

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

#### Amendment of Rules 219 and 221 of the Pennsylvania Rules of Disciplinary Enforcement; No. 208; Doc. No. 3

##### Order

*Per Curiam:*

And Now, this 3rd day of April, 1996, Rules 219 and 221 of the Pennsylvania Rules of Disciplinary Enforcement are amended to read as set forth in Annex A hereto.

To the extent that notice of proposed rulemaking would be required by Rule 103 of the Pennsylvania Rules of Judicial Administration or otherwise, the immediate amendment of these rules is hereby found to be required in the interest of justice and efficient administration.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration and the amendments shall take effect with respect to assessment years commencing July 1, 1996 and thereafter.

##### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart B. DISCIPLINARY ENFORCEMENT

#### CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

##### Subchapter B. MISCONDUCT

#### Rule 219. Periodic assessment of attorneys; voluntary inactive status.

\* \* \* \* \*

(d)(1) On or before July 1 of each year all persons required by this rule to pay an annual fee shall file with the Administrative Office a signed statement on the form prescribed by the Administrative Office setting forth:

(i) The date on which the attorney was first admitted to practice in this Commonwealth, and a list of all courts (except courts of this Commonwealth) and jurisdictions in which the person has ever been licensed to practice law, with the current status thereof.

(ii) The current residence and office addresses of the attorney. Each address shall be an actual street address or rural route box number, and the Administrative Office shall refuse to accept a statement that sets forth only a post office box number for either required address.

(iii) The name of each financial institution in this Commonwealth in which the attorney on May 1 of the current year or at any time during the preceding 12 months held funds:

(A) of a client;

(B) in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee of an express trust, guardian or conservator; or

(C) as an escrow agent or other fiduciary, having been designated as such by a client or having been so selected as a result of the client-attorney relationship.

(D) A certification reading as follows: "I certify that all fiduciary accounts that I maintain in Pennsylvania are in financial institutions that have been approved by the Supreme Court of Pennsylvania for the maintenance of such accounts pursuant to Pennsylvania Rule of Disciplinary Enforcement 221 (relating to mandatory overdraft notification)."

\* \* \* \* \*

#### Rule 221. Mandatory overdraft notification.

(a) For purposes of this rule, a fiduciary account of an attorney is any account in which or with respect to which an attorney

(1) holds funds of a client,

(2) holds funds in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee of an express trust, guardian or conservator, or

(3) holds funds as an escrow agent or other fiduciary, having been so selected as a result of a client-attorney relationship.

(b) [ A fiduciary account of an ] An attorney shall maintain a fiduciary account with respect to his/her practice in this Commonwealth [ may be maintained ] only in a financial institution approved by the Supreme Court of Pennsylvania for the maintenance of such accounts. Subject to the provisions set forth herein, the Disciplinary Board shall establish regulations governing approval and termination of approval for financial institutions, shall make appropriate recommendations to the Supreme Court of Pennsylvania concerning approval and termination, and shall periodically publish a list of approved financial institutions.

\* \* \* \* \*

[Pa.B. Doc. No. 96-620. Filed for public inspection April 19, 1996, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [231 PA. CODE CHS. 2950, 2980 AND 3000]

#### Amendment of Rules Governing Confession of Judgment for Money; No. 256; Doc. No. 5

##### Order

*Per Curiam:*

And Now, this 1st day of April, 1996, the Pennsylvania Rules of Civil Procedure governing confession of judgment for money are amended as follows:

1. Rules 2950, 2951, 2952, 2957, 2959, 2960, 2961, 2962, 2986, 3103, 3129.2 and 3251 are amended to read as follows.

2. Rules 2958 and 2961 are rescinded.

3. New Rules 2956.1, 2958.1, 2958.2, 2958.3, 2958.4, 2963, 2964, 2965, 2966 and 2967 are promulgated to read as follows.

4. Notes to Rules 2955 and 2956 are amended to read as follows.

This Order shall be effective July 1, 1996 and shall be processed in accordance with Rule of Judicial Administration 103(b).

