

# The Greene Reports

Official Legal Publication for Greene County, Pennsylvania  
Owned and operated by Greene County Bar Association  
Greene County Courthouse, Waynesburg, PA 15370

**Vol. XXXVIII, No. 51**

**July 13, 2023**

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Serving the Legal Community of Greene County  
Since October 1982

# The Greene Reports

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**COURT OF COMMON PLEAS**  
Honorable Louis Dayich, President Judge  
Honorable Jeffry N. Grimes, Judge

## MOTIONS

Criminal & Civil & O.C.:  
July 17 and 19, 2023

## CRIMINAL

Arraignments: July 17, 2023  
ARDs: August 9, 2023  
ARD Revocations: August 9, 2023  
Parole Violations: July 17, 2023  
Plea Court: August 8-10, 2023  
License Suspension Appeals: August 15, 2023  
Argument Court: July 19, 2023

## ORPHANS

Accounts Nisi: July 3, 2023  
Accounts Absolute: July 13, 2023

**SUPREME COURT**  
**SUPERIOR COURT**  
**COMMONWEALTH COURT**

Convenes in Pgh.: October 16-20, 2023  
Convenes in Pgh.: August 14-18, 2023  
Convenes in Pgh.: October 10-13, 2023

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## THE GREENE REPORTS

Owned and published by the GREENE COUNTY BAR ASSOCIATION  
Editor: Kayla M. Sammons  
E-mail address: [editor.greenerreports@yahoo.com](mailto:editor.greenerreports@yahoo.com)

## EDITORIAL POLICY

All articles published in The Greene Reports are intended to inform, educate or amuse. Any article deemed by the editorial staff to be reasonably interpreted as offensive, demeaning or insulting to any individual or group will not be published.

The views expressed in the articles represent the views of the author and are not necessarily the views of The Greene Reports or the Greene County Bar Association.

The Greene Reports welcomes letters to the Editor both for publication and otherwise. All letters should be addressed to: Editor, The Greene Reports, Greene County Courthouse, 10 East High Street, Waynesburg, PA 15370. Letters must include signature, address and telephone number. Anonymous correspondence will not be published. All letters for publication are subject to editing and, upon submission, become the property of The Greene Reports.

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## THE GREENE COUNTY BAR ASSOCIATION

Christopher M. Simms, President  
Timothy M. Ross, Vice-President  
Allen J. Koslovsky, Secretary  
Lukas B. Gatten, Treasurer  
Jessica L. Phillips, Ex-Officio

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# The Greene Reports

-----7/13/23-----3

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## DEED TRANSFERS

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The following property transfers have been recorded in the Greene County Recorder of Deeds office.

### ALEPPO AND JACKSON TOWNSHIPS

Adam Campbell to Susan Knisely, 132.843 Acres, Und 1/12 Interest, \$15,000.00 (7-6-23)

### CUMBERLAND TOWNSHIP

Marianne E. Brewer to William H. Lowden, et ux., 3 Lots, \$284,000.00 (7-5-23)  
FNB OREO LLC to Equity Point Real Estate LLC, Lots 11-12, Hartley Plan, \$31,500.00 (7-6-23)

Joseph W. Watson, et ux., to Ben Kurtis Knecht, Lots 8-9, Woods View Plan, \$165,000.00 (7-6-23)

### DUNKARD TOWNSHIP

Huntington National Bank to Carl O. Wise, et ux., 1.993 Acres, \$33,000.00 (7-5-23)

### FRANKLN TOWNSHIP

Byron D. Howell to Steven A. George, et ux., 3.582 Acres, \$345,000.00 (7-6-23)

### GILMORE, JACKSON, AND WAYNE TOWNSHIPS

Judy Stanley a/k/a Judy Stanley Myler to Three Rivers Royalty III LLC, 10 Tracts, O&G, \$24,316.50 (7-11-23)

### GREENE TOWNSHIP

Joshua Czemerd, et ux., to Gregory Allen Traynor, et al., Tract, \$140,000.00 (7-10-23)

### GREENE AND DUNKARD TOWNSHIPS

Jan S. Cox to Noel Scott Hoffman, et ux., 2 Tracts, \$400,000.00 (7-7-23)

### MONONGAHELA TOWNSHIP

Rose Emma Kendralla Estate a/k/a Rose E. Kendralla Estate a/k/a Rose Kendralla Estate a/k/a Rose Kendrella Estate, et al., to Bobbi Jo Durbin, et al., 4 Tracts, \$150,000.00 (7-7-23)

### MORRIS TOWNSHIP

Stanley C. Bennett, et ux., to Consol Pennsylvania Coal Company LLC, et ux., 28.918 Acres, \$400,000.00 (7-11-23)

### PERRY TOWNSHIP

Max G. Loughman, et ux., to Three Rivers Royalty III LLC, et ux., 52 Acres, O&G, \$4,122.57 (7-6-23)

John J. Loughman to Three Rivers Royalty III LLC, et ux., 52 Acres, O&G, \$4,122.57 (7-6-23)  
Ryan A. Toothman a/k/a Ryan Toothman, et ux., to Toothman Real Estate Holdings LLC, 4 Tracts, \$206,864.40 (7-11-23)

### SPRINGHILL TOWNSHIP

Raymond H. Riggs to Daniel R. Rohland, 1.570 Acres, \$30,547.20 (7-5-23)

### WAYNEBURG BOROUGH

Matthew Jay Stewart, et ux., to Rolling Meadows Real Estate Development LLC, 2 Tracts, \$20,000.00 (7-6-23)

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ESTATE NOTICES

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NOTICE is hereby given of the grant of letters by the Register of Wills to the Estates of the following named decedents. All persons having claims are requested to make known the same and all persons indebted to the decedent are requested to make payment to the personal representative or his attorney without delay.

