

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

NOTICE OF PROPOSED RULEMAKING

Proposed Recission and Replacement of Pa.R.Civ.P.M.D.J. 319

The Minor Court Rules Committee is considering proposing to the Supreme Court of Pennsylvania the recission and replacement of Pa.R.Civ.P.M.D.J. 319, pertaining to the appearance of the parties at the civil hearing 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.

Deletions to the text are bold and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **June 12, 2024**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Minor Court Rules Committee,
Honorable James R. Edgcomb
Chair

Rule 319. [Failure of a Party to Appear] Parties' Appearance at the Hearing.

- [A.] If a plaintiff who has been given notice of the defendant's intention to defend does not appear at the hearing, but the defendant does appear, the magisterial district judge shall enter judgment for the defendant or continue the case for cause. If the plaintiff does not appear at the hearing and the defendant does, but the plaintiff has not been given notice of the defendant's intention to defend, the case shall be continued.**
- B. If the defendant does not appear at the hearing, the magisterial district judge shall, whether or not the plaintiff appears, enter judgment for the plaintiff or continue the case for cause. If judgment is entered for the plaintiff, the magisterial district judge shall assess damages for the amount to which the plaintiff is entitled if it is for a sum certain or which can be made certain by computation, but if it is not, the damages shall be assessed by the magisterial district judge at a hearing at which the issues shall be limited to the amount of the damages. If such a hearing is to be held, the magisterial district judge shall give the defendant written notice of the time and date of the hearing, which shall be not less than ten (10) days from the date of the notice.**

***Note:* The first sentence of subdivision A of this rule provides for a judgment for the defendant rather than merely a dismissal of the plaintiff's complaint. This provision is intended to prevent the plaintiff from bringing the action again before a magisterial district judge, although he can appeal. The continuance called for in the second sentence of subdivision A will constitute a form of notice to defend and if the plaintiff does not appear at the second hearing judgment will be entered against him.**

As to the provisions concerning assessment of damages in subdivision B, compare Pa.R.C.P. Nos. 1037(b) and 1047(b).]

– The deleted rule text is replaced in its entirety with the following rule text –

- (a) Notice of Intent to Defend Given.** If the plaintiff has been given written notice of the defendant's intent to defend pursuant to Pa.R.Civ.P.M.D.J. 318:
- (1) Plaintiff Appears.** If the plaintiff appears at the hearing and the defendant does not appear, then the magisterial district judge shall enter judgment for the plaintiff, subject to subdivision (d)(1).

- (2) **Defendant Appears.** If the plaintiff does not appear at the hearing and defendant appears, then the magisterial district judge shall enter judgment for the defendant.
 - (3) **Both Parties Appear.** If both parties appear at the hearing, then the magisterial district judge shall conduct the hearing in accordance with Pa.R.Civ.P.M.D.J. 321.
 - (4) **Neither Party Appears.** If neither party appears at the hearing, then the magisterial district judge shall enter judgment for the defendant.
- (b) **Notice of Intent to Defend Not Given.** If the plaintiff has not been given notice of the defendant's intention to defend pursuant to Pa.R.Civ.P.M.D.J. 318:
- (1) **Plaintiff Appears.** If the plaintiff appears at the hearing and the defendant does not appear, then the magisterial district judge shall enter judgment for the plaintiff, subject to subdivision (d)(1).
 - (2) **Defendant Appears.** If the plaintiff does not appear at the hearing and the defendant appears, then the magisterial district judge shall continue the case.
 - (3) **Both Parties Appear.** If both parties appear at the hearing, then the magisterial district judge may conduct the hearing in accordance with Pa.R.Civ.P.M.D.J. 321 or continue the case.
 - (4) **Neither Party Appears.** If neither party appears at the hearing, then the magisterial district judge shall enter judgment for the plaintiff, subject to subdivision (d)(1).
- (c) **Continuances.** The magisterial district judge may grant a continuance upon good cause shown in any case notwithstanding the appearance of a party or parties at the hearing.
- (d) **Hearing on Unascertained Damages.**
- (1) **Generally.** If plaintiff's damages are not for a sum certain or cannot be computed, the magisterial district judge shall assess damages at a separate hearing at which the issues shall be limited to the amount of the damages.

- (2) **Notice of Damages Hearing.** The magisterial district judge shall give the parties written notice of the time and date of the damages hearing, which shall be at least ten days from the date of the notice.

Comment: See Pa.R.Civ.P.M.D.J. 209 pertaining to continuances, generally. Entry of a continuance is required by subdivision (b)(2) if the magisterial district judge determines from the docket that the plaintiff was not provided with written notice of the defendant's intention to defend. This outcome is necessary to allow the plaintiff to prepare for an adversarial hearing. Similarly, if the plaintiff was not provided with written notice of the defendant's intent to defend and both parties appear, the magisterial district judge may conduct the hearing, or elect to continue the case at the request of the plaintiff or the judge's own accord if court scheduling cannot accommodate the hearing at that time. See Pa.R.Civ.P.M.D.J. 319(b)(3).