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 2950. CONFESSION OF JUDGMENT FOR MONEY

##### Rule 2950. [ Definition ] Definitions.

As used in this chapter

"action" means a proceeding to enter a judgment by confession for money pursuant to an instrument, **other than an instrument executed by a natural person in connection with a consumer credit transaction,** authorizing such confession.

**Official Note: The action is abolished insofar as it would apply to a confession of judgment which is part of an instrument executed in connection with a consumer credit transaction.**

"consumer credit transaction" means a credit transaction in which the party to whom credit is offered or extended is a natural person and the money, property or services which are the subject of the transaction are primarily for personal, family or household purposes.

##### Rule 2951. Methods of proceeding.

(a) (1) [ The ] Upon filing of the documents required by subparagraph (2), the prothonotary shall enter judgment by confession on a note, bond or other instrument confessing judgment or authorizing confession by an attorney at law or other person against the person who executed it in favor of the original holder or, unless expressly forbidden in the instrument, in favor of the assignee or other transferee[ , upon filing of the instrument and a certificate of residence of the plaintiff and of the defendant, ] without the agency of an attorney and without the filing of a complaint, for the amount which may appear to be due from the instrument. The judgment may include interest computable from the instrument.

(2) The documents to be filed in support of the entry of judgment are

(i) the instrument

(ii) an affidavit that the judgment is not being entered by confession against a natural person in connection with a consumer credit transaction, and

(iii) a certificate of residence of the plaintiff and of the defendant.

**Official Note: [ Subdivision (a) does not change existing law. It replaces Section 28 of the Act of**

**February 24, 1806, P. L. 334, 4 Sm.L. 270, as amended, 12 P. S. § 739, which is repealed by Section 2(a) of the Judiciary Act Repealer Act, 42 P. S. § 20002(a)(49). ]**

Section 2737(3) of the Judicial Code provides that the prothonotary shall have the power and the duty to "enter all civil judgments, including judgments by confession."

A judgment by confession may be entered only in the name of a holder, assignee or other transferee. See Rule 2954.

For collection of attorneys' fees under such a judgment see Rule 2957. If an instrument authorizes confession for a penal sum judgment may be entered in that amount.

(b) If judgment by confession is authorized by the instrument but may not be entered by the prothonotary under subdivision (a), an action shall be commenced by filing with the prothonotary a complaint substantially in the form provided by Rule 2952. Even though the instrument is one on which judgment could be entered by the prothonotary under subdivision (a), the plaintiff may proceed under this subdivision.

**[ Official Note: Subdivision (b) replaces Section 8 of the Act of March 21, 1806, 4 Sm.L. 326, 12 P. S. § 738, which is repealed by Section 2(a) of the Judiciary Act Repealer Act, 42 P. S. § 20002(a)(50). ]**

\* \* \* \* \*

(d) If the instrument is more than twenty [ (20) ] years old, judgment may be entered only by leave of court after notice and the filing of a complaint under Subdivision (b).

(e) When the plaintiff proceeds under Subdivision (b) and the original or a photostatic copy or like reproduction of the instrument showing the defendant's signature is not attached to the complaint, judgment may be entered only by leave of court after notice.

**Official Note:** Amended January 20, 1970. Effective February 15, 1970. The procedure for notice and hearing shall be in accordance with local practice.

See [ sec. ] sections 401(h) and [ sec. ] 1205 of the Goods and Services [ Retail ] Installment Sales Act, 1966, Special Sess. No. 1, October 28, P. L. 7, effective April 1, 1967, 69 P. S. §§ 1401(h) and 2205 which may limit the venue for commencement of an action in certain cases.