SECOND PUBLICATION

BRUMAGE, EILEEN

Late of Franklin Township, Greene County, Pennsylvania
Executor: Robert L. Beabout, 30 Crabapple Drive, Waynesburg, PA 15370
Attorney: Lukas B. Gatten, Esquire, Logan & Gatten Law Offices, 54 North Richhill Street, Waynesburg, PA 15370

COLEMAN, CYNTHIA S.

Late of Cumberland Township, Greene County, Pennsylvania
Administratrix: Michele Lee Cook, 102 Ridge Avenue, Rices Landing, PA 15357
Attorney: John R. Headley, Esquire, 76 North Richhill Street, Waynesburg, PA 15370

DEAN, DIANNE

Late of Rices Landing Borough, Greene County, Pennsylvania
Executrix: Cassie Rush, 873 Lone Pine Road, Amity, PA 15311
Attorney: Lukas B. Gatten, Esquire, Logan & Gatten Law Offices, 54 North Richhill Street, Waynesburg, PA 15370

FINNEGAN, MARY RUTH

Late of Aleppo Township, Greene County, Pennsylvania
Executor: Robbie L. Finnegan, 498 Crabapple Road, Waynesburg, PA 15370
Attorney: Timothy N. Logan, Esquire, Logan & Gatten Law Offices, 54 North Richhill Street, Waynesburg, PA 15370

KELLEY, HAROLD O.

Late of Cumberland Township, Greene County, Pennsylvania
Executor: David W. Staggers, 153 Reynolds Road, Jefferson, PA 15344
Attorney: Timothy N. Logan, Esquire, Logan & Gatten Law Offices, 54 North Richhill Street, Waynesburg, PA 15370

PRATT, LARRY DALE

Late of Cumberland Township, Greene County, Pennsylvania
Executrix: Judy Hamilton, 195 Haines Road, Carmichaels, PA 15320
Attorney: Timothy N. Logan, Esquire, Logan & Gatten Law Offices, 54 North Richhill Street, Waynesburg, PA 15370

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LEGAL NOTICE

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CIVIL ACTION
COURT OF COMMON PLEAS
GREENE COUNTY, PA
CIVIL ACTION-LAW
NO. AD-624-2022
NOTICE OF ACTION IN MORTGAGE FORECLOSURE

NATIONSTAR MORTGAGE LLC, Plaintiff

v.
KENNETH A. GUTHRIE, IN HIS CAPACITY AS HEIR OF ALICE A. GUTHRIE AKA ALICE ANN GUTHRIE; ET AL., Defendants

To: UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS, CLAIMING RIGHT, TITLE, OR INTEREST FROM OR UNDER GRETCHEN I. GUTHRIE, DECEASED HEIR OF ALICE A. GUTHRIE AKA ALICE ANN GUTHRIE; UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS, CLAIMING RIGHT, TITLE, OR INTEREST FROM OR UNDER ALICE A. GUTHRIE AKA ALICE ANN GUTHRIE Defendants, 147 CARMICHAELS STREET, RICES LANDING, PA 15357

COMPLAINT IN MORTGAGE FORECLOSURE

You are hereby notified that Plaintiff, NATIONSTAR MORTGAGE LLC, has filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of GREENE County, PA docketed to No. AD-624-2022, seeking to foreclose the mortgage secured on your property located, 147 CARMICHAELS STREET, RICES LANDING, PA 15357.

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in this notice you must take action within twenty (20) days after the Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH THE INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

District Court Administrator
Greene County Courthouse
10 E. High Street, Suite 218

Waynesburg PA 15370  
(724) 852-5237

Southwestern Pennsylvania Legal Aid Society  
63 S. Washington Street  
Waynesburg, PA 15370  
(724) 627-3127  
Robertson, Anschutz, Schneid, Crane & Partners, PLLC  
A Florida professional limited liability company  
ATTORNEYS FOR PLAINTIFF  
Jonathan M. Etkowicz, Esq. ID No. 208786  
133 Gaither Drive, Suite F  
Mt. Laurel, NJ 08054  
855-225-6906

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**LEGAL NOTICE**  
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IN THE COURT OF COMMON PLEAS OF GREENE COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

Redevelopment Authority of the )  
County of Greene )  
)  
v. ) No. AD-387-2023  
)  
Cortney Ann Flynn Miller )

**IMPORTANT NOTICE**

TO: Cortney Ann Flynn Miller

TAKE NOTICE that the above-identified Plaintiff has filed a Complaint in Action to Quiet Title against you at the above number and term averring that the Plaintiff is the sole owner of:

ALL that certain lot or piece of ground situate in Dunkard Township, Greene County, Pennsylvania, having an address of 333 Steele Hill Road, known as Parcel 06-03-138B.

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the Complaint, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a

judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

COURT ADMINISTRATOR - LAW LIBRARY  
GREENE COUNTY COURTHOUSE  
10 EAST HIGH STREET  
WAYNESBURG, PA 15370  
PHONE: (724) 852-5237

SOUTHWESTERN PENNSYLVANIA LEGAL AID SOCIETY  
63 SOUTH WASHINGTON STREET  
WAYNESBURG, PA 15370  
PHONE: (724) 627-3127

The Court ordered that this Notice be served upon you by publication.

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**SHERIFF'S SALE**  
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**By Virtue of a Writ of Execution (Mortgage Foreclosure)**  
**No. ED-22-2023 AD-572-2022**

Issued out of the Court of Common Pleas of Greene County, Pennsylvania and to me directed, I will expose the following described property at public sale at the Greene County Courthouse in the City of Waynesburg, County of Greene, Commonwealth of Pennsylvania on:

**FRIDAY, JULY 28, 2023**  
**AT 10:00 O'CLOCK A.M.**

All parties in interest and claimants are further notified that a proposed schedule of distribution will be on file in the Sheriff's Office no later than twenty (20) days after the date of the sale of any property sold hereunder, and distribution of the proceeds will be made in accordance with the schedule ten (10) days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

All that certain piece or parcel or Tract of land situate in Cumberland Township, Greene County, Pennsylvania, and being known as 12 Biddle Acres, Carmichaels, Pennsylvania 15320.

