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HOW TO APPEAL FROM MAGISTERIAL DISTRICT COURT

A Handbook for people who have lost a case in Magisterial District Court. You have a right to file an appeal to the local Common Pleas Court of your county.



Revised November 2008

(*The other side's name*),) APPEAL FROM DISTRICT JUDGE
)
Plaintiff-Appellee,)
) Case No.: (fill in case number)
vs.)
)
(*Your name and name of anyone else*)
who was sued,)
)
Defendant-Appellant.)

NOTICE TO PLEAD

You have been sued in Court. If you wish to defend against the claims set forth in is New Matter, you must take action within twenty (20) days after this Answer and New Matter 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 Defendant's Answer and New Matter or relief requested by the Defendant. 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:

Lawyer Referral Service
(Insert the address and phone
number of the Lawyer Referral
Service for the County)

(*Your Signature*)

(*Print your name*)

(*Your Address*)

(*Your Telephone Number*)

Introduction



If you have lost a case in Magisterial District Court, you have the right to file an appeal to the local Common Pleas Court of your county. Because of lack of staff, your local legal services program may not be able to represent you. However, you may be able to file an appeal on your own, with the help of this booklet. This booklet does not tell you everything about how to handle an appeal. It only describes the steps that should be taken in the simplest cases. Also, each Common Pleas Court has "local rules" that apply just in its county. This booklet does not cover those local rules. It is difficult to handle an appeal without a lawyer. After reading this booklet you may decide that it is too complicated for you to do by yourself. Before you make that decision you should read this entire booklet.

You should only file an appeal if you have a legitimate, reasonable disagreement with the District Magistrate Judge's decision. If you file an appeal without a good reason you could be forced to pay the fees for the other side's lawyer. Also, the decision of the Common Pleas Court could end up being worse than the one made by the District Judge. For these reasons and others, it may be best for you to accept the District Judge's ruling, even though you disagree with it. Sometimes you may be able to work out a settlement by making a proposal to the other side. You can also ask the District Judge to allow you to pay in installments, for a period of up to one year.

This booklet covers only cases where you were the person being sued (the Defendant) in Magisterial District court. If you were the one who brought the lawsuit (the Plaintiff), an appeal to Common Pleas Court is probably too complicated for you to handle without a lawyer. ***This booklet does not cover appeals in criminal cases or landlord-tenant evictions.*** It only covers appeals in civil lawsuits for money.

Important Terms and Information



The person who appeals a decision is called the “**Appellant.**” The other side is called the “**Appellee.**”

You should always make several copies of every paper you file with the court, and keep one copy for your own records.

You must always give or mail a copy of every paper you file with the court to the other side. This is called “serving” the paper on the other side. Neatness counts. You should **print or type all documents** to make sure that they can be read easily. Some of the documents you will have to prepare may be forms that have several copies; if so, use a typewriter or press hard.

Filing the Appeal

A. Time Limit

You must file your appeal within 30 days of the date the Magisterial District Judge made the decision, which is also called a “judgment.” The District Judge usually makes the decision on the same day as the hearing, but is allowed to wait up to five days after the hearing. If you do not get a written notice of the decision at the hearing or within five days after the hearing, you should contact the District Judge’s office to make sure the notice has not been sent to the wrong address.

The 30-day appeal period starts from the date of the decision, not the date it was mailed to you or the date you received it. If the 30th day falls on a Saturday, Sunday or holiday you have until the next day that the Common Pleas Court is open to file your appeal.

YOU MUST FILE YOUR APPEAL WITHIN THE 30-DAY PERIOD, OR THE DISTRICT JUDGE’S DECISION WILL BECOME FINAL AND YOUR APPEAL WILL NOT BE ALLOWED.

To be on the safe side, you should file your appeal several days before the deadline.

<i>(The other side’s name),</i>)	APPEAL FROM DISTRICT JUDGE
)	
Plaintiff-Appellee,)	
)	Case No.: (fill in case number)
vs.)	
)	
<i>(Your name and name of anyone else)</i>		
<i>who was sued),</i>)	
)	
Defendant-Appellant.)	

CERTIFICATION OF SERVICE

I, (**your name**), hereby certify that I have mailed by U.S. mail, first class, postage prepaid on this ____ day of **(month)**, 2008, a true and correct copy of the Answer and New Matter to the person(s) at the address indicated:

(the other side’s name and address or their attorney’s name and address)

Date: **(month and date)**, 2008

(Your name)

(Your address)

(Your telephone number)

(Admit, or deny and explain, the other paragraphs of the complaint in this same way).