##### Rule 2952. Complaint; contents.

(a) The complaint shall contain the following:

[ (a) ] (1) the names and last known addresses of the parties;

**Official Note: These rules change prior practice by not requiring a separate certification of address.**

[ (b) ] (2) the original or a photostatic copy or like reproduction of the instrument showing the defendant's signature; if the original is not attached, an averment that the copy attached is a true and correct reproduction of the original; if neither the original nor a reproduction can be attached, an explanation why they are not available;

**Official Note:** If the original instrument is not attached to the complaint, a method of securing inspection thereof is provided by Discovery Rule 4009.

**(3) an averment that judgment is not being entered by confession against a natural person in connection with a consumer credit transaction;**

[ (c) ] (4) \* \* \*

[ (d) ] (5) \* \* \*

[ (e) ] (6) \* \* \*

[ (f) ] (7) \* \* \*

[ (g) ] (8) \* \* \*

[ (h) ] (9) if the instrument is more than twenty [ (20) ] years old, or if the original or a photostatic copy or like reproduction of the instrument showing the defendant's signature is not attached to the complaint, an application for a court order granting leave to enter judgment after notice;

**Official Note:** The procedure for notice and hearing will be in accordance with local practice.

[ (i) ] (10) \* \* \*

[ (j) ] (b) \* \* \*

**Rule 2955. Confession of judgment.**

\* \* \* \* \*

**Official Note:** Added June 27, 1969. Eff. Jan. 1, 1970. Amended Jan. 20, 1970. Eff. Feb. 15, 1970. There are local rules in some counties requiring the filing of an affidavit of non-military service. See also the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.A. Appendix § 520.

[ **The Act of May 17, 1929, P. L. 1804, as amended by the Act of June 25, 1937, P. L. 2325, sec. 1, 12 P. S. § 743, requiring certification of the precise residence address of the plaintiff and the last known address of the defendant, remains unsuspending by these rules.** ]

**Rule 2956. Entry of judgment.**

\* \* \* \* \*

**Official Note:** As to instruments more than 20 years old see Rules 2951(d) and [ **2952(h) ] 2952(a)(9).**

See Rule 236 for the notice required to be given and the documents required to be mailed to the defendant by the prothonotary.

**Rule 2956.1. Execution upon a judgment entered by confession.**

(a) Except as otherwise provided by subdivisions (b) and (c), a judgment entered by confession shall be enforced as provided by Rule 3101 et seq. governing the enforcement of a judgment for the payment of money.

(b) A judgment entered by confession which arises from a retail installment sale, contract or account under the Goods and Services Installment Sales Act or which constitutes a residential mortgage obligation under the Loan Interest and Protection Law shall be conformed as provided by Rule 2981 et seq. prior to execution.

**Official Note:** These Acts of Assembly prohibit execution upon these judgments until they have been conformed in a separate action. Once conformed pursuant to Rule 2986, these judgments may be enforced in the same manner as other judgments for the payment of money.

(c) Execution upon a judgment entered by confession which is not within the scope of subdivision (b) and to which a petition to open or strike the judgment has not been filed, shall be

(1) commenced by a praecipe as provided by Rule 2957 and

**Official Note:** The praecipe required by subparagraph (1) is in place of the praecipe prescribed by Rule 3251.

(2) conditioned upon the service of notice on the defendant in the judgment as provided by either

(i) Rule 2958.1 at least thirty days prior to the filing of the praecipe for the writ of execution, or

(ii) Rule 2958.2 with the notice of sale of real property, or

(iii) Rule 2958.3 with the writ of execution.

**Official Note:** The notice may be given prior to execution under Rule 2958.1 or as part of the execution process under Rule 2958.2 or 2958.3, whichever is applicable.

Notice prior to execution under Rule 2958.1 may be given in all cases. However, the notice served with the notice of sale of real property under Rule 2958.2 is limited to execution upon real property or real property and personal property subject to Section 9501(d) of the Judicial Code. The notice served with the writ of execution under Rule 2958.3 is limited to an execution upon personal property or personal and real property.

