

The Greene Reports

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

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June 30, 2022



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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 5 and July 6, 2022

CRIMINAL

Arraignments: July 5, 2022
ARDs: July 11, 2022
ARD Revocations: July 11, 2022
Parole Violations: July 5, 2022
Plea Court: July 12-14, 2022
License Suspension Appeals: July 20, 2022
Argument Court: TBD

ORPHANS

Accounts Nisi: July 5, 2022
Accounts Absolute: July 15, 2022

SUPREME COURT
SUPERIOR COURT
COMMONWEALTH COURT

Convenes in Pgh.: October 24-28, 2022
Convenes in Pgh.: August 2-3, 2022
Convenes in Pgh.: October 11-14, 2022

THE GREENE REPORTS

Owned and published by the GREENE COUNTY BAR ASSOCIATION
Editor: Kayla M. Sammons
E-mail address: 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the editorial staff to be reasonably interpreted as offensive, demeaning or insulting to any individual or group will not be published.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 Anonymous correspondence will not be published.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.

THE GREENE COUNTY BAR ASSOCIATION

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

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DEED TRANSFERS

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

ALEPPO TOWNSHIP

Pamela P. Barrow, et ux., to Mulligan Mineral Partners LLC, 3 Tracts, O&G, \$11,000.00 (6-28-22)

H. Victor Penn to Mulligan Mineral Partners LLC, 3 Tracts, O&G, \$11,000.00 (6-28-22)

ALEPPO, SPRINGHILL, AND FREEPORT TOWNSHIPS

Jent E. Love to Three Rivers Royalty III LLC, Tracts, O&G, \$192,250.04 (6-23-22)

CUMBERLAND TOWNSHIP

Christopher Hughes, et al., to Codie M. Dikun, 4 Lots, Crucible Plan, \$80,000.00 (6-23-22)

Charles Brent Maletic, et ux., to Patricia N. Hill, .5840 Acre, \$85,000.00 (6-24-22)

Donald W. Fuller Revocable Living Trust, et ux., to Rachel E. Costa, et ux., 2 Lots, \$224,720.00 (6-24-22)

Donald Mason to Sean Fitzgerald O'Donnell, et al., Tract, \$300,000.00 (6-27-22)

Michael J. Yeager, et ux., to Nathan Carl, et ux., 2.332 Acres, \$225,000.00 (6-28-22)

FRANKLIN TOWNSHIP

Edward L. Hinerman, et ux., to Richard G. Baker, Jr., et ux., Lot 55, Arbor Terrace, \$325,000.00 (6-22-22)

William A. Morris by Atty-In-Fact, et ux., to Madelyn K. Koppelman, Tract, \$180,000.00 (6-27-22)

James E. Barger, et ux., to Holbert J. White, Jr., et ux., Unit 605, Huntington Woods, \$180,000.00 (6-27-22)

Garet Venie Bennett to Mark S. Moos, 2 Tracts, \$40,000.00 (6-28-22)

FREEPORT TOWNSHIP

Elliott D. Taylor to Freeport Township, et ux., Tracts, \$50,000.00 (6-23-22)

Benjamin Franklin Gooden, Jr., to Three Rivers Royalty III LLC, 189.9763 Acres, O&G, \$31,662.75 (6-23-22)

Grace L. Riggle to Three Rivers Royalty LLC, 23 Acres, O&G, \$10,726.85 (6-23-22)

JACKSON TOWNSHIP

Carroll E. Phillips to Lois Sue Severance, Lot, \$15,000.00 (6-24-22)

Brett L. Watson, et ux., to The Mineral Company, et ux., 86.851 Acres, O&G, \$37,861.91 (6-28-22)

JEFFERSON TOWNSHIP

Alpha Metallurgical Resources LLC, et al., to James A. Hoyle, et ux., 15.288 Acres, \$4,676.25 (6-28-22)

MORGAN TOWNSHIP

Hildebrand Asset Protection Trust, et ux., to Kevin S. Johnson, Tracts, \$110,000.00 (6-27-22)

MORRIS TOWNSHIP

Mary L. Wilke, et ux., to The Mineral Company, et ux., 104.722 Acres, O&G, Und. ¼ Interest, \$10,472.20 (6-28-22)

Jeanne M. Beecher to The Mineral Company, et ux., 104.722 Acres, O&G, Und. ¼ Interest, \$10,472.21 (6-28-22)