In most cases, the amount of damages will be certain and calculable because the plaintiff is required to state the amount claimed in the complaint. See Pa.R.Civ.P.M.D.J. 304B(2). However, a separate damages hearing under subdivision (d) may be required in limited circumstances, *e.g.*, when a party has not appeared at the initial hearing and the case is for civil fines or penalties. As to the provisions concerning assessment of damages in subdivision (d), compare Pa.R.Civ.P. 1037(b).

SUPREME COURT OF PENNSYLVANIA
Minor Court Rules Committee

PUBLICATION REPORT

Proposed Recission and Replacement of Pa.R.Civ.P.M.D.J. 319

The Minor Court Rules Committee (“Committee”) is considering proposing to the Supreme Court of Pennsylvania the recission and replacement of Pa.R.Civ.P.M.D.J. 319 relating to appearance of the parties at the civil hearing.

Currently, Pa.R.Civ.P.M.D.J. 319 prescribes case outcomes relating to the parties’ appearance at the hearing. In addition to being determined by the appearance of the party, the consequences are also determined by whether or not the plaintiff was given written notice that the defendant intends to appear at the hearing and defend against the complaint, *i.e.*, files a “notice of intent to defend.” The substantive language of Pa.R.Civ.P.M.D.J. 319 has not changed since it took effect in 1970, notwithstanding changes to the title of the presiding jurist. See, *e.g.*, Order of January 6, 2005, Judicial Administration Docket 1, No. 269 (changing the title of “district justice” to “magisterial district judge” throughout court rules).

A Committee member suggested that the Committee review Pa.R.Civ.P.M.D.J. 319B, relating to the outcome of a case when the defendant fails to appear at the hearing. The rule currently provides, among other things, that “[i]f the defendant does not appear at the hearing, the magisterial district judge, shall, *whether or not the plaintiff appears*, enter judgment for the plaintiff or continue the case for cause.” Pa.R.Civ.P.M.D.J. 319B (emphasis added). The discussion was driven, in part, by the number of complaints determined solely by the nonappearance of the defendant. There is also a perception that some plaintiffs may engage in litigation strategies utilizing Rule 319B for purposes of obtaining default judgments and taking a *de novo* appeal should a defendant appear. While such strategies are authorized by the current rules, the Committee questioned if that should remain the case.

The Committee discussed these perceived shortcomings of Pa.R.Civ.P.M.D.J. 319B. Some members took the position that: (1) failure of a plaintiff to appear in court for an action he or she initiated reflects a lack of respect for the court; (2) there should not be a greater burden on the defendant to appear than the plaintiff; and (3) there should be consistent procedures across the civil and landlord-tenant rules. However, other members disagreed with this position, finding that requiring the presence of the plaintiff in the absence of the defendant may constitute “form over substance” if the plaintiff is not further required to give testimony and prove the elements of the complaint. The Committee considered at length whether the plaintiff should be required to appear and meet his or her evidentiary burden prior to a judgment for the plaintiff. *Compare*

Pa.R.Civ.P.M.D.J. 512 (“The landlord shall appear at the hearing and present testimony in an action for the recovery of possession of real property.”). Ultimately, the Committee agreed to keep the current practice relative to appearance but change the outcomes to better reflect the expectations of the parties based on whether the plaintiff has been notified that the defendant intends to defend against the action.

The rules prescribe a process for the defendant to notify the court of his or her intention to defend against the complaint. In the hearing notice served on the defendant with the complaint, the defendant is directed that: “If you intend to enter a defense to this complaint you should so notify this office immediately.” Pa.R.Civ.P.M.D.J. 305(4)(a) (pertaining to setting the date for hearing and delivery for service). The Comment further provides that “giving the notice mentioned in subdivision (4)(a) is necessary if the defendant is to obtain judgment under [Pa.R.Civ.P.M.D.J. 319A] because of a plaintiff’s failure to appear.” Pa.R.Civ.P.M.D.J. 305, cmt. Upon receipt of a defendant’s notice of intent to defend, the magisterial district court is required to “promptly give written notice that the defendant intends to enter a defense.” Pa.R.Civ.P.M.D.J. 318. The docket entries of the magisterial district court will reflect whether the defendant gave the court notice of intent to defend and, in turn, whether the magisterial district court then gave written notice of the defendant’s intent to defend to the plaintiff. *Id.*, cmt. Thus, a key element in determining the outcome of a case when a party fails to appear is whether the magisterial district court provided the plaintiff with written notice of the defendant’s intent to defend.

Ultimately, the Committee agreed that the rule is ripe for both stylistic and substantive changes. The Committee proposes restructuring the rule into a set of outcomes that depend on whether a notice of intent to defend was given to the plaintiff. The Committee further delineated the outcomes of those two subgroups into four subdivisions: (1) the plaintiff appears and the defendant does not appear; (2) the plaintiff does not appear and the defendant does appear; (3) both parties appear; and (4) neither party appears. See proposed Pa.R.Civ.P.M.D.J. 319 (a)–(b).