PARCEL #: 05/19/406

THE IMPROVEMENTS THEREON ARE: Residential Dwelling

REAL DEBT: \$28,809.51  
SEIZED AND TAKEN IN EXECUTION AS THE PROPERTY OF: Mary Rankin

McCabe, Welsberg & Conway, LLC  
1420 Walnut Street, Suite 1502  
Philadelphia, PA 19102

PROPERTY ADDRESS: 12 Biddle Acres, Carmichaels, PA 15320  
UPI/TAX PARCEL NUMBER: 05/19/406

Seized and taken into execution to be sold as the property of MARY V. RANKIN,  
OCCUPANT in suit of BANK OF AMERICA, N.A..

Attorney for the Plaintiff:  
McCabe, Weisberg & Conway, LLC  
Philadelphia, PA 215-790-1010

MARCUS N. SIMMS, Sheriff  
Greene County, Pennsylvania

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SUPREME COURT NOTICE

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SUPREME COURT OF PENNSYLVANIA  
Minor Court Rules Committee

NOTICE OF PROPOSED RULEMAKING

**Proposed Amendment of Pa.R.Civ.P.M.D.J. 209  
and Adoption of Pa.R.Civ.P.M.D.J. 504.1**

The Minor Court Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.Civ.P.M.D.J. 209 and adoption of Pa.R.Civ.P.M.D.J. 504.1. The proposal provides for the promulgation of local rules governing mediation in residential landlord-tenant actions 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 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:

**Pamela S. Walker, Counsel  
Minor Court Rules Committee  
Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
PO Box 62635  
Harrisburg, PA 17106-2635  
FAX: 717-231-9546**

[minorrules@pacourts.us](mailto:minorrules@pacourts.us)

All communications in reference to the proposal should be received by **September 12, 2023**. 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 Daniel E. Butler, Chair

**Rule 209. Continuances and Stays.**

**[A.](a)** Continuances may be granted for cause or by agreement.

**[B.](b)** Continuances shall be to a specific time and date. The magisterial district judge shall note continuances on the docket and shall promptly give or mail to the parties written notice of continuances.

**[C.](c)** Except for good cause shown[, or agreement of the parties:

- (1) not more than one continuance shall be granted to each party, and
- (2) the aggregate of all continuances shall not extend the date of the

hearing:

**[(a)](i)** beyond 90 days from the date of filing the plaintiff’s complaint in proceedings commenced pursuant to Rule 303, or

**[(b)](ii)** beyond 30 days from the date of filing the landlord’s complaint in proceedings commenced pursuant to Rule 502, including in mediation authorized by local rule.

**[D.](d)** In all proceedings governed by these rules, the following shall constitute cause for granting a continuance:

(1) the scheduling of a party’s attorney of record to appear at any proceeding under the Pennsylvania Rules of Disciplinary Enforcement, whether

**[(a)](i)** as counsel for a respondent-attorney before a hearing committee, special master, the Disciplinary Board, or the Supreme Court;

**[(b)](ii)** as a special master or member of a hearing committee; or

**[(c)](iii)** as a member of the Disciplinary Board.

(2) the scheduling of a party’s attorney of record to appear at any proceeding involving the discipline of a justice, judge, or magisterial district judge under Section 18 of Article V of the Constitution of Pennsylvania, whether

**[(a)](i)** as counsel for a justice, judge, or magisterial district judge before the special tribunal provided for in 42 Pa.C.S. § 727, the Court of Judicial Discipline, the Judicial Conduct Board, or any hearing committee or other arm of the Judicial Conduct Board; or

**[(b)](ii)** as a member of the Court of Judicial Discipline, the Judicial Conduct Board, or any hearing committee or other arm of the Judicial Conduct Board.

**[E.](e)** Continuances and stays shall be granted in compliance with federal or state law, such as the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*

**[Official Note] Comment:** This rule was amended in 2005 to consolidate the provisions of former Rules 320 (relating to continuances in civil actions) and 511 (relating to continuances in possessory actions) into one general rule governing continuances. The limitations set forth in subdivision **[C](c)** are intended to ensure that these cases proceed expeditiously. The grounds set forth in **[subdivisions D and E] subdivisions (d) and (e) [of course]**, are not intended to be the only grounds on which a continuance will be granted.

**Subdivision (c)(2)(ii) clarifies that participation in a landlord-tenant mediation program authorized by local rule will not entitle a party to a continuance beyond 30 days from the date the plaintiff filed the complaint unless there has been good cause shown or agreement by the parties. See Pa.R.Civ.P.M.D.J. 504.1 pertaining to landlord-tenant mediation programs authorized by local rule.**

– The following text is entirely new –

Rule 504.1 Mediation.

(a) The court of common pleas may promulgate a local rule of procedure pursuant to Pa.R.J.A. 103(d) permitting mediation of residential landlord-tenant actions filed pursuant to Rule 503.

(b) A local rule promulgated pursuant to this rule shall not require mediation as a precondition to filing a complaint.

**Comment:** As used in this rule, mediation means a process, however labeled, by which a neutral third party assists the parties in attempting to reach a mutually acceptable agreement on issues arising out of a residential landlord-tenant action.

The requirements for the promulgation and amendment of local procedural rules are set forth in Pa.R.J.A. 103(d).

A local rule may address aspects of a mediation program including, but not limited to, whether initial participation in mediation is voluntary or mandatory, types of landlord-tenant actions subject to mediation, i.e., nonpayment of rent, end of lease terms, or breach of conditions of the lease, and entities assisting with mediation or rental assistance programs. See also Pa.R.Civ.P.M.D.J. 209(c)(2)(ii) pertaining to continuances.

This rule does not require a judicial district to create, fund, or staff a mediation program.