NEW MATTER

8. (Here write out any other facts you feel the Court should know. Number each paragraph. Keep each paragraph short.)

Respectfully submitted,

(*Your Signature*)

Defendant-Appellant

{*Type or print your name,
address and phone number*}

Defendant-Appellant

I verify that the statements made in this Answer and New Matter are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: _____

Your Signature

Filing the Appeal

B. The Notice of Appeal

You start the appeal process by filling out a Notice of Appeal form. You can get the form from the Prothonotary (the clerk of the civil part of the Common Pleas Court). Appendix A shows how to fill out the Notice of Appeal.

Once you have filled out the Notice of Appeal, you must file it with the Prothonotary in the County of the Common Pleas Court where the office of the Magisterial District Judge is located.

The Appeal form has several copies. When you file the appeal the Prothonotary will keep one copy and give you back all the rest. The last copy (which is a golden-orange color) says “Copy to be served on District Magistrate” at the bottom. You must take this to the District Judge’s office in person, or send it there by certified mail.

The second-to-last copy (which is pink) says “Copy to be served on Appellee” at the bottom. You must give this to the other side or send it by certified mail. The yellow copy (marked “Appellant’s Copy”) is for you.

C. Filing Fee

The Common Pleas Court charges a fee for filing an appeal. The fee varies from county to county but is generally in the \$120-150 range. The Prothonotary’s office can tell you what the fee is.

If your income is low, you can ask the court to excuse you from paying the filing fee. To do this, you must file an **In Forma Pauperis** [“IFP”] **Petition** like the one attached to this booklet as Appendix B. You should ask the Prothonotary or your local legal services office if there are any local rules about IFP Petitions that you need to follow. Give the IFP Petition to the Prothonotary at the same time as you file your appeal. You should find out in a few days whether the Court has approved your IFP Petition. In some counties, you must take your IFP papers to a judge. If your Petition is rejected, you will have to pay the filing fee or face having your appeal dismissed.

Filing the Appeal

D. Serving the Notice of Appeal

After you have filed the Notice of Appeal with the Prothonotary, you must give or send a copy to both the District Judge and the Plaintiff. This is called “**serving**” the Notice of Appeal.

After you have served the District Judge and the other side, you must fill out the Proof of Service on the reverse side of the green copy (marked “Court File”), have it notarized, and return it to the Prothonotary. If you use certified mail, you must attach the white sender’s receipts to the Proof of Service. An example showing how to fill out the Proof of Service (with sender’s receipts attached) is included as Appendix C of this pamphlet. You must file the Proof of Service with the Prothonotary no more than 10 days after you have filed your Notice of Appeal.

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

<i>(The other side’s name),</i>)	APPEAL FROM DISTRICT JUDGE
)	
Plaintiff-Appellee,)	
)	Case No.: (fill in case number)
vs.)	
)	
<i>(Your name and name of anyone else)</i>		
<i>who was sued,</i>)	
)	
Defendant-Appellant.)	

ANSWER AND NEW MATTER

And now, comes the Defendant, *(your name)*, pro se, who answers Plaintiff’s Complaint as follows:

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is denied. (Explain what the true facts are).
4. Paragraph 4 is denied (Explain what the true facts are).
5. Paragraph 5 is admitted.
6. Paragraph 6 is admitted in part and denied in part. (Explain what part is admitted and what part is denied, and what the true facts are).
7. After reasonable investigation, I am without knowledge or information sufficient to form a belief as to the truth of paragraph 7, which is therefore denied.

Next Steps

A. Deadline for Filing Complaint



If you were the one sued in District Justice Court (the Defendant), the other side (the Plaintiff) has to file a Complaint within 20 days from the date you gave or mailed them the Notice of Appeal. The Complaint is a legal paper that tells the Court the details about why the Plaintiff believes you owe money. If you mailed a copy of the Notice of Appeal to the Plaintiff, the date of service is the date that you mailed it.

B. If the Other Side Does Not File a Complaint

You can have the Plaintiff’s case dismissed if: a) more than 20 days have passed since you mailed or gave the Notice of Appeal to the Plaintiff, and b) the Plaintiff has not filed a Complaint.