Written notice under subdivision (c)(2) is required only in connection with execution proceedings and is in addition to the procedural requirements of Rule 3101 et seq. The notice is in addition also to the notice of the entry of the judgment given by the prothonotary under Rule 236.

**Rule 2957. [ Execution ] Praecipe for writ of execution; amount; items claimed; certification.**

(a) Plaintiff may include the amount due, interest, attorneys' fees and costs in [ **his** ] the praecipe for a writ of execution under Rule [ **3251(5) ] 2963(5).** Where judgment has been entered under Rule 2951(a) and there has been a record appearance of counsel at any stage of the proceedings and attorneys' fees are authorized in the instrument, these fees may be included in the praecipe for a writ of execution.

**(b) The praecipe for the writ of execution shall contain the words "Confessed Judgment" immediately below the title of the praecipe and a certification that**

**(1) the praecipe is based upon a confessed judgment and**

**(2) the prothonotary is authorized to issue the praecipe because**

**(i) notice has been served pursuant to Rule 2958.1 as evidenced by a return of service filed of record, or**

**(ii) notice will be served pursuant to Rule 2958.2 because the property to be levied upon consists solely of real property or real property and personal property to be sold with the real property pursuant to Section 9501(d) of the Uniform Commercial Code, or**

**(iii) notice will be served pursuant to Rule 2958.3 because the property to be levied upon consists of**

**personal property or personal property and real property, not within the scope of Rule 2958.2(a)(2), or**

**(iv) notice was served in connection with a prior execution on this judgment and no further notice is required under Rule 2958.4(b), or**

**(v) a petition to open or strike the judgment has been previously filed and notice is not required under Rule 2956.1(c).**

**Official Note: See Rule 2963 for the form of the praecipe for writ of execution upon a confessed judgment.**

Rule 2958. **Rescinded.**

**Rule 2958.1. Notice served prior to execution.**

(a) A written notice substantially in the form prescribed by Rule 2964 shall be served on the defendant at least thirty days prior to the filing of the praecipe for a writ of execution.

**Official Note:** The notice provided for by this rule may be served in all executions within the scope of Rule 2956.1(c). If notice is served under this rule at least thirty days prior to the filing of the praecipe, notice need not be given under Rule 2958.2 governing execution upon real property or Rule 2958.3 governing execution upon personal or personal and real property. Conversely, if notice is served under either Rule 2958.2 or 2958.3, notice need not be given under this rule.

Rule 2957(b) governing the praecipe for the writ of execution requires a certification that notice has been given as provided by this rule.

Rule 2959(a)(3) requires a petition for relief from a confessed judgment to be filed within thirty days after service of notice pursuant to this rule.

(b) The notice shall be served

(1) upon a defendant in the judgment who has not entered an appearance

(i) by the sheriff or by a competent adult who is not a party to the action in the manner prescribed by Rule 402(a) for the service of original process upon a defendant, or

(ii) by the plaintiff mailing a copy in the manner prescribed by Rule 403, or

(iii) pursuant to special order of court as prescribed by Rule 430 if service cannot be made as provided in subparagraphs (i) or (ii), or

(2) upon a defendant in the judgment who has entered an appearance, by the plaintiff in the manner provided by Rule 440.

(c) The person serving the notice shall file a return of service as provided by Rule 405.

**Rule 2958.2. Notice of execution served with notice of sale of real property.**

(a) Written notice substantially in the form prescribed by Rule 2965 shall be served upon the defendant at least thirty days prior to the sheriff's sale if the property to be levied upon consists solely of

(1) real property, or

(2) real property and personal property to be sold with the real property pursuant to Section 9501(d) of the Uniform Commercial Code.

**Official Note:** Section 9501(d) of the Uniform Commercial Code, 13 Pa.C.S. § 9501(d) relates to the rights of a secured party when the agreement covers real and personal property.

The notice required by this rule must be served only when the plaintiff has not proceeded under Rule 2958.1 requiring at least thirty days notice prior to the filing of the praecipe for writ of execution.