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

**PUBLICATION REPORT**

**Proposed Amendment of Pa.R.Civ.P.M.D.J. 209 and  
Adoption of Pa.R.Civ.P.M.D.J. 504.1**

The Minor Court Rules Committee (“Committee”) is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.Civ.P.M.D.J. 209 and the adoption of Pa.R.Civ.P.M.D.J. 504.1 providing for local rules governing mediation in residential landlord-tenant actions in magisterial district courts.

**Background**

The Committee was first asked to consider developing rules to facilitate eviction diversion programs in 2021. Housing advocates suggested the Committee should consider making rule recommendations that would support local eviction diversion/mediation programs and encourage informal settlement of landlord-tenant disputes by, e.g., requiring or encouraging landlords to seek mediation prior to the filing of an eviction complaint.

In support of local rulemaking, the Committee was informed that court programs across the Commonwealth were encouraging landlords and tenants to resolve their differences prior to the entry of a judgment for possession. The rationale for developing informal resolution procedures for landlord-tenant disputes is that it could remove the stigma on tenants of an eviction judgment when seeking new housing, serving the interest of judicial economy by diverting cases to mediation programs, and addressing a then-anticipated increase in landlord-

tenant cases following expiration of COVID-related eviction moratoria. Housing advocates favored local rulemaking, observing that such a change would enable local communities to maximize the impact of resources created to support tenants with rental assistance, aid landlords in actually recouping missed rental income, and ease strain on already over-burdened emergency resources.

Allegheny and Philadelphia Counties both developed landlord-tenant diversion programs. In Allegheny County, such programs operated in Allegheny County during 2020 and 2021 pursuant to orders issued during the judicial emergency. See, e.g., Order of August 6, 2021, No. 23 WM 2020. Representatives from the Allegheny County Department of Human Services attended landlord-tenant hearings and distributed information about emergency rental assistance funds to landlords and tenants. It is the Committee’s understanding that magisterial district judges continued cases as necessary to accommodate disbursement of emergency funds.

The Philadelphia Municipal Court (“PMC”) has an existing form of mediation, “judgment by agreement,” available in civil and landlord-tenant matters. In summary, a judgment by agreement is a judgment entered into by the parties after negotiation or mediation at the time of trial. In addition to judgment by agreement, both PMC and Philadelphia city government took steps to require parties to participate in eviction diversion programs. Following the expiration of the federal moratorium, PMC sought, and the Court granted, interim orders extending the PMC Landlord-Tenant Diversion Program through December 31, 2021. See Orders of July 2, 2021, August 16, 2021, October 28, 2021, and November 15, 2021, No. 21 EM 2020. Philadelphia City Council later passed, and the mayor signed, an ordinance requiring a landlord to participate in the eviction diversion program for at least 45 days prior to filing an eviction complaint. See Phil. Code § 9-811. The ordinance was originally effective through December 31, 2022 but was later extended through June 30, 2024. Under the amended ordinance, landlord participation in the program is required for at least 30 days, down from 45 days.

Housing advocates also cited pilot programs in other judicial districts intended to refer willing parties to mediation through outside agencies, such as the United Way and other non-profits. While outside the scope of mediation programs, other programs provided tenants with legal representation in possessory actions.

**Discussion**

Initially, the Committee discussed whether a statewide rule permitting mediation of landlord-tenant actions required enabling legislation. The Committee first reviewed the voluntary mediation rules contained in Pa.R.Civ.P. 1940.1–9 governing child custody actions. Those rules were authorized by 23 Pa.C.S. § 3901(a) (“A court may establish a mediation program for actions brought under this part or Chapter 53 (relating to custody)”). However, mediation in Commonwealth Court pursuant to 210 Pa. Code § 69.501 does not appear to have statutory underpinning.

The Committee was also informed by the relatively recent Pennsylvania Rule of Orphans’ Court Procedure 1.6 that authorizes mediation by local rule. See Pa.R.O.C.P. 1.6 (“All parties having an interest in a matter may participate by written agreement, or the court by local rule or order in a particular matter may provide for the parties to participate, in private mediation or in court-supervised mediation.”). That rule, effective September 1, 2016, was adopted without enabling legislation and has resulted in the promulgation of local mediation rules in several judicial districts.

Accordingly, the Committee was of the opinion that the Court may authorize, by procedural rule, the use of mediation following the commencement of a landlord-tenant action. Yet, the Committee acknowledges that this authority may not be exclusive to the Court. Notwithstanding the lack of a statute, Philadelphia turned to its local government authority to

enact ordinances requiring mediation efforts between the parties in landlord-tenant proceedings. The Committee invites further comments on the need for statutory authority for court-based authorized programs or perceived impact on existing statutes.

Preliminarily, the concept of informal resolution is not foreign in magisterial district courts. Judges, in their neutral capacity, often solicit the parties' positions and attempt to facilitate settlement prior to a hearing. The courtroom may be the first opportunity for the parties to calmly meet and discuss after a complaint has been filed. A difference between a settlement conference and mediation is the facilitator. The use of a mediator permits ex parte communications with the mediator, unlike communications with a magisterial district judge. Further, successful mediation often will produce agreements that conditionally postpone eviction proceedings provided that the terms are met. Indeed, the "pay and stay" concept is not new to landlord-tenant actions. See Pa.R.Civ.P.M.D.J. 518 (Satisfaction of Order by Payment of Rent and Costs).

The potential merits of mediation reported to the Committee are that it generally results in fewer evictions, which reduces homelessness and trauma, terminates litigation without judicial intervention, preserves judicial resources, and avoids eviction judgements, which can be a barrier for tenants when applying for future leases. Moreover, mediation can provide an opportunity for tenants to access resources to either maintain their current housing or ease transition to new housing. Other merits have been suggested, such as faster results through mediation than through the judicial process, savings of further court costs attributed to posting and forceful eviction, and preservation of a harmonious relationship between parties. However, while these benefits may be realized in certain instances, the Committee is not persuaded that the benefits accrue in all circumstances. It waits to be seen whether merits of mediation can be sustained long term, i.e., whether an eviction deferral results in a lasting reprieve or merely delays possession.

