

**SUPREME COURT OF PENNSYLVANIA
MINOR COURT RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

**Proposed Adoption of Pa.R.C.P.M.D.J. Nos. 302.1 and 302.2, and Proposed
Amendment of Pa.R.C.P.M.D.J. Nos. 314 and 1001**

The Minor Court Rules Committee is planning to propose to the Supreme Court of Pennsylvania the adoption of Pa.R.C.P.M.D.J. Nos. 302.1 and 302.2, as well as the amendment of Pa.R.C.P.M.D.J. Nos. 314 and 1001, governing dismissals and transfers of civil actions for lack of jurisdiction, for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being republished in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor be officially adopted by the Supreme Court.

Additions to the text of the proposal 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 May 5, 2015. 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,

Bradley K. Moss
Chair

REPORT

Proposed Adoption of Pa.R.C.P.M.D.J. Nos. 302.1 and 302.2, and Proposed Amendment of Pa.R.C.P.M.D.J. Nos. 314 and 1001

DISMISSALS AND TRANSFERS FOR LACK OF JURISDICTION

I. Introduction

The Minor Court Rules Committee (“Committee”) is planning to propose to the Supreme Court of Pennsylvania the adoption of Pa.R.C.P.M.D.J. Nos. Rules 302.1 and 302.2, as well as the amendment of Pa.R.C.P.M.D.J. Nos. 314 and 1001, governing dismissals and transfers of civil actions for lack of jurisdiction. The goal of the proposed new rules and amendments is to establish procedures when a case is brought in a magisterial district court, but the court is lacking either personal jurisdiction or subject matter jurisdiction.

II. Discussion

The Committee has been examining procedures related to withdrawals, settlements and dismissals of cases in the magisterial district courts.¹ In conducting its review, the Committee observed that the rules did not have procedures for addressing cases where the magisterial district court is lacking either personal jurisdiction over a party or subject matter jurisdiction. The Committee previously published proposed rules on this topic in the Pennsylvania Bulletin for public comment. See 44 Pa.B. 479 (January 25, 2014). After reviewing comments received in response to the publication, the Committee determined that further review and revision of the proposal was warranted.

With regard to personal jurisdiction, the Committee further revised proposed new Rule 302.1 to require that jurisdictional issues be raised at a hearing, and permitting such a hearing to be held for the limited purpose of contesting jurisdiction, without waiver of future defenses. The Committee also added definitions of venue and personal jurisdiction to the Official Note, as well as statutory citations to distinguish between personal jurisdiction over persons within and outside the Commonwealth. The Committee is concurrently seeking comments on a proposal that would rescind the rules governing writs of certiorari and making correlative rule changes.²

¹ The Supreme Court adopted a procedural rule pertaining to withdrawals and settlements. See Supreme Court of Pennsylvania Order No. 368, Magisterial Docket No. 1 (July 21, 2014); Pa.R.C.P.M.D.J. No. 320.

² Any final recommendation to the Court on this matter will conform to the current status of the rescission of certiorari proposal.

Currently, jurisdictional challenges are addressed by seeking a writ of certiorari. Because the Committee plans to ultimately recommend the rescission of the certiorari rules, proposed new Rule 302.1 does not identify certiorari as the vehicle for review of a magisterial district court decision on personal jurisdiction; rather, the Official Note to proposed new Rule 302.1 identifies an appeal as the method for challenging a dismissal made on the grounds of personal jurisdiction.

With regard to subject matter jurisdiction, the Committee further revised the Official Note to proposed new Rule 302.2 to distinguish the statutorily established subject matter jurisdiction of magisterial district courts from venue.

Because proposed new Rule 302.1 now provides for a limited purpose hearing for contesting personal jurisdiction determinations, the Committee proposes amending Rule 314C to provide for an exception to the general rule that “appearance of a defendant in person or by representative...shall be deemed a waiver of any defect in service.” See Rule 314C. Additionally, the Committee proposes amending the definition of “judgment” in Rule 1001 to include a dismissal made pursuant to proposed new Rule 302.1. As the Committee is planning to propose the rescission of the rules governing writs of certiorari, adding dismissals pursuant to proposed new Rule 302.1 to the definition of a judgment will permit such dismissals to be challenged via appeals.

III. Proposed Rule Changes

Proposed Rule 302.1A provides that a magisterial district judge may dismiss a complaint for lack of personal jurisdiction. Proposed Rule 302.1B provides for a hearing for the limited purpose of contesting personal jurisdiction, and establishes that such a hearing will not constitute a waiver of the right to raise any defense, such as jurisdiction or venue. Proposed Rule 302.1C provides that the magisterial district judge shall issue written notice of the dismissal. The Official Note provides that jurisdictional issues must be raised at a hearing. The Official Note also sets forth the statutory authority for establishing personal jurisdiction, on persons inside and outside the Commonwealth, as well as distinguishing personal jurisdiction from venue. Finally, the Official Note advises that an appeal is the method for challenging a dismissal made on the grounds of personal jurisdiction.

Proposed Rule 302.2 is derived in part from 42 Pa.C.S. § 5103(a) and Pa.R.C.P. No. 213(f). The proposed new rule provides for the transfer of actions for lack of subject matter jurisdiction, and notes that there may be additional costs to the plaintiff when a case is transferred, including, but not limited to, service costs. The Official Note to proposed new Rule 302.2 distinguishes subject matter jurisdiction from venue.

The proposed amendment to Rule 314C addresses the limited purpose hearing authorized by proposed Rule 302.1B. It provides that such limited purpose hearings are exempt from the general provision that “the appearance of a defendant in person or by

representative or the filing by the defendant of a claim in the case shall be deemed a waiver of any defect in service but not a waiver of a defect in venue.” See Rule 314C.

Finally, the proposed amendment to the definition of “judgment” in Rule 1001 would include a dismissal rendered by a magisterial district judge pursuant to Rule 302.1, as well as amend the Official Note to explain that the Rule 302.1 dismissal is due to lack of personal jurisdiction.