, addressing continuances, was rescinded by Order of December 16, 2004, effective July 1, 2005, and its provisions were added to Rule

209.] The provisions of prior Pa.R.Civ.P.M.D.J. 320, pertaining to continuances, were relocated to Pa.R.Civ.P.M.D.J. 209, effective July 1, 2005.

SUPREME COURT OF PENNSYLVANIA
Minor Court Rules Committee

PUBLICATION REPORT

**Proposed Adoption of Pa.R.Civ.P.M.D.J. 210.1 and
Amendment of Pa.R.Civ.P.M.D.J. 320**

The Minor Court Rules Committee (“Committee”) is considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.Civ.P.M.D.J. 210.1 and the amendment of Pa.R.Civ.P.M.D.J. 320, pertaining to prohibitions on *ex parte* communications and stipulated judgments, respectively.

While discussing a separate matter, the Committee became aware of instances in magisterial district courts of creditor-plaintiffs submitting *ex parte* requests to the court to mark civil complaints settled and requesting entry of a judgment in favor of the plaintiff. While a joint request for entry of judgment is not inherently problematic, the Committee perceived the potential for malfeasance if the filing does not reflect notice to or consent to the agreement by the defendant. The Committee thought it beneficial to examine methods to: (1) develop a procedure for the parties in a civil action to advise the magisterial district court of a settlement agreement that includes the entry of a judgment in favor of the plaintiff, *i.e.*, a stipulated judgment; and (2) establish an explicit prohibition on unauthorized *ex parte* communications with the court by the parties or their representatives.

***Ex Parte* Communications**

The Committee first examined *ex parte* communications in magisterial district courts. The Court has defined “*ex parte*” as:

On one side only; by or for one party; done for, in behalf of, or on the application of, one party only. A judicial proceeding, order, injunction, etc., is said to be *ex parte* when it is taken or granted at the insistence and for the benefit of one party only, and without notice to, or contestation by any person adversely interested.

Commonwealth v. Carpenter, 725 A.2d 154, 168 (Pa. 1999) (quoting *Black’s Law Dictionary*, 517 (5th Ed. 1979)).

Magisterial district judges and attorneys are bound by codes of conduct that prohibit unauthorized *ex parte* communication. See Rule 2.9 of the Rules Governing Standards of Conduct of Magisterial District Judges and Rule 3.5 of the Rules of Professional Conduct, respectively. In contrast, there is no similar obligation for parties

in the Rules of Civil Procedure Governing Actions and Proceedings Before Magisterial District Judges. Thus, while magisterial district judges and attorneys have guidance relating to *ex parte* communications, the same cannot be said for a litigant who is not law-trained.

The Committee looked to existing Rules of Juvenile Court Procedure, which has prohibitions on *ex parte* communications by the parties. See Pa.R.J.C.P. 136 and 1136 (pertaining to delinquency and dependency proceedings, respectively). The Committee used these rules as the basis for developing proposed Pa.R.Civ.P.M.D.J. 210.1.

While *ex parte* communications are generally prohibited by proposed Pa.R.Civ.P.M.D.J. 210.1, certain *ex parte* communications are authorized and permitted. Notably, proceedings for emergency protective relief are filed and heard on an *ex parte* basis. “As soon as possible after the filing of the petition, the hearing officer shall hold an *ex parte* hearing thereon.” Pa.R.Civ.P.M.D.J. 1207 (pertaining to hearings for emergency protective relief). Moreover, Rule 2.9(A)(1) of the Rules Governing Standards of Conduct of Magisterial District Judges identifies types of authorized *ex parte* communications under certain circumstances, e.g., scheduling, administrative, or emergency purposes. These exceptions to the general rule against *ex parte* communications are included in the Comment to proposed Pa.R.Civ.P.M.D.J. 210.1.