Members agreed that a successful mediation program is often contingent on the knowledge, experience, and expertise of the mediators, which necessarily raises the issue of resources. The Committee invites further comments on the need for minimum qualifications of mediators and whether such minimum qualifications should be established by statewide or local rule.

The Committee is mindful that the costs of any a mediation program cannot be imposed on judicial districts as an unfunded mandate. It is anticipated that successful mediation programs must be funded in whole or in part by non-judicial entities and not the courts. Whether a portion of the filing fee for the complaint may be used to fund a mediation program is beyond the scope of this proposal.

Related to the cost of mediation programs, an additional factor is the availability of third-party resources to offset rent arrears when nonpayment is the basis for eviction. This factor can be significant to obtain landlord participation and commitment to the mediation process.

The Committee discussed potential concerns of landlords if mediation is viewed as merely delaying possession. Of course, this scenario presumes that mediation will not or did not result in a mutually satisfactory agreement. The countervailing view is that successful mediation will result in a benefit to landlords, such as payment of arrearages. However, there may be situations when a landlord seeks possession rather than arrears or reformed conduct, e.g., the tenant refuses to vacate following the expiration of term. These discussions focused on whether initial participation in mediation should be mandatory or voluntary. One view was that, if mediation was mutually beneficial to all parties, participation would not have been mandated. Another view was that parties lack knowledge about mediation and the most effective means of education is through mandatory participation. Moreover, judicial districts, through local rules,

could identify which bases for eviction are subject to mediation. See 68 P.S. § 250.501(a) (setting forth circumstances for repossession: "(1) Upon the termination of a term of the tenant, (2) or upon forfeiture of the lease for breach of its conditions, (3) or upon the failure of the tenant, upon demand, to satisfy any rent reserved and due."). The Committee invites comments on whether courts of common pleas should have the discretion to make initial participation in mediation mandatory.

**Proposed Rules**

The Committee has developed amendments to Rule 209 (Continuances) and a new Rule 504.1 (Mediation) to authorize the promulgation of local rules governing mediation in residential landlord-tenant actions. Proposed Rule 504.1(a) delegates procedural responsibility to individual judicial districts via local rulemaking. This approach is intended to provide maximum flexibility so mediation programs can be designed and implemented based upon local resources and need. Additionally, the non-specific statewide rule would have minimal impact on existing programs in operation.

Subdivision (b) requires the filing of a complaint prior to mediation. This action was considered necessary to subject the parties to the court's jurisdiction and any requirement for mediation. A prefiling mediation requirement operates as a barrier for an aggrieved party to access the courts. The Committee believed that any prefiling requirement should be a matter of public policy reserved for a legislative body rather than one of procedure by the judiciary.

The commentary accompanying proposed Rule 504.1 emphasizes that mediation should involve a neutral third party. This language is intended to address concerns that mediation programs may be tilted in favor of either the tenant or landlord.

A key concern relating to mediation is the potential for conflict with Rule 209 (Continuances). Current Rule 209C provides that, except for good cause shown, the aggregate of all continuances in landlord-tenant matters shall not extend beyond 30 days from the date of filing the landlord-tenant complaint. The Committee agrees it would be prudent to reflect explicitly that continuances may extend beyond current limits when agreed to by the parties. See proposed Pa.R.Civ.P.M.D.J. 209(c). The Committee also proposes limiting mediation beyond 30 days except by agreement of the parties. See proposed Pa.R.Civ.P.M.D.J. 209(c)(2)(ii). Therefore, mediation by local rule will not unduly postpone the hearing if not agreed to by the parties.

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

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**SUPREME COURT NOTICE**

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**SUPREME COURT OF PENNSYLVANIA  
CRIMINAL PROCEDURAL RULES COMMITTEE**

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.Crim.P. 462 and 1010**

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the proposed amendment of Pa.R.Crim.P. 462 (Trial *De Novo*) and 1010 (Procedures for Trial *De Novo*) 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 indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be 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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**Criminal Procedural Rules Committee**  
**Supreme Court of Pennsylvania**  
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All communications in reference to the proposal should be received by **August 21, 2023**. 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 Criminal Procedural Rules Committee,  
 Stefanie J. Salavantis  
 Chair

**Rule 462. Trial De Novo.**

[(A)](a) When a defendant appeals after the entry of a guilty plea or a conviction by an issuing authority in any summary proceeding, upon the filing of the transcript and other papers by the issuing authority, the case shall be heard *de novo* by the judge of the court of common pleas sitting without a jury.

[(B)](b) The attorney for the Commonwealth may appear and assume charge of the prosecution. When the violation of an ordinance of a municipality is charged, an attorney representing that municipality, with the consent of the attorney for the Commonwealth, may appear and assume charge of the prosecution. When no attorney appears on behalf of the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.

[(C)](c) In appeals from summary proceedings arising under the Vehicle Code or local traffic ordinances, other than parking offenses, the law enforcement officer who observed the alleged offense **[must]shall** appear and testify. The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

- (1) the defendant waives the presence of the law enforcement officer in open court on the record;
- (2) the defendant waives the presence of the law enforcement officer by filing a written waiver signed by the defendant and defense counsel, or the defendant if **[proceeding pro se]self-represented**, with the clerk of courts; or
- (3) the trial judge determines that good cause exists for the law enforcement officer's unavailability and grants a continuance.

[(D)](d) If the defendant fails to appear, the trial judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.

[(E)](e) If the defendant withdraws the appeal, the trial judge shall enter judgment in the court of common pleas on the judgment of the issuing authority.

[(F)](f) If the defendant has petitioned the trial judge to permit the taking of an appeal *nunc pro tunc* and **[this]the** petition is denied, the trial judge shall enter judgment in the court of common pleas on the judgment of the issuing authority.

[(G)](g) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial, or, in cases in which the defendant may be sentenced to intermediate punishment, the trial judge may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment.