Office of the Prothonotary
 Court of Common Pleas,
 County of _____
 Room _____
 _____, PA

TO: _____
 Address: _____

Court of Common Pleas
 _____ County, Pennsylvania

_____	:	Civil Action - Law
Plaintiff-Appellee	:	
vs.	:	
_____	:	Case No. _____
_____	:	
Defendant-appellant	:	

NOTICE

Pursuant to Pa. R.C.P. 236, you are hereby notified that a JUDGMENT OF NON PROS has been entered against you in the above proceeding.

 Prothonotary

Next Steps

To get the case dismissed, you must take these steps:

1. Once 20 days pass, if the Plaintiff has not filed a Complaint, fill out the form in Appendix D-1 ("Notice of Praecipe to Enter Judgment of Non Pros"), and send it to the other side. Regular first-class mail is fine.
2. Wait ten more days.
3. If the ten days pass and the other side still have not sent you a complaint, file a "Praecipe for Non Pros" (Appendix D-2 with the Prothonotary).

When you give the Praecipe to the Prothonotary, you may also have to provide a Notice of Judgment of Non Pros and a stamped envelope, addressed to the other side. Appendix D-3 shows an example of a Notice of Judgment of Non Pros. Before you file a Praecipe for Non Pros, you should ask the Prothonotary about these possible requirements.

If the other side does not file a Complaint and you get a Judgment of Non Pros, then the case is over. The other side may still have the right to start a new case against you, but that does not usually happen. The other side may also ask the Common Pleas Court to "open" the judgment of Non Pros, if the other side can show a good reason for not filing the complaint on time.

C. If the Other Side Files a Complaint

If the other side (the Plaintiff) files a Complaint, you must file an Answer with the Court within 20 days after you get the Complaint. You must also give or send a copy of the Answer to the other side. It is very difficult to prepare and file an Answer without a lawyer. This pamphlet tells you only the most basic steps that you have to follow.

Next Steps



If the other side files a Complaint and you don't file an Answer, the other side can get a "default judgment" against you – a ruling that you owe the amount of money the other side has asked for – without presenting any evidence. However before the other side can get such a default judgment, they must send you a notice reminding you that you must file an answer within 10 days of the date the notice is mailed.

Preparing an Answer

If you decide to file an Answer on your own, you should write the name of the case, the name of the Court, the case number, and the word "Answer" at the top of the page, as in the example in Appendix E. Then you should write out your response to each paragraph of the Complaint. Use the same paragraph numbers for your Answer as the Complaint uses.

If a paragraph of the Complaint is completely true, your answer should say "Paragraph ____ of the Complaint is admitted." If it is not true, you should say "Paragraph ____ of the Complaint is denied" and then explain what the true facts are. NOTE: It is not enough to just deny a paragraph of the Complaint. You must give some further explanation of why the paragraph is not true.

If a paragraph of the Complaint is partly true, you should explain exactly what you are admitting and exactly what you are denying and why.

If you don't know or can't find out whether a paragraph is true or false, you should state in your Answer that you have investigated the facts but still do not know whether the paragraph is true or false, using the language in paragraph 7 of Appendix E.

Office of the Prothonotary
Court of Common Pleas,
County of _____
Room _____
_____, PA

TO: (Fill in name of the other side) _____

Address: _____

Court of Common Pleas
_____, County, Pennsylvania

(The other side's name), : Civil Action - Law
Plaintiff-Appellee :

vs. :

(Your name and the name of : Case No. _____
anyone else who was sued) :
Defendant-appellant :

NOTICE

Pursuant to Pa. R.C.P. 236, you are hereby notified that a JUDGMENT OF NON PROS has been entered against you in the above proceeding.

Prothonotary

Court of Common Pleas

____ County, Pennsylvania

____,	:	Civil Action - Law
Plaintiff-Appellee	:	
	:	
vs.	:	
	:	
____	:	Case No. _____
	:	
____	:	
Defendant-Appellant	:	

Præcipe for Non Pros

Please enter a non pros against Plaintiff-Appellee, for the reason that the Plaintiff-Appellee has failed to file a Complaint and more that 20 days have elapsed since the Notice of Appeal and Rule to File Complaint were served upon the Plaintiff-Appellee, as shown by the Proof of Service filed in this case.