Robert A. Hayes, et ux., to EQT Production Company, 5 Tracts, O&G, \$436.08 (6-28-22)

Preston K. Hayes to EQT Production Company, 5 Tracts, O&G, \$436.08 (6-28-22)

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PERRY TOWNSHIP

Joseph S. Yorio, Jr., et al., to AMP V LP, 81.45 Acres, O&G, \$386,887.50 (6-24-22)
Nila Mae Wise to The Mineral Company, et ux., 90.847 Acres, O&G, \$6,611.33 (6-28-22)

RICHHILL TOWNSHIP

Stephen J. Burns, et ux., to Kenneth D. Jones, Jr., et ux., .514 Acre, \$20,000.00 (6-23-22)

SPRINGHILL TOWNSHIP

Barbara Ann Nelson to The Mineral Company, et ux., 100 Acres, O&G, \$21,428.00 (6-22-22)
William Carl Tustin, et al., to Three Rivers Royalty III LLC, 2 Tracts, \$24,667.49 (6-23-22)
Thumper O. Parthemer, et ux., to EQT Production Company, 3 Tracts, O&G, \$1,730.28 (6-28-22)

Nancy Anne Null to The Mineral Company, et ux., 4 Tracts, O&G, \$14,030.47 (6-28-22)

WAYNE TOWNSHIP

Betty J. Morris Estate, et ux., to EQT Production Company, 3 Tracts, O&G, \$500.00 (6-28-22)

WAYNE, JACKSON, AND GILMORE TOWNSHIP

Deborah S. Neely, et ux., to The Mineral Company, et ux., Tracts, O&G, \$8,257.06 (6-22-22)

WHITELEY TOWNSHIP

Denise A. Gregg, et ux., to The Mineral Company, et ux., 55.2458 Acres, O&G, \$33,143.28 (6-28-22)

ESTATE NOTICES

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.

FIRST PUBLICATION

PETERITIS, DOROTHY ARLENE
Late of Morgan Township, Greene County, Pennsylvania
Administratrix: Alison S. Deboe, 127 Greene Street, Clarksville, PA 15322
Attorney: David F. Pollock, Esquire, POLLOCK MORRIS BELLETTI & SIMMS, LLC, 54 South Washington Street, Waynesburg, PA 15370

SECOND PUBLICATION

NADER, GEORGE J., JR.
Late of Franklin Township, Greene County, Pennsylvania
Executor: Ross Kalsey, 238 West High Street, Waynesburg, PA 15370
Attorney: Kirk A. King, Esquire, 77 South Washington Street, Waynesburg, PA 15370

PETTIT, MARGARET P.
Late of Perry Township, Greene County, Pennsylvania
Executrix: Clara Lou Eddy, 847 Buckeye Road, Core, WV 26541
Attorney: David F. Pollock, Esquire, POLLOCK MORRIS BELLETTI & SIMMS, LLC, 54 South Washington Street, Waynesburg, PA 15370

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THIRD PUBLICATION

CORBETT, JOY L.
Late of Morgan Township, Greene County, Pennsylvania
Executor: David R. Corbett, P.O. Box 74, Mather, PA 15346
Attorney: Ray Bitar, Esquire, New Kensington, PA 15068

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Petition has been filed in the Court of Common Pleas of Greene County, Pennsylvania, seeking to change the name of Leah Marie Zirkle to Leah Marie Shackelford-Strawser. A hearing on the Petition will be held on July 21, 2022 at 2:30 o'clock p.m. in Courtroom No. 3 at the Greene County Courthouse, Waynesburg, Pennsylvania, at which time any persons interested may attend and show cause, if any, why the Petition should not be granted.

Angela M. Strawser for Leah Marie Zirkle
% Dellarose Law Office, PLLC
Melinda Deal Dellarose
99 East Main Street
Suite 101
Uniontown, PA 15401
(724) 437-3200

SUPREME COURT NOTICE

SUPREME COURT OF PENNSYLVANIA
Minor Court Rules Committee

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.Civ.P.M.D.J. 301, 302, and 321 and Proposed Adoption of Pa.R.Civ.P.M.D.J. 351

The Minor Court Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.Civ.P.M.D.J. 301, 302, and 321 and the adoption of Pa.R.Civ.P.M.D.J. 351. This proposal provides procedural rules for actions initiated pursuant to 75 Pa.C.S. § 3345.1(i.1), relating to civil violations for failing to stop for a school bus, 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

All communications in reference to the proposal should be received by **August 24, 2022**. 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 Margaret A. Hunsicker, Chair

Rule 301. Definition; Scope.