Rule 2957(b) governing the praecipe for the writ of execution requires a certification that notice has been given as provided by this rule.

Rule 2959(a)(3) requires a petition for relief from a confessed judgment to be filed within thirty days after service of notice pursuant to this rule.

(b) The notice shall be served with the written notice of sale of real property and shall be governed by the provisions of Rule 3129.2(c).

**Official Note:** Rule 3129.2(c) governing notice of the sale of real property provides for the manner of service, the return of service and the timeliness of the service.

**Rule 2958.3. Notice of execution served with writ of execution. Request for prompt hearing limited to issue of waiver of due process rights.**

(a) Written notice in the form prescribed by Rule 2966 and a form of petition to strike the judgment and request for prompt hearing in the form prescribed by Rule 2967 shall be served upon the defendant with the writ of execution if the property to be levied upon consists of

(1) personal property or

(2) personal property and real property, not within the scope of Rule 2958.2(a)(2).

**Official Note:** The notice required by this rule must be served only when the plaintiff has not proceeded under Rule 2958.1 requiring at least thirty days notice prior to the filing of the praecipe for writ of execution.

Rule 2957(b) governing the praecipe for the writ of execution requires a certification that notice has been given as provided by this rule.

Rule 2959(a)(3) requires a petition for relief from a confessed judgment to be filed within thirty days after service of notice pursuant to this rule.

(b) If the writ has been served and property has been levied upon or attached, the defendant may file with the sheriff a petition to strike the judgment in the form provided by Rule 2967. The petition shall be limited to the issue whether the defendant voluntarily, intelligently and knowingly waived the right to notice and hearing prior to the entry of the judgment. The defendant may include in the claim a demand for a prompt hearing. The sheriff shall immediately notify the plaintiff of the filing of the petition.

(c) The sheriff shall immediately present the matter to the court. The court shall hear the claim within three business days thereafter upon such notice to the parties as the court shall direct and shall promptly dispose of the matter on the testimony, admissions or other evidence.

(1) If the court finds that the plaintiff has shown by a preponderance of the evidence that the defendant voluntarily, intelligently and knowingly waived the right to notice and hearing prior to the entry of judgment, it shall enter an order so determining and the stay of the execution proceedings under subdivision (d) shall terminate automatically.

(2) If the court finds that the plaintiff has not made the required showing, it shall enter an order vacating the writ of execution and striking the judgment. Upon entry of the order, any property which has been seized, levied upon or attached pursuant to the writ of execution shall be returned to the defendant.

(d) Execution proceedings shall be stayed during the period from the time the defendant files the hearing request form with the sheriff to the time the court makes the determination on the request.

**Rule 2958.4. Choice of procedure. Notice upon subsequent executions.**

(a) A plaintiff who has given notice pursuant to Rule 2958.1 may not proceed thereafter under Rules 2958.2 and 2958.3.

(b) The notice required by Rules 2958.1 through 2958.3 need not be given upon subsequent executions on a judgment if the notice was given prior to or upon a previous execution on that judgment and either

(1) the defendant filed a petition for relief from the judgment and the court denied the relief, or

(2) the defendant failed to file a petition for relief from the judgment within thirty days after service of the notice as required by Rule 2959(a)(3).

**Rule 2959. Striking off or Opening Judgment. Pleadings. Procedure.**

(a) (1) Relief from a judgment by confession shall be sought by petition. [ All ] Except as provided in subparagraph (2), all grounds for relief whether to strike off the judgment or to open it must be asserted in a single petition. The petition may be filed in the county in which the judgment was originally entered, in any county to which the judgment has been transferred or in any other county in which the sheriff has received a writ of execution directed to [ him ] the sheriff to enforce the judgment.

(2) The ground that the waiver of the due process rights of notice and hearing was not voluntary, intelligent and knowing shall be raised only

(i) in support of a further request for a stay of execution where the court has not stayed execution despite the timely filing of a petition for relief from the judgment and the presentation of prima facie evidence of a defense; and

(ii) as provided by Rule 2958.3 or Rule 2973.3.