Defendant-Appellant

Preparing an Answer

"New Matter"

There may be other facts that you haven't stated in your Answer that explain why you do not owe the money claimed. For instance, you may have withheld payment for a product you bought because the product didn't work properly. Or you may believe that the other side in an accident case was at least partly at fault for the injuries claimed. Facts such as these are called "New Matter." You should write then out in paragraph form after you finish responding to all of the paragraphs of the Complaint. Keep numbering the paragraphs.

Signing and Verification

After you have written out your response to each paragraph of the Complaint and any important additional facts ("New Matter"), you should sign your name.

Then you must write out the following statement at the bottom of your Answer and sign it:

"Understanding that the making of any false statements would subject me to the penalties of the Crimes Code, 18 Pa. C.S. Sec 4904 (relating to unsworn falsification to authorities), I verify that the statements made in this Answer are true and correct, to the best of my knowledge, information and belief."

As you can see, your Answer has to be truthful. It is a crime to file an Answer that you know is not truthful.

If two people are appealing the District Judge's decision, both of them must sign this statement.

Filing and Serving the Answer

You must file your answer with the Prothonotary and send a copy of it to the other side (the Plaintiff). Make sure you keep a copy for yourself.

Getting a Hearing



If the other side (the Plaintiff) files a Complaint and you file an Answer, the next step in the case is usually an arbitration hearing. The hearing is like a trial, except that three lawyers act as the judge. The attorneys, who have no connection with the case, are appointed by the court. They listen to the evidence and decide the case. Since there is no record of testimony or evidence made in the Magisterial District Court, the case will be heard all over again, as if there had never been a hearing in the Magisterial District Court.

In some counties, an arbitration hearing is automatically scheduled when the Plaintiff files a complaint. In other counties, either side may ask for an arbitration hearing. In most cases, if you are the person who has been sued, it is best to wait for the other side to ask for a hearing. After all, the other side might decide to abandon the case. If the other side never asks for a hearing, then some courts dismiss the case after a year or two, after sending a notice to both sides.

If you decide to ask for a hearing, you can get a form for the Praecipe for Arbitration at the Prothonotary's office in most counties. Your county may have special rules about what information this form must contain. There may be special rules that require a statement with information concerning witnesses, etc., be filed before the hearing. Check with the Prothonotary or Court Administrator. There will also be a fee unless you have been approved to proceed "in forma pauperis."

Court of Common Pleas

County, Pennsylvania

Plaintiff-Appellee

vs.

Defendant-Appellant

Civil Action - Law

Case No. _____

To: * _____

Date of Notice: _____

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO FILE A COMPLAINT IN THIS CASE. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR RIGHT TO SUE THE DEFENDANT AND THEREBY LOSE PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

** _____

Name of office

Address of office

Telephone number

Your signature

Your address

*Fill out and send a separate notice for each person on the other side. If someone on the other side has an attorney, send the notice to the attorney.

**Each local court has a rule about what office should be listed in this blank. The Prothonotary's office or the Court Administrator may be able to tell you what office should be listed.

Appendix C

PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing the notice of appeal. Check applicable boxes)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF Fill in name of county; SS

AFFIDAVIT: I hereby swear or affirm that I served

- ☐ a copy of the Notice of Appeal, Common Pleas No. [1], upon the Magisterial District Judge designated therein on (date of service) [2], 20 , ☐ by personal service ☐ by (certified) (registered) mail, sender's receipt attached hereto, and upon the appellee, (name) fill in name(s) of other party [3], 20 , ☐ by personal service ☐ by (certified) (registered) mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

THIS DAY OF , 20

Signature of official before whom affidavit was made

(Sign your name here)
Signature of affiant

Title of official

My commission expires on , 20

[1] Fill in the case number assigned by the Prothonotary. (It should be on the front of the Notice of Appeal.)

[2] Fill in the date you gave or sent the papers to the District Judge, and check the box to show how you did it.

[3] Fill in the date you gave or sent the papers to the other side, and check the box to show how you did it.

AOPC 312A-05

Remember to get this paper notarized and to attach your white receipts for certified Mail!

Getting a Hearing

You will be notified of the date and time of the hearing. At the hearing, you should make sure that you have:

1. All the papers that have anything to do with the case. It is helpful to have four extra copies of all the papers, so that each of the three arbitrators and the other side can have a copy.
2. All the witnesses who know anything about the case that you want to prove. If a witness won't agree to come to the hearing, you can get a subpoena from the Prothonotary. You should fill out the subpoena, make two copies of it and hand the original to the witness. You also have to offer the witness 7 cents a mile (round trip) for travel expenses, and \$5 a day as a witness fee. Fill out the back of one copy of the subpoena to show where, when and how you served it, and file this copy with the Prothonotary. The last copy is for your own records.