- [A.](a)** As used in this chapter, “action” means a civil action brought before a magisterial district judge.
- [B.](b)** Civil action includes any action within the jurisdiction of a magisterial district judge except an action by a landlord against a tenant for the recovery of the possession of real property.
- [C.](c)** As used in this chapter, “complaint” or civil action shall include, where applicable, the attached and completed Civil Action Hearing Notice form.

Comment: Civil action includes actions formerly denominated “assumpsit” or “trespass” (commonly called contract and tort cases, respectively) and civil claims for fines and penalties. See 42 Pa.C.S. § 1515(a)(3) prescribing the jurisdiction of magisterial district judges.

The rules in this chapter apply to all civil actions before magisterial district judges except an action by a landlord against a tenant for the recovery of possession of real property, which is governed by Chapter 500 of these rules.

Except as otherwise provided in **[Rule 350] Rules 350 and 351**, the rules in this chapter apply to *de novo* appeals filed pursuant to 75 Pa.C.S. § 3369(j)(4), relating to automated work zone speed enforcement violations **and actions initiated pursuant to 75 Pa.C.S. § 3345.1(i.1), relating to failure to stop for a school bus, respectively.**

Statutes authorizing a civil fine or penalty include 53 P.S. §§ 10617.1[,] **and** 10817-A relating to violations of zoning and joint municipal zoning ordinances.

Rule 302. Venue.

Comment: This rule combines, with some minor changes, the Pennsylvania Rules of Civil Procedure relating to venue. See:

- (1) Individuals: Pa.R.Civ.P. 1006(a).
- (2) Partnerships: Pa.R.Civ.P. 2130(a).
- (3) Corporations: Pa.R.Civ.P. 2179(a).
- (4) Insurance Policies: Pa.R.Civ.P. 2179(b).
- (5) Unincorporated Associations: Pa.R.Civ.P. 2156(a).
- (6) Political Subdivisions: Pa.R.Civ.P. 2103(b).

This rule is not intended to repeal special statutory venue provisions, such as the: (1) venue provisions for actions involving installment sales of goods and services, 12 Pa.C.S. § 6307; (2) venue provisions of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692i, pertaining to actions brought by debt collectors against consumers; **[and]** (3) venue provisions for appeals from automated work zone speed enforcement violations, 75 Pa.C.S. § 3369(j)(4); **and (4) venue provisions for actions relating to failure to stop for a school bus, 75 Pa.C.S. § 3345.1(i.1).** See Pa.R.Civ.P.M.D.J. 382(1) (pertaining to Acts of Assembly providing for special venue provisions that are not suspended).

For a definition of “transaction or occurrence,” see *Craig v. W.J. Thiele & Sons, Inc.*, 149 A.2d 35 (Pa. 1959).

Subdivision G is intended to take care of indistinct, “center line” or other confusing boundaries in the respects mentioned. When a complaint is transferred under subdivision H, it is treated as if originally filed in the transferee court on the date first filed in a court. If service of the complaint has already been made, no new service may be necessary, but the transferee court must set a new date, time and place for the new hearing and notify the parties thereof. It is the intent of this rule that cases may be transferred to any Pennsylvania court with appropriate jurisdiction and venue, including the Philadelphia Municipal Court. Likewise, nothing in this rule prohibits a court other than a magisterial district court from transferring a case to a magisterial district court with proper jurisdiction and venue, in accordance with the procedural rules of the transferring court. The jurisdictional limits of the magisterial district courts and the Philadelphia Municipal Court are governed by 42 Pa.C.S. §§ 1515 and 1123, respectively.

There are no costs for transfer of the complaint and no additional filing costs when a case is transferred from one magisterial district court to another magisterial district court. There are no additional filing costs when a case is transferred from the Philadelphia Municipal Court to a magisterial district court.

There may be additional service costs when a case is transferred.

Rule 321. Hearings and Evidence.

The magisterial district judge shall be bound by the rules of evidence, except that a bill, estimate, receipt, or statement of account that appears to have been made in the regular course of business may be introduced in evidence by any party without affidavit or other evidence of its truth, accuracy, or authenticity.