Proposed subdivision (a) addresses the scenario when the defendant has filed a notice of intent to defend with the magisterial district court and the court has given written notice of the defendant’s intention to the plaintiff. If the plaintiff appears at the hearing but the defendant does not, then the magisterial district judge shall enter judgment for the plaintiff. See proposed Pa.R.Civ.P.M.D.J. 319(a)(1). The Committee thought that this is the correct outcome because the plaintiff appeared to plead his or her case upon learning that the defendant intended to defend the matter. In contrast, if the plaintiff does not appear at the hearing but the defendant does, then the magisterial district judge shall enter judgment for the defendant. See proposed Pa.R.Civ.P.M.D.J. 319(a)(2). The Committee agreed upon this outcome because the plaintiff knew the defendant intended to defend the matter yet elected not to appear. Proposed subdivisions (a)(1) and (a)(2) are consistent with the current practice.

While not incorporated in the current rule, the Committee added a new subdivision (a)(3) addressing the scenario when both parties appear at the hearing. In the instance when the plaintiff is given notice of the defendant's intent to defend and all parties are present in court, the magisterial district judge will proceed with the civil hearing. While this outcome may seem patently obvious, the Committee thought its absence from the permutations of attendance may raise questions among some readers.

If neither party appears at the hearing, then the magisterial district judge shall enter judgment for the defendant. See proposed Pa.R.Civ.P.M.D.J. 319(a)(4). Currently, when neither party appears, the court enters judgment for the plaintiff. The Committee disagreed with this approach when the plaintiff has been advised that the defendant intends to defend the case, believing that the plaintiff has an obligation to appear before the court upon learning that the defendant intends to defend the case.

Proposed subdivision (b) addresses the scenario when the court docket does not reflect that the plaintiff was provided with a notice of intent to defend as required by Pa.R.Civ.P.M.D.J. 318. This may be because: (1) the defendant did not give the magisterial district court notice of intent to defend; or (2) the magisterial district court did not promptly give the plaintiff such notice. The outcomes in subdivision (b) are largely consistent with current practice. If the plaintiff appears at the hearing and the defendant does not, then the magisterial district judge shall enter judgment for the plaintiff. See proposed Pa.R.Civ.P.M.D.J. 319(b)(1). If the plaintiff does not appear at the hearing but the defendant does, then the magisterial district judge shall continue the case. See proposed Pa.R.Civ.P.M.D.J. 319(b)(2). This outcome is necessitated by judicial fairness. Without notice of the defendant's intention to defend, the plaintiff may have reasonably anticipated entry of judgment in his or her favor.

Similar to subdivision (a)(3), the current rule does not address the scenario when both parties appear at the hearing but the plaintiff has not received notice of the defendant's intention to defend. Proposed subdivision (b)(3) would give the plaintiff the opportunity to proceed with the civil hearing if they are willing and prepared for the hearing. Alternatively, the court may elect to enter a continuance at the request of the plaintiff or on the court's own accord. The plaintiff may request a continuance to prepare for an adversarial hearing, which they may not have anticipated in the absence of notice. Likewise, the court may not have allotted time for an adversarial hearing if the presence of the defendant was not expected.

If neither party appears at the hearing, then the magisterial district judge shall enter judgment for the plaintiff. See proposed Pa.R.Civ.P.M.D.J. 319(a)(3). The Committee agreed that this is the proper outcome because the defendant gave no indication that he or she intended to defend the matter and should bear the consequences of that decision.

Currently, there are numerous continuance provisions throughout the rule. See Pa.R.Civ.P.M.D.J. 319. The Committee agreed to add a new subdivision (c) to provide generally that the magisterial district judge may continue a case for good cause shown instead of entering judgment for a party. See proposed Pa.R.Civ.P.M.D.J. 319(c).

Similarly, current Pa.R.Civ.P.M.D.J. 319B contains a provision relating to hearings on unascertained damages that does not strictly pertain to subdivision (a) or (b). The Committee believes this provision pertaining to unascertained damages may have limited application because Pa.R.Civ.P.M.D.J. 304B(2) requires the plaintiff to state “the amount claimed” in the civil complaint. It likely applies to damages sought in a case involving a civil fine or penalty authorized by statute. See Pa.R.Civ.P.M.D.J. 304B(3)(c). The Committee agreed the unascertained damages provisions would be better located in a standalone subdivision. See proposed Pa.R.Civ.P.M.D.J. 319(d). Cross-references to proposed subdivision (d)(1) were added to proposed subdivisions (a)(1), (b)(1), and (b)(4) to reflect that while judgment may be entered for plaintiff, a separate damages hearing may need to be held if damages are unascertainable.

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