[(H)](h) At the time of sentencing, the trial judge shall:

- (1) if the defendant's sentence includes restitution, a fine, or costs, state:

[(a)](i) the amount of the fine and the obligation to pay costs;

[(b)](ii) the amount of restitution ordered, including

[(i)](A) the identity of the payee(s),

[(ii)](B) to whom the restitution payment shall be made,

and

[(iii)](C) whether any restitution has been paid and in what amount; and

[(c)](iii) the date on which payment is due.

If the defendant is without the financial means to pay the amount in a single remittance, the trial judge may provide for installment payments and shall state the date on which each installment is due;

(2) advise the defendant of the right to appeal to the Superior Court within 30 days of the imposition of sentence, and that, if an appeal is filed, the execution of sentence **[will]shall** be stayed and the trial judge may set bail;

(3) If a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(4) issue a written order imposing sentence, signed by the trial judge. The order shall include the information specified in **[paragraphs (H)(1) through (H)(3)]subdivisions (h)(1) through (h)(3)**, and a copy of the order shall be given to the defendant.

[(I)](i) After sentence is imposed by the trial judge, the case shall remain in the court of common pleas for the execution of sentence, including the collection of any fine and restitution, and for the collection of any costs.

**(j) Suppression Motion.**

**(1) A motion to suppress evidence shall be made in the first instance in the court of common pleas on appeal from a summary conviction.**

**(2) The motion shall comply with subdivisions (C) through (J) of Rule 581 and shall be filed with the clerk of courts within 30 days of the filing of the notice of appeal.**

**Comment:** This rule is derived from former Rule 86(G) and former Rule 1117(c).

**[that the]a** defendant may file an appeal for a trial *de novo* following the entry of a guilty plea. "Entry," as used in **[paragraph (A) of this rule]subdivision (a)**, means the date on which the issuing authority enters or records the guilty plea, the conviction, or other order in the magisterial district judge computer system.

The procedures for conducting the trial *de novo* in the court of common pleas set forth in **[paragraphs (B), (G), and (H)]subdivisions (b), (g), and (h)** are comparable to the summary case trial procedures in Rule 454 (Trial in Summary Cases).



Pursuant to **[paragraph (B)]subdivision (b)**, the decision whether to appear and assume control of the prosecution of the trial *de novo* is solely within the discretion of the attorney for the Commonwealth. When no attorney appears at the trial *de novo* on behalf of the Commonwealth or a municipality, the trial judge may ask questions of any witness who testifies, and the affiant may request the trial judge to ask specific questions. In the appropriate circumstances, the trial judge also may permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the trial judge.

**[The provisions of paragraph (C) that permit the court to continue the case if there is good cause for the officer's unavailability were added in response to *Commonwealth v. Hightower*, 652 A.2d 873 (Pa. Super. 1995).**

**Paragraph (D) makes it clear that the trial judge may dismiss a summary case appeal when the judge determines that the defendant is absent without cause from the trial *de novo*. If the appeal is dismissed, the trial judge should enter judgment and order execution of any sentence imposed by the issuing authority.]**

**[New paragraph (F) was added in 2017 to clarify]Subdivision (f) clarifies** that in a case in which a defendant seeks to file an appeal *nunc pro tunc*, and the common pleas judge denies that petition, the case will remain at the court of common pleas. This is consistent with the long-standing policy under the rules that once a case has moved from the minor judiciary to the court of common pleas, the case remains at common pleas.

**[Paragraph (G) was amended in 2008 to permit]Subdivision (g) permits** a trial judge to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. §1543(b) (driving while license is under a DUI-related suspension), but only if **[he or she]the defendant** meets certain eligibility requirements, such as undergoing a drug and alcohol assessment. Potentially this information may not be available to the trial judge following a trial *de novo* at the time of sentencing.

Pursuant to **[paragraph (H)]subdivision (h)**, if the defendant is convicted, the trial judge **[must]shall** impose sentence, and advise the defendant of the payment schedule, if any, and the defendant's appeal rights. See Rule 704(A)(3) and Rule 720(D). No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002)[,]; *Scott v. Illinois*, 440 U.S. 367 (1979)[, and ];  
*Argersinger v. Hamlin*, 407 U.S. 25 (1972).

Certain costs are mandatory and must be imposed. See, e.g., **[Section 1101 of the Crime Victims Act,]**18 P.S. § 11.1101.

Once sentence is imposed, **[paragraph (I)]subdivision (i)** makes it clear that the case is to remain in the court of common pleas for execution of the sentence and collection of any costs, and the case may not be returned to the magisterial district judge. The execution of sentence includes the collection of any fines and restitution.

**Pursuant to subdivision (j), motions to suppress evidence are not to be made before the issuing authority at a summary trial but are to be filed with the clerk of courts no later than 30 days after a notice of appeal has been filed pursuant to Rule 460.**

For the procedure to dismiss upon satisfaction or by agreement a summary case, as defined in Rule 103, that has been appealed to the court of common pleas, see Rule 463.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

For the procedures for appeals from the Philadelphia Municipal Court Traffic Division, see Rule 1037.

**[NOTE: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates**

extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1, 2000, effective April 1, 2001, and paragraph (G) replaced by Rule 462. New Rule 462 adopted March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; amended February 28, 2003, effective July 1, 2003; Comment revised March 26, 2004, effective July 1, 2004; amended January 18, 2007, effective August 1, 2007; amended December 16, 2008, effective February 1, 2009; Comment revised October 16, 2009, effective February 1, 2010; Comment revised May 7, 2014, effective immediately; amended March 9, 2016, effective July 1, 2016; amended December 29, 2017, effective April 1, 2018; Comment revised January 27, 2021, effective June 1, 2021.