Comment: The exception to the rules of evidence provided by this rule was inserted because the Pennsylvania statutes making certain business entries admissible in evidence apparently do not apply to bills, receipts, and the like that are made in the regular course of business but are not made as “records.” See 42 Pa.C.S. § 6108. The fact that this exception permits the introduction of these items of evidence without affidavit or other evidence of their truth, accuracy, or authenticity does not, of course, preclude the introduction of evidence contradicting them. The exception was deemed necessary because the items of evidence made admissible thereby are probably the proofs most commonly used in minor judiciary proceedings. See [Rule 350D(2)] Rules 350(d)(2) and 351(d) for additional exceptions applicable to appeals from automated work zone speed enforcement violations and actions initiated for failure to stop for a school bus, respectively.

– The following rule text is entirely new –

Rule 351. Action to Contest Civil Liability for Passing a School Bus; Failure to Respond to a Notice of Violation.

- (a) As used in this rule:
 - (1) “Vehicle owner” means the owner of a vehicle alleged to have violated 75 Pa.C.S. § 3345, relating to enforcement of failure to stop for a school bus, in an action brought pursuant to 75 Pa.C.S. § 3345.1.
 - (2) “Police department” means the police department issuing the notice of violation of 75 Pa.C.S. § 3345, relating to enforcement of failure to stop for a school bus, in an action brought pursuant to 75 Pa.C.S. § 3345.1.
- (b) **Venue.** An action filed pursuant to this rule shall only be filed in the magisterial district court in the magisterial district where the alleged violation of 75 Pa.C.S. § 3345 occurred.
- (c) **Proceedings.**
 - (1) **Vehicle Owner Request to Contest Liability.**
 - (i) A vehicle owner may contest the liability alleged in the notice of violation by filing a hearing request form prescribed by the State Court Administrator together with a copy of the notice of violation with the magisterial district court within 30 days of the mailing of the notice.
 - (ii) The vehicle owner shall pay all costs for filing and service of the hearing request form at the time of filing

- (iii) or, if without the financial resources to pay the costs of litigation, the vehicle owner shall file a petition to proceed *in forma pauperis* pursuant to Rule 206E. After setting the hearing date pursuant to Rule 305, the magisterial district judge shall serve the hearing request on the police department by mailing a copy to the police department at the address listed on the notice of violation by certified mail or comparable delivery method resulting in a return receipt in paper or electronic form. The return receipt shall show that the notice of appeal was received by the police department.

(2) **Vehicle Owner Fails to Respond to Notice of Violation.**

- (i) The police department may file a civil complaint against the vehicle owner pursuant to Rule 303 if the vehicle owner fails to respond to the notice of violation within 30 days of the original notice by either paying the fine as indicated on the notice of violation or contesting liability as provided in subdivision (c)(1). The police department shall pay all costs for filing and service of the complaint at the time of filing.
- (ii) In a complaint filed pursuant to this subdivision, the police department shall aver that the vehicle owner did not timely respond to the notice of violation by paying the civil fine or contesting liability.
- (iii) The sole issue for determination by the magisterial district judge at a hearing on a complaint filed pursuant to subdivision (c)(2) is whether the vehicle owner timely responded to the notice of violation by paying the civil fine or contesting liability.
- (iv) Except as otherwise provided by this rule, an action commenced pursuant to subdivision (c)(2)(i) shall proceed in the same manner as any other civil action.

- (d) **Evidence.** The hearing is subject to the standards of evidence set forth in Rule 321, except that photographs, videos, vehicle titles, police reports, and records of the Pennsylvania Department of Transportation may also be entered as evidence by any party without affidavit or other evidence of their truth, accuracy, or authenticity.

Comment: 75 Pa.C.S. § 3345.1 provides for automated side stop signal arm enforcement systems to identify and civil fines for the owners of vehicles failing to stop for a school bus. This rule was adopted to address the provisions of the statute that (1) allow a vehicle owner to contest liability for a notice of violation and (2) establishes a mechanism for a police

department to file a civil complaint when a vehicle owner has failed to respond timely to a notice of violation.

Insofar as other procedures under these rules may be applicable, the vehicle owner shall be deemed the “defendant” and the police department shall be deemed the “plaintiff.”

A vehicle owner issued a notice of violation under 75 Pa.C.S. § 3345.1 may contest liability by requesting a hearing with the magisterial district judge in the magisterial district where the violation occurred. The initiating document in an action filed by a vehicle owner to contest liability is the hearing request form, which shall be used in lieu of a complaint.

