

INTRODUCTION

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt amendments to Rule 1002 of the Pennsylvania Rules of Civil Procedure before Magisterial District Judges (“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 and underlined; 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 September 12, 2014.

July 1, 2014

BY THE MINOR COURT RULES COMMITTEE:

Bradley K. Moss, Chair

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REPORT

Proposed Amendments to Rule 1002 of the Pennsylvania Rules of Civil Procedure before Magisterial District Judges

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 Pennsylvania Rules of Civil Procedure before Magisterial District Judges 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 provide additional time to victims 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 the Philadelphia Municipal Court case of *Luck Ent. LLC v. Melton*, <http://www.courts.phila.gov/pdf/opinions/mc/LT0911033436.pdf>, LT-09-11-03-3436 (Phil. Mun. Ct. 2011)(Moss, J.). That court had “forward[ed] a copy of th[e] 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.

When a landlord brings a landlord-tenant action against a tenant, the landlord has the right to seek a judgment providing for the recovery of money damages and for the right to use lawful process to recover possession of the property. If the landlord prevails at trial, the court will enter a judgment that provides for one of the following: (1) the right to use lawful process to recover possession of the property; (2) an award of money damages; or (3) both an award of money damages and the right to use lawful process to recover possession of the property.

A judgment providing for only the right to use lawful process to recover possession of the property will be entered when the tenant remains in possession of the property, owes no money to the landlord, and the landlord has proven that the tenant has breached a condition of the lease, such a no pet provision, or that the term of the lease has expired and that the lease has been properly terminated. A judgment providing for only money damages will be entered when the landlord has proven that the tenant owes rent or other monetary compensation under the terms of the lease and the tenant is no longer in possession of the property as a result of, for example, moving

out and returning the keys to the landlord after the landlord-tenant complaint was filed but before trial.

Thirty days from the entry of an Order is the standard period of time for taking an appeal. See 42 Pa. C.S. § 5571; Pa.R.A.P. 903. There are, however, exceptions to the thirty-day standard. Generally, when the appeal period is less than thirty days, there is a special reason to shorten the appeal period. For example, the time for appeal from an order in any matter arising under the Pennsylvania Election Code is generally for a lesser time than thirty days because of the need for the courts to resolve such appeals within the short time period between the submission of nominating petitions and the election. See 42 Pa.C.S. § 5571(c)(1).

In the context of landlord-tenant actions, there are two competing interests when possession of the property is at issue. The landlord has an interest in regaining possession of the leased property as quickly as possible. The tenant, however, has an interest in remaining in the property as long as possible in order to have sufficient time to make arrangements to pack belongings and to move to another property. These competing interests do not exist when the tenant has returned possession of the property to the landlord prior to trial.

The law has continually sought to strike a fair balance between the competing interests of the landlord and the tenant. Prior to the addition on July 6, 1995 of Section 513(b) to the Landlord and Tenant Act of 1951 (“Act”), Act of April 6, 1951, P.L. 69, as amended, 68 P.S. § 250.513(b), Sections 504 and 506 of the Act provided for only five days after the entry of a judgment within which to take an appeal.

In 1995, the General Assembly rebalanced the competing interests between landlords and tenants by distinguishing between residential and nonresidential leases, and between instances in which there was a residential lease involving a victim of domestic violence. Section 513(b) envisions three situations applicable to the time for taking an appeal in a landlord-tenant action. One situation is when a judgment arises out of a residential lease, another is when a judgment arises out of a nonresidential lease, and the third situation is when a judgment arises out of a residential lease in which a victim of domestic violence is involved. In the first situation, there are ten days within which to take an appeal. In the second and third situations, there are thirty days within which to take an appeal. Section 513(b) provides the following:

(b) Within ten days after the rendition of judgment by a lower court arising out of residential lease or within thirty days after a judgment by a lower court arising out of a nonresidential lease or a residential lease involving a victim of domestic violence, either party may appeal to the court of common pleas and the appeal by the tenant shall operate as a supersedeas only if the tenant pays in cash or bond the amount of any

judgment rendered by the lower court or is a victim of domestic violence and pays, in cash, any rent which becomes due during the court of common pleas proceedings within ten days after the date each payment is due into an escrow account with the prothonotary or the supersedeas shall be summarily terminated.

Although the Supreme Court of Pennsylvania (“Court”) suspended Section 513(b) by entering a number of Orders, it never declared Section 513(b) unconstitutional. Eventually, the Court adopted Pa.R.C.P.M.D.J. No. 1081 which provides that Section 513(b) is suspended to the extent that it is inconsistent with the rules governing appellate proceedings with respect to judgment and other decisions of magisterial district judges in civil actions. The Court, however, did not elaborate on any such inconsistencies and did not suspend Section 513(b) as it applies to the Philadelphia Municipal Court or to the Courts of Common Pleas.

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 Act. The Committee agreed that Rule 1002 was in need of refinement, specifically (1) to clarify the appeal periods for all civil and landlord-tenant judgments and (2) to provide additional time to victims of domestic violence when a judgment arises out of a residential lease and contains an award of possession.

The Committee published proposed rules for public comment at Volume 42, Pennsylvania Bulletin, p. 7525 (42 Pa. B. 7525, December 15, 2012). Based on the analysis in *Luck Ent. LLC*, the Committee believed 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 proposed patterning the language of Rule 1002 more closely to Section 513 of the Act to reflect the available timeframes for appeal. Additionally, the Committee proposed 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.