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#### COMMITTEE EXPLANATORY REPORTS:

##### FORMER RULE 86:

*Final Report explaining the March 22, 1993 amendments to former Rule 86 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).*

*Final Report explaining the October 28, 1994 amendments to former Rule 86 published with the Court's Order at 24 Pa.B. 5843 (November 26, 1994).*

*Final Report explaining the February 27, 1995 amendments to former Rule 86 published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).*

*Final Report explaining the October 1, 1997 amendments to former Rule 86 concerning stays published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997).*

*Final Report explaining the May 14, 1999 amendments to former Rule 86, paragraph (G), concerning the police officer's presence published with the Court's Order at 29 Pa.B. 2776 (May 29, 1999).*

##### NEW RULE 462:

*Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 462 published at 30 Pa.B. 1478 (March 18, 2000).*

*Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. 1508 (March 18, 2000).*

*Final Report explaining the February 28, 2003 amendments published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).*

*Final Report explaining the March 26, 2004 Comment revision published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).*

*Final Report explaining the January 18, 2007 amendment to paragraph (G)(2) published with the Court's Order at 37 Pa.B. 523 (February 3, 2007).*

*Final Report explaining the December 16, 2008 amendments to permit delay in sentencing for determination of intermediate punishment status published with the Court's Order at 39 Pa.B. 8 (January 3, 2009).*

*Final Report explaining the October 16, 2009 Comment revision regarding new Rule 1037 and procedures for the appeal from the Philadelphia Traffic Court published with the Court's Order at 39 Pa.B. 6327 (October 31, 2009).*

*Final Report explaining the May 7, 2014 Comment revision changing the cross-reference to the Philadelphia Traffic Court to the Traffic Division of the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3056 (May 24, 2014).*

Final Report explaining the March 9, 2016 amendments to paragraph (G) concerning required elements of the sentence published with the Court's Order at 46 Pa.B. 1532 (March 26, 2016).

Final Report explaining the December 29, 2017 amendments regarding appeals nunc pro tunc published with the Court's Order at 48 Pa.B. 224 (January 13, 2018).

Final Report explaining the January 27, 2021 Comment revisions regarding dismissal by agreement of summary cases in the common pleas court pursuant to Rule 458 published with the Court's Order at 51 Pa.B. 688 (February 6, 2021).]

**Rule 1010. Procedures for Trial De Novo.**

[(A)](a)When a defendant appeals after conviction by a Municipal Court judge,

(1) in a non-traffic summary case, upon the filing of the transcript and other papers, the case shall be heard *de novo* by the judge of the Court of Common Pleas sitting without a jury.

(2) In a Municipal Court case, the attorney for the Commonwealth, upon receiving the notice of appeal, shall prepare an information and the matter shall thereafter be treated in the same manner as any other court case.

[(B)](b)If the defendant fails to appear for the trial *de novo*, the Common Pleas Court judge may dismiss the appeal and thereafter shall enter judgment in the Court of Common Pleas on the judgment of the Municipal Court judge.

[(C)](c)**Withdrawals of Appeals.**

(1) If the defendant withdraws the appeal, the Common Pleas Court judge shall enter judgment in the Court of Common Pleas on the judgment of the Municipal Court judge.

(2) In a Municipal Court case, the defendant may withdraw the appeal only with the written consent of the attorney for the Commonwealth.

[(D)](d)At the time of sentencing, the Common Pleas Court judge shall:

(1) if the defendant's sentence includes restitution, a fine, or costs, state:

[(a)](i) the amount of the fine and the obligation to pay costs;

[(b)](ii) the amount of restitution ordered, including

[(i)](A) the identity of the payee(s),

[(ii)](B) to whom the restitution payment shall be made,

and

[(iii)](C) whether any restitution has been paid and in what amount; and

[(c)](iii) the date on which payment is due.

If the defendant is without the financial means to pay the amount in a single remittance, the Common Pleas Court judge may provide for installment payments and shall state the date on which each installment is due;

(2) advise the defendant of the right to appeal to the Superior Court within 30 days of the imposition of sentence, and that, if an appeal is filed, the execution of sentence **[will]shall** be stayed and the Common Pleas Court judge may set bail;

(3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(4) issue a written order imposing sentence, signed by the Common Pleas Court judge. The order shall include the information specified in **[paragraphs (D)(1)**

**through (D)(3)]subdivisions (d)(1) through (d)(3),** and a copy of the order shall be given to the defendant.

[(E)](e)After entry of judgment pursuant to **[paragraphs (B) or (C)(1)]subdivisions (b) or (c)(1),** or after the trial *de novo* and imposition of sentence, the case shall remain in the Court of Common Pleas for the execution of sentence, including for the collection of any fines and restitution, for the collection of any costs, and for proceedings for violation of probation, intermediate punishment, or parole pursuant to Rule 708.

**(f) Suppression Motion in Summary Cases.**

**(1) A motion to suppress evidence shall be made in the first instance in the Court of Common Pleas on appeal from a summary conviction.**

**(2) The motion shall comply with subdivisions (C) through (J) of Rule 581 and shall be filed with the clerk of courts within 30 days of the filing of the notice of appeal.**

**Comment:** In any case in which there are summary offenses joined with the misdemeanor charges that are the subject of the appeal, the attorney for the Commonwealth must include the summary offenses in the information. See *Commonwealth v. Speller*, 458 A.2d 198 (Pa. Super. 1983).

**[Paragraph (B)]Subdivision (b)** makes it clear that the Common Pleas Court judge may dismiss an appeal when the judge determines that the defendant is absent without cause from the trial *de novo*. If the appeal is dismissed, the Common Pleas Court judge **[must ]shall** enter judgment and order execution of any sentence imposed by the Municipal Court judge. Nothing in this rule is intended to preclude the judge from issuing a bench warrant when the defendant fails to appear.

Certain costs are mandatory and must be imposed. See, e.g., **[Section 1101 of the Crime Victims Act, ]**18 P.S. § 11.1101.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

Once a judgment is entered and sentence is imposed, **[paragraph (E)]subdivision (e)** makes it clear that the case is to remain in the Court of Common Pleas for execution of the sentence and collection of any costs, and the case may not be returned to the Municipal Court judge. The execution of sentence includes the collection of any fines and restitution and any proceedings for violation of probation, intermediate punishment, or parole as provided by Rule 708.