If the vehicle owner fails to respond to the notice of violation within 30 days of the original notice by either paying the fine as indicated on the notice of violation or contesting liability as provided in subdivision (c)(1), the police department may file a civil complaint against the vehicle owner in the magisterial district where the violation occurred. *See* 75 Pa.C.S. § 3345.1(i.1)(2)(iii). An action brought pursuant to subdivision (c)(2) is limited to the issue of whether the vehicle owner timely responded to the notice of violation by paying the civil fine or contesting liability. A complaint filed by a police department when the vehicle owner failed to respond will proceed as any other civil action filed pursuant to Rule 303 except as otherwise provided in this rule. *See also* Pa.R.Civ.P.M.D.J. 206 (pertaining to costs) and Pa.R.Civ.P.M.D.J. 401 *et seq.* (pertaining to enforcement of judgments).

If the prevailing party has paid the filing and service costs, that party is entitled to recover taxable costs from the unsuccessful party. *See* Pa.R.Civ.P.M.D.J. 206B (“the prevailing party in magisterial district court proceedings shall be entitled to recover taxable costs from the unsuccessful party. Such costs shall consist of all filing, personal service, witness, and execution costs authorized by Act of Assembly or general rule and paid by the prevailing party”). Procedures for enforcement of judgments are set forth in Rules 401 *et seq.*

Judgments are payable to the prevailing party and not the magisterial district court. *See* Rule 3.10(A)(2) of the Rules Governing Standards of Conduct of Magisterial District Judges (prohibiting a magisterial district judge from engaging in any activity related to the collection of a claim or judgment for money); *see also* Pa.R.Civ.P.M.D.J. 323, Comment (“The payments are to be made to the plaintiff and not to the magisterial district judge”).

Photographs, videos, vehicle titles, police reports, and records of the Pennsylvania Department of Transportation were added to the existing business record exceptions in Rule 321 because they are the proofs most likely to be used to support the permitted defenses to 75 Pa.C.S. § 3345.1(c).

See Rules 1001 *et seq.* for procedures to appeal a judgment rendered by a magisterial district judge or to file a *praecipe* for a writ of *certiorari* in civil actions, including actions brought pursuant to this rule.

SUPREME COURT OF PENNSYLVANIA
Minor Court Rules Committee

PUBLICATION REPORT

**Proposed Amendment of Pa.R.Civ.P.M.D.J. 301, 302, and 321 and
Proposed Pa.R.Civ.P.M.D.J. 351**

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. 301, 302, and 321 and the adoption of Pa.R.Civ.P.M.D.J. 351. This proposal would establish procedures for actions initiated pursuant to 75 Pa.C.S. § 3345.1(i.1), relating to civil violations for failing to stop for a school bus.

Background

Act 38 of 2020 authorizes the use of side stop signal arm enforcement systems to identify and issue civil violations to the owners of vehicles failing to stop for a school bus. A system vendor will provide violation data to the police department with coverage responsibility for the school district or the Pennsylvania State Police. *See* 75 Pa.C.S. § 3345.1(h). The police department will review the violation evidence from the vendor and authorize the issuance of a notice of violation to the vehicle owner. *Id.* § 3345(h.2)(1). The notice of violation will instruct the vehicle owner to either return the notice with payment or “request a hearing with the magisterial district judge for the purpose of contesting liability.” *Id.* § 3345.1(i.1)(1)(iv). If the owner does not pay the fine or contest liability within 30 days of the original notice, the police department may “turn the matter over to the magisterial district judge where the violation occurred. The magisterial district judge may assess liability upon the owner for failure to pay the fine or contest liability.” *Id.* § 3345.1(i.1)(2)(iii).

Proposal

First, the Committee proposes amending the Comment to Rule 301 (Definition; Scope) to add a provision that the Rules apply generally to these actions, except as otherwise provided by new Rule 351. Second, the Committee proposes amending the Comment to Rule 302 (Venue) to update the list of actions with special venue provisions. Finally, in the Comment to Rule 321 (Hearings and Evidence), the Committee proposes adding a cross-reference to proposed new Rule 351(c), providing exceptions to the evidentiary requirements in hearings on these new actions. The amendments mirror those recently adopted by the Court to implement procedures for appeals from automated work zone speed enforcement violations. *See* Order of April 12, 2022, No. 466, Magisterial Rules Docket.

