

PROPOSED REVISION 1

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.] Except as otherwise prescribed by this rule, a notice of appeal shall be filed within thirty (30) days after the date of entry of judgment from which the appeal is taken.

(2) A notice of appeal from a judgment that concerns a residential lease shall be filed within ten (10) days after the date of entry of judgment from which the appeal is taken. If, however, the tenant is a victim of domestic violence, a notice of appeal shall be filed within thirty (30) days after the date of entry of the judgment from which the appeal is taken.

B. [A party aggrieved by a 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 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.] An appeal shall be filed by filing a notice of appeal with the prothonotary of the court of common pleas on a form that shall be prescribed by the State Court Administrator. The prothonotary shall not accept [an appeal] a notice of appeal [from an aggrieved party which] that is presented [for filing more than ten (10) days after the date of entry of judgment] after the expiration of the time period specified above in subdivision A without leave of court and upon good cause shown.

Official Note

The 2014 amendment is intended to clarify that the time for an appeal is thirty (30) days in all cases with the exception of the ten (10) day period that exists in cases that concern a residential lease and in which the tenant is not a victim of domestic violence. Accordingly, in a case that concerns a residential lease, appeals must generally be brought within ten (10) days after the date of entry of judgment. The ten (10) day appeal period is applicable in cases concerning

residential leases when the judgment is for possession only or for possession and money. When, however, the underlying case concerns a residential lease and the tenant is victim of domestic violence or the judgment is for money only, the appeal period is thirty (30) days.

The 2014 amendment provides additional time to a victim of domestic violence when a judgment arises out of a residential lease and contains an award of possession. A “victim of domestic violence” is defined as “a person who has obtained a protection from abuse order against another individual or can provide other suitable evidence as the court shall direct.” See 68 P.S. § 250.513. It is the intent of this rule that should a determination be necessary as to whether or not a tenant is a victim of domestic violence, that determination would be made by the court of common pleas following the filing by a landlord of a motion to quash an appeal for being untimely.

The thirty **(30)** day [limitation in subdivision A of this rule is the same as that found in the Judicial Code § 5571(b),] appeal period set forth above is consistent with the appeal period found in Section 5571(b) of the Judicial Code, 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. The ten **(10)** day limitation in [subdivision B] **paragraph A(2)** 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.) **[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 a money 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.

In a landlord-tenant action, the court is authorized to enter only one judgment which may contain a monetary award and authorize the landlord to regain possession of the leasehold through lawful process. 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, or a landlord who wishes to take an appeal must do so within ten (10) 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 Dev. v. Chenoga*, 703 A.2d 1061 (Pa. Super. 1997).

In *Cherry Ridge*, a magisterial district judge entered a judgment in favor of a landlord for possession of the premises and a monetary judgment. See *Cherry Ridge* at 1062. The issue on appeal that the Superior Court addressed was “[w]hat is the time period to file an appeal when an Order for both possession and money judgment is entered by a District Justice?” *Id.* The Superior Court held that the then Rule 1002 provided the tenant with ten (10) days and not thirty (30) days to take an appeal. In reaching that conclusion, the Superior Court observed that the tenant “does not appeal from a ‘judgment only for money,’ but from a judgment for possession with an ancillary award for damages [and that] she does not appeal from a ‘judgment affecting a nonresidential lease.’” *Cherry Ridge* at 1063. As noted above, the proposed changes to the revised rule clarify that there is only one judgment from which an appeal is taken. Therefore, while the proposed rule would also provide for a ten (10) appeal period, it does so without the need for the type of analysis that the Superior Court used in *Cherry Ridge*.

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.

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).]

PROPOSED REVISION 2

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.] Except as otherwise prescribed by this rule, a notice of appeal shall be filed within thirty (30) days after the date of entry of judgment from which the appeal is taken.

(2) A notice of appeal from a judgment that concerns only the delivery of possession of real property arising out of a residential lease shall be filed within ten (10) days after the date of entry of the judgment from which the appeal is taken. If, however, the tenant is a victim of domestic violence, a notice of appeal shall be filed within thirty (30) days after the date of entry of the judgment from which the appeal is taken.

B. [A party aggrieved by a 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 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.] An appeal shall be filed by filing a notice of appeal with the prothonotary of the court of common pleas on a form that shall be prescribed by the State Court Administrator. The prothonotary shall not accept [an appeal] a notice of appeal [from an aggrieved party which] that is presented [for filing more than ten (10) days after the date of entry of judgment] after the

expiration of the time period specified above in subdivision A without leave of court and upon good cause shown.

Official Note

The 2014 amendment is intended to clarify that the time for an appeal is thirty (30) days in all cases with the exception of the ten (10) day period that exists in cases that concern a residential lease and in which the judgment is for possession only and the tenant is not a victim of domestic violence. The thirty (30) day appeal period, therefore, is applicable in cases concerning residential leases when the judgment is for possession and money, money only or when the tenant is a victim of domestic violence.

The 2014 amendment provides additional time to a victim of domestic violence when a judgment arises out of a residential lease and contains an award of possession. A “victim of domestic violence” is defined as “a person who has obtained a protection from abuse order against another individual or can provide other suitable evidence as the court shall direct.” See 68 P.S. § 250.513.” It is the intent of this rule that should a determination be necessary as to whether or not a tenant is a victim of domestic violence, that determination would be made by the court of common pleas following the filing by a landlord of a motion to quash an appeal for being untimely.

The thirty (30) 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 (10) day limitation in [subdivision B] paragraph A(2) 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 a money 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.

In a landlord-tenant action, the court is authorized to enter only one judgment which may contain a monetary award and authorize the landlord to regain possession of the leasehold through lawful process. 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, whether or not a victim of domestic violence, or a landlord who wishes to take an appeal must do so within thirty (30) days of the entry of the judgment regardless of whether or not the tenant has vacated the leasehold after the entry of the judgment. Under this circumstance, the rule provides more time within which to take an appeal than Section 513(b) of the Act and as the Superior Court interpreted in then Rule 1002 in *Cherry Ridge Dev. v. Chenoga*, 703 A.2d 1061 (Pa. Super. 1997).

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.