If you lose the arbitration hearing, you have the right to appeal to the Court and have a trial. That step is too complicated to explain in this pamphlet.

REMEMBER:



This booklet only gives the most basic information that may work in the simplest cases. The information may not be appropriate in all cases. The rules for filing an appeal are somewhat different in different counties and can be changed by the courts or the legislature at anytime. To make sure that your rights are protected it is best to have a lawyer represent you. If your local Legal Services office cannot help you, you should consider trying to hire a private attorney to handle your appeal.

Appendix A

COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS

Judicial District, County Of

(Fill in name of County in which the appeal will be filed.)

NOTICE OF APPEAL

FROM

MAGISTERIAL DISTRICT JUDGE JUDGMENT

COMMON PLEAS No.

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the Magisterial District Judge on the date and in the case referenced below.

NAME OF APPELLANT (your name and name of anyone else appealing)	MAG. DIST. NO.	NAME OF MDJ (write in name of District Judge)
ADDRESS OF APPELLANT (your address)	CITY	STATE ZIP CODE

DATE OF JUDGMENT (Take off Notice of Judgment)	IN THE CASE OF (Plaintiff) (Write in the name of the case in District Court here (Other side vs you.))	(Defendant)
---	---	-------------

DOCKET No. (Take from Notice of Judgment/Transcript form)	SIGNATURE OF APPELLANT OR ATTORNEY OR AGENT (Sign here)
--	--

This block will be signed ONLY when this notation is required under Pa. R.C.P.D.J. No. 1008B.
This Notice of Appeal, when received by the Magisterial District Judge, will operate as a SUPERSEDEAS to the judgment for possession in this case.

If appellant was Claimant (see Pa. R.C.P.D.J. No. 1001(6) in action before a Magisterial District Judge, A COMPLAINT MUST BE FILED within twenty (20) days after filing the NOTICE OF APPEAL.

Signature of Prothonotary or Deputy

PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa.R.C.P.D.J. No. 1001(7) in action before Magisterial District Judge. IF NOT USED, detach from copy of notice of appeal to be served upon appellee.

PRAECIPE: To Prothonotary

Enter rule upon (Write in the name of the other side here) appellee(s), to file a complaint in this appeal
Name of appellee(s)

(Common Pleas No.) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

(You sign here)

Signature of appellant or attorney or agent

RULE: To (Write in the name of the other side) appellee(s)
Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS MAY BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of the mailing.

Date: , 20

Signature of Prothonotary or Deputy

YOU MUST INCLUDE A COPY OF THE NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH THIS NOTICE OF APPEAL.

Other: _____

G. Persons dependent upon you for support

Wife's/Husband's Name: _____

Children, if any:

Name: _____ Age: _____

_____ Age: _____

_____ Age: _____

Other persons:

Name: _____

Relationship: _____

4. I understand that I have a continuing obligation to inform the court of improvement in my financial circumstances that would permit me to pay the costs incurred herein.

5. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

WHEREFORE, Petitioner respectfully prays that the Honorable Court allow the petitioner to proceed in forma pauperis.

Date: _____

Petitioner

B-5

Public assistance: _____

Loans: _____

IN THE COURT OF COMMON PLEAS OF _____ COUNTY, PENNSYLVANIA
MOTION – FAMILY/MISCELLANEOUS COURT DIVISION

Plaintiff :
Vs. :
Defendant :
: File No: _____
:
:

PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The petition of _____ respectfully represents:

1. I am the plaintiff/defendant in the above matter and because of my financial condition am unable to pay the fees and costs of prosecuting or defending the action or preceding.
2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.
3. I represent that the information below relating to my ability to pay the fees and costs is true and correct:

A. Name: _____
Address: _____

B. Employment:

If you are presently employed, state:

Employer: _____

Address: _____

Salary or wages per month: _____

Types of work: _____

If you are presently unemployed, state:

Date of last employment: _____

Salary or wages per month: _____

Type of work: _____

C. Other income within the past twelve months:

Business of profession: _____

Other self-employment _____

Interest: _____

Dividends: _____

Pension and annuities: _____

Social Security benefits: _____

Support Payments: _____

Disability Payments: _____