As noted above, the statute provides for two types of proceedings in magisterial district court: (1) a vehicle owner may contest liability for an alleged violation; and (2) a police department may file an action if a vehicle owner fails to respond timely to a notice of violation. In the first instance, the vehicle owner may contest liability for the alleged violation by filing a hearing request with the magisterial district court in the magisterial district where the alleged violation occurred. The hearing request must be accompanied by a copy of the notice of violation and must be filed within 30 days from the mailing of the notice of violation. The vehicle owner must pay all filing and service costs at the time of filing or file a petition to proceed *in forma pauperis* pursuant to Rule 206E. The hearing notice is served on the police department by certified mail or comparable delivery method.

In the latter instance, a police department may file a civil complaint with the magisterial district court when a vehicle owner has failed to respond timely to a notice of violation by paying the fine indicated on the notice or by requesting a hearing to contest liability. The police may file the civil complaint no earlier than 30 days from the date of the

original notice. Except as otherwise provided by proposed Rule 351, a complaint filed pursuant to subdivision (c)(2)(1) will proceed in the same manner as any other civil complaint. It should be noted that 75 Pa.C.S. § 3345.1(i.1)(2)(iii) provides:

If payment is not received or the owner has not contested liability within 30 days of the original notice, the police department may turn the matter over to the Magisterial District Judge where the violation occurred. The Magisterial District Judge may assess liability upon the owner for failure to pay the fine or contest liability.

Id. In these actions, the only issue for the magisterial district judge to determine is if the vehicle owner timely responded to the notice of violation by paying the civil fine or contesting liability. The underlying violation for passing a school bus is not the subject of a hearing on a complaint brought pursuant to subdivision (c)(2)(i) and the defenses in 75 Pa.C.S. § 3345.1(f) are not applicable.

This scheme is similar to that established in zoning enforcement proceedings brought pursuant to the Municipalities Planning Code (“MPC”), 53 P.S. §§ 10101 *et seq.* Under the MPC, once an alleged violator has been given notice of a zoning violation pursuant to 53 P.S. § 10616.1, the alleged violator can seek an appeal with the municipality’s zoning hearing board and cannot defend the underlying charges before the magisterial district judge after failing to appeal. *See e.g., City of Erie v. Freitus*, 681 A.2d 840, 842 (Pa. Cmwlth., 1996). In these cases, the vehicle owner’s opportunity to challenge the underlying violation is by contesting the liability alleged in the notice of violation and requesting a hearing with the magisterial district judge as provided in subdivision (c)(1)(i).

The Committee observes the statute does not address the scenario when the vehicle owner initially pays the violation but later decides to request a hearing within 30 days of the mailing of the notice of violation. Accordingly, the Committee did not develop a provision to accommodate this likely rare occurrence.

In both proceedings under subdivision (c), if the prevailing party has paid the filing and service costs, that party is entitled to recover taxable costs from the unsuccessful party. While it may be unusual for a police department to be a party in a civil matter in magisterial district court, the statute has prescribed these violations for passing a school bus as civil actions, not criminal. There are no provisions in the legislation exempting the parties from filing fee requirements pursuant to 42 Pa.C.S. § 1725.1(a) or from the awarding of costs to a prevailing party pursuant to 42 Pa.C.S. § 1726. *See also* Pa.R.Civ.P.M.D.J. 206B. Procedures for a prevailing litigant to enforce a judgment are set forth at Rules 401 *et seq.*

Because these are civil actions, the unsuccessful party must pay the judgment amount directly to the prevailing party. *See* Rule 3.10(A)(2) of the Rules Governing Standards of Conduct of Magisterial District Judges (prohibiting a magisterial district judge from engaging in any activity related to the collection of a claim or judgment for money); *see also* Pa.R.Civ.P.M.D.J. 323, Comment (“The payments are to be made to the plaintiff and not to the magisterial district judge”).

The courts of common pleas have jurisdiction of appeals from the magisterial district courts. “Except as otherwise prescribed by any general rule adopted pursuant to section 503

(relating to reassignment of matters), each court of common pleas shall have exclusive jurisdiction of appeals from final orders of the minor judiciary established within the judicial district.” *See* 42 Pa.C.S. § 932. An appeal from a judgment rendered by a magisterial district court should be made to the court of common pleas for the judicial district. *See* Pa.R.Civ.P.M.D.J. 1001 *et seq.*

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