In response to publication, the Committee received correspondence from the bench and bar. Much of the correspondence expressed concern that the proposed rules would create additional burdens on impoverished tenants by establishing the time

for all appeals from judgments arising out of residential leases at ten days. Many of the commenters pointed out that the Committee was not bound by Section 513 of the Act to the extent it conflicted with the Court's procedural rules.

Other correspondents wrote to commend the Committee for extending the appeal period for victims of domestic violence. Additionally, there were no objections to maintaining a thirty-day appeal period when the judgment concerned nonresidential leases or a ten-day appeal period when the judgment concerned only the right to use lawful process to recover possession of the property in the context of a residential lease.

The quandary that remains is the amount of time that tenants and landlords should have to take an appeal when the judgment provides for both money damages and the right to use lawful process to recover possession of the property, the matter involves a residential lease, and a victim of domestic violence is not involved.

The Committee gave careful consideration to the comments submitted by interested parties, and decided further analysis was needed to reach a final recommendation. The Committee recognizes that Section 513 of the Act has been suspended by the Court to the extent it is inconsistent with the rules.¹ Therefore, while the Committee is under no obligation to amend Rule 1002 to conform to Section 513, it may make recommendations to do so, and the Court could adopt rule changes to make the rule consistent with the statute. The Committee was also sensitive to the concerns raised by the public interest bar, taking note of the predicted hardships to poor litigants. Finally, the Committee recognized an interest in modifying the language of Rule 1002 to more closely follow that of Section 513, Pa.R.A.P. 903 and 42 Pa.C.S. § 5571. For example, the Committee proposes deleting references to "a party aggrieved by a judgment" in favor of focusing on the nature of the judgment, such as "an appeal from a judgment arising out of a residential lease."

After additional discussion and consideration of the prior comments, the Committee has arrived at two competing proposals and again seeks the comments of the bench and bar. The primary difference between the two proposals is that one proposal provides for a thirty-day appeal period in the context of a residential lease, not involving a victim of domestic violence, in which the judgment provides for both money damages and the right to use lawful process to recover possession of the property. The other proposal provides for a ten-day appeal period in such a situation.

¹ On March 28, 1996, the Court, in addition to approving proposed amendments to Rule 1002, also amended Rule 1081 to suspend Act 33 of 1995, insofar as it was inconsistent with the rules. Act 33 of 1995 provides for Section 513 of the Landlord and Tenant Act. The Court did not rule that Act 33 of 1995 was unconstitutional.

III. Proposed Rule Changes

Proposed Revision 1 is akin to the proposal as published in December 2012, and adheres to the timeframes established in Section 513 of the Act, bringing all appeals from judgments arising out of residential leases (except those involving domestic violence victims) within the ten (10) day period. Proposed Revision 2 differs only with respect to the situation in which a case arising out of a residential lease that does not involve a domestic violence victim results in a judgment providing for the use of legal process to regain possession and an award of money damages. Under Proposed Revision 1, the appeal period is ten (10) days. Under Proposed Revision 2, the appeal period is thirty (30) days.

In cases in which a judgment is entered that permits the landlord to use lawful process to recover possession of the property at issue and an award of money, the Committee continues to search for a fair and appropriate balance between the competing interests of landlords and residential tenants who are not victims of domestic violence. While the Committee favors the ten (10) day appeal period in Proposed Revision 1 as an appropriate and fair balance between the competing interests of landlords and tenants, it is taking the unusual step of submitting Proposed Revision 2 as a means of recognizing the prior comments of proponents for tenants' rights who favored a thirty (30) appeal period in that situation.

The Committee also proposes eliminating the phrase "aggrieved by a judgment" from Rule 1002. That language is not used in Section 513 of the Act, Pa.R.A.P. 903 or 42 Pa. C.S. § 5571. Additionally, the "aggrieved by" language is commonly used when discussing whether or not a party has standing to file an appeal and contributes to the existing ambiguity under present Rule 1002 as to the time within which to file an appeal under various scenarios.

Rather than the appeal period being viewed from the perspective of whether or not a party considered itself to be aggrieved by all or some of the relief provided by a judgment, the Committee agreed with the court in *Luck* that it would be clearer to identify the appeal time periods based on the nature of the underlying judgment. The Committee also examined Pa.R.A.P. 903, and followed the structure therein, utilizing a general rule and exception format.

In both proposals, the Committee suggests 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.

The chart below provides a schematic summary of the two proposals.

<u>Content of Judgment and Type of Action</u>	<u>Time for Appeal Under Proposal One</u>	<u>Time for Appeal Under Proposal Two</u>
I. <u>Actions for the Recovery of Possession of Real Property</u>		
A. Nonresidential lease	Thirty days	Thirty days
B. Residential lease – Only right to use of lawful process to recover possession of property and award of court costs	Ten days	Ten days
C. Residential lease – Only award of monetary damages and court costs	Thirty days	Thirty days
D. Residential lease – Both right to use lawful process to recover possession of property and award of monetary damages and court costs	Ten days	Thirty days
E. Residential lease – Regardless of the content of the judgment, when a victim of domestic violence is involved	Thirty days	Thirty days
II. <u>Civil Action</u>		
A. Award of money damages and court costs	Thirty days	Thirty days