Stipulated Judgments

The Committee considers the phrase “stipulated judgment” to mean a consensual judgment that is entered without a hearing by the magisterial district court at the request of the parties. Because the Committee was informed that *ex parte* requests for stipulated judgments are being filed with magisterial district courts, it agreed to consider developing a procedure to ensure a defendant is an informed and active participant to a request to enter a stipulated judgment.

The Committee proposes dividing Pa.R.Civ.P.M.D.J. 320(B), pertaining to settlements, into two subdivisions. Subdivision (b)(1) reflects current subdivision (B), regarding a request to mark a civil action settled without the entry of a stipulated judgment. This provision could be used when the parties reach an out of court settlement that does not include the entry of a judgment by the court.

Proposed subdivision (b)(2) includes new provisions relating to a stipulated judgment and emphasizes participation of the parties. Proposed subdivision (b)(2)(ii) provides for a new statewide form to request entry of a stipulated judgment by the magisterial district court. The amount of the judgment will be entered on the form. The amount of the judgment should not include court costs insofar as those are determined by Pa.R.Civ.P.M.D.J. 206B and are the responsibility of the unsuccessful party. The judgment issued by the magisterial district court will reflect these costs.

The form will also contain a notice to the defendant: (1) to review the settlement agreement to ensure familiarity with and acceptance of its terms; (2) that judgment will be entered against the defendant on the docket of the magisterial district court; and (3) failure to make payments as agreed upon will give the plaintiff the right to request execution of the judgment. Finally, the form will require the signatures of the parties, reflecting that the request is being made jointly. Proposed Pa.R.Civ.P.M.D.J. 320(b)(2)(ii)(C). The Comment to proposed Pa.R.Civ.P.M.D.J. 320 was amended to include a cross-reference to proposed Pa.R.Civ.P.M.D.J. 210.1, prohibiting unauthorized *ex parte* communication with the magisterial district judge.

Relative to proposed Pa.R.Civ.P.M.D.J. 320(b)(2)(ii)(B)(I), advising the defendant to review the terms of a settlement agreement, it was not the Committee's intent to require judicial approval of the terms of these agreements. The primary risk in such arrangements is that the plaintiff may execute upon a judgment prematurely or the levy may be excessive in relation to prior payments on the judgment. Should that occur, the defendant could file an objection to the levy pursuant to Pa.R.Civ.P.M.D.J. 413, which can be the subject of a request for reconsideration at the court of common pleas. The Committee was satisfied with this remedy for a premature request or excessive levy.

The Committee did consider an alternative approach to entry of a stipulated judgment. The alternative scheme would have the magisterial district court keep the hearing date on the schedule to allow either party to contest the stipulation prior to its entry. Then, if either party appeared at the scheduled hearing time to object to the stipulation, the magisterial district judge would continue the hearing to a later date. In contrast, if no one appeared at the scheduled hearing time, then the magisterial district court would enter the judgment. Ultimately, the Committee did not favor this approach, finding it would complicate the process, disrupt scheduling, and create the potential for intentional delays.

The Committee also observed that the parties will have to act diligently within the allotted time between the filing of the complaint and the date scheduled for the civil hearing. Parties inclined to negotiate a settlement including a stipulated judgment will have limited time, unless a continuance is sought, to negotiate the agreement, execute it, and file the request with the magisterial district court. However, parties who have reached a mutually satisfactory outcome should be incentivized to proceed as directed in proposed Pa.R.Civ.P.M.D.J. 320.

Finally, the Committee recommended Pa.R.Civ.P.M.D.J. 320 to the Court in 2014 to address the misuse of reinstatement of civil complaints, currently limited to circumstances of failure to make timely service. See Pa.R.Civ.P.M.D.J. 304E(1). There is no counterpart to Pa.R.Civ.P.M.D.J. 304E(1) in the rules governing landlord-tenant actions because service can be accomplished by posting, thus, timely service is not an issue in landlord-tenant actions. The Committee specifically invites comments on

whether the landlord-tenant rules would benefit from the addition of a withdrawal and settlement rule.

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