**Pursuant to subdivision (f), motions to suppress evidence are not to be made before the Municipal Court judge at a summary trial but are to be filed with the clerk of courts no later than 30 days after a notice of appeal has been filed pursuant to Rule 1008.**

**[NOTE: Rule 6010 adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective August 1, 1980; amended August 28, 1998, effective immediately; renumbered Rule 1010 March 1, 2000, effective April 1, 2001; Comment revised March 9, 2006, effective September 1, 2006; amended February 12, 2010, effective April 1, 2010; amended September 21, 2011, effective November 1, 2011; amended March 9, 2016, effective July 1, 2016.**

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**COMMITTEE EXPLANATORY REPORTS:**

Final Report explaining the August 28, 1998 amendment published with the Court's Order at 28 Pa.B. 4627 (September 12, 1998).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

*Final Report explaining the March 9, 2006 Comment revision concerning joinder of summary offenses with misdemeanor charges published with the Court’s Order at 36 Pa.B. 1385 (March 25, 2006).*

*Final Report explaining the February 12, 2010 amendments to paragraph (B) concerning the disposition of summary offenses at the court of common pleas published with the Court’s Order at 40 Pa.B. 1068 (February 27, 2010).*

*Final Report explaining the September 21, 2011 amendments to paragraphs (A)—(C) and adding new paragraphs (D) and (E) concerning the procedures for trials de novo in the Court of Common Pleas published with the Court’s Order at 41 Pa.B. 5353 (October 8, 2011).*

*Final Report explaining the March 9, 2016 amendments to paragraph (D) concerning required elements of the sentence published with the Court’s Order at 46 Pa.B. 1540 (March 26, 2016).*

**SUPREME COURT OF PENNSYLVANIA  
CRIMINAL PROCEDURAL RULES COMMITTEE**

**PUBLICATION REPORT**

**Proposed Amendment of Pa.R.Crim.P. 462 and 1010**

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pa.R.Crim.P. 462 and 1010 to provide for the filing of suppression motions when a summary conviction is appealed to the court of common pleas.<sup>1</sup>

The Committee received a request to consider incorporating procedures into the rules for filing a suppression motion in summary cases. As the requester noted, Pa.R.Crim.P. 581 (Suppression of Evidence) is contained in Chapter 5 of the rules, which is titled “Pretrial Procedures in Court Cases.” Pa.R.Crim.P. 103 defines “court case” as “a case in which on or more of the offenses charged is a misdemeanor, felony, or murder of the first, second, or third degree.” Consequently, a case only involving a summary charge is not a court case and thus outside the scope of Pa.R.Crim.P. 581. To accommodate summary suppression motions, the amendment of Rules 462 and 1010 is being proposed.

When considering the request, the Committee needed to determine in which court a motion to suppress in a summary case should be heard. The Committee concluded that suppression motions in summary cases should be heard in the first instance in the court of common pleas on appeal from a summary conviction. The Committee reasoned that magisterial district courts have no motions practice and magisterial district judges are not currently trained with regard to suppression issues and the relevant jurisprudence. Additionally, the need to devise an appropriate appellate procedure, which does not currently exist, to accommodate appeals from summary suppression motions decided in magisterial district courts also weighed against this option. To create consistency in the First Judicial District, the Committee decided suppression motions in summary cases in the First Judicial District should also be heard in the first instance in the court of common pleas on appeal, even though a motions practice does exist in Philadelphia Municipal Court. The Committee is specifically seeking comment on this aspect of the proposal, particularly from the bench and bar of the First Judicial District.<sup>2</sup>

As this proposal requires summary suppression motions to be filed in the court of common pleas on appeal in all judicial districts, both Rule 462 and Rule 1010 would be amended to include a new subdivision, subdivision (j) (Suppression Motion) in Rule 462 and subdivision (f) (Suppression Motion in Summary Cases) in Rule 1010. Proposed Rule 462(j)(1)

and Proposed Rule 1010(f)(1) would both provide that motions to suppress evidence “shall be made in the first instance” in the court of common pleas on appeal from a summary conviction. Proposed Rule 462(j)(2) and Proposed Rule 1010(f)(2) would then require such motions to “comply with subdivisions (C) through (J) of Rule 581” and to be filed with “the clerk of courts within 30 days of the filing of the notice of appeal.” Thirty days was chosen to mirror the timing requirement for a suppression motion in a court case. See Pa.R.Crim.P. 579 (Time for Omnibus Pretrial Motion and Service).

The following two paragraphs would be removed from the Comment, the first for being merely historical and the second for simply being a restatement of the rule text:

The provisions of paragraph (C) that permit the court to continue the case if there is good cause for the officer's unavailability were added in response to *Commonwealth v. Hightower*, 652 A.2d 873 (Pa. Super. 1995).

Paragraph (D) makes it clear that the trial judge may dismiss a summary case appeal when the judge determines that the defendant is absent without cause from the trial *de novo*. If the appeal is dismissed, the trial judge should enter judgment and order execution of any sentence imposed by the issuing authority.

Also, the Comment to each rule would be amended to advise that motions to suppress are not to be made in a magisterial district court or in Philadelphia Municipal Court but are to be filed with the clerk of courts within 30 days of a notice of appeal being filed pursuant to Pa.R.Crim.P. 460 or 1008, respectively.

<sup>1</sup>Stylistic amendments have also been made to conform to the Supreme Court of Pennsylvania Style and Rulemaking Guide for Procedural and Evidentiary Rules.

<sup>2</sup>It is the Committee’s understanding that the appeal of a suppression determination entered in Philadelphia Municipal Court is accomplished via a petition for writ of certiorari to the court of common pleas. However, “[c]ertiorari is available in non-summary cases only.” Pa.R.Crim.P. 1006, cmt. Thus creating a parallel procedure for summary cases is not feasible.