(3) If written notice is served upon the petitioner pursuant to Rule 2956.1(c)(2) or Rule 2973.1(c), the petition shall be filed within thirty days after such service. Unless the defendant can demonstrate that there were compelling reasons for the delay, a petition not timely filed shall be denied.

\* \* \* \* \*

(c) A party waives all defenses and objections which [ he does ] are not [ include ] included in [ his ] the petition or answer.

\* \* \* \* \*

**Rule 2960. Proceedings upon Opening of Judgment. Pleadings. Jury Trial. Waiver.**

If a judgment is opened in whole or in part the issues to be tried shall be defined by the complaint if a complaint has been filed, and by the petition, answer and the order of the court opening the judgment. There shall

be no further pleadings. The right to a jury trial on the opened judgment shall be deemed waived unless a party files and serves a written demand for jury trial within twenty [ (20) ] days after the order opening judgment; but if the issue is referred to compulsory arbitration, Rule 1007.1 shall apply.

\* \* \* \* \*

**Rule 2961. [ Effective Date. ] Application of Amendments to Pending Actions.**

[ These rules shall become effective on the first day of January, 1970. These rules shall apply only to actions commenced after the effective date except Rules 2959 and 2960 which also apply to judgments theretofore entered. ]

(a) The amendments promulgated in 1996 to the rules of civil procedure prohibiting the entry of a judgment by confession for money in connection with a consumer credit transaction shall apply to actions commenced after the effective date set forth in the Order of the Supreme Court.

Official Note: The amendments to Rules 2950, 2951 and 2952 generally relate to the prohibition against the entry of a judgment by confession arising from a consumer credit transaction.

(b) The amendments promulgated in 1996 to the rules governing execution on a judgment entered by confession for money shall apply to executions commenced after the effective date set forth in the Order of the Supreme Court.

Official Note: The amendments to Rules 2956.1 through 2959 and Rules 2963 through 2967 generally relate to execution upon a judgment entered by confession and relief from the judgment.

**FORMS**

Rule 2962. Confession of Judgment Where Action Commenced by Complaint. Form.

The confession of judgment required by Rule 2955 shall be substantially in the following form:

(CAPTION)

Pursuant to the authority contained in the warrant of attorney, the original or a copy of which is attached to the complaint filed in this action, I appear for the defendant(s) and confess judgment in favor of the plaintiff(s) and against defendant(s) as follows:

\*(Principal) \*(Penal) Sum \$ \_\_\_\_\_

Other authorized items: \_\_\_\_\_ \$ \_\_\_\_\_

(Specify)

\*\* Interest \$ \_\_\_\_\_

\*\* Attorney fees \$ \_\_\_\_\_

\* Strike out inapplicable item.

\*\* Interest and attorney fees may be included only if authorized by the warrant.

\_\_\_\_\_  
Attorney for Defendant(s)

Official Note: Added June 27, 1969, effective January 1, 1970. This form is not to be used when judgment by confession is entered by the prothonotary under [ the Act of February 24, 1806. See ] Rule 2951(a).

**Rule 2963. Praecipe for Writ of Execution. Certification. Form.**

The praecipe for a writ of execution upon a confessed judgment shall be substantially in the following form:

(Caption)

PRAECIPE FOR WRIT OF EXECUTION UPON A  
CONFESSSED JUDGMENT

To the Prothonotary:

Issue a writ of execution upon a judgment entered by confession in the above matter.

- (1) directed to the sheriff of \_\_\_\_\_ county;
- (2) against \_\_\_\_\_, defendant; and  
(Name of Defendant)
- (3) against \_\_\_\_\_, garnishee;  
(Name of Garnishee)
- (4) and index this writ
  - (a) against \_\_\_\_\_, defendant and  
(Name of Defendant)
  - (b) against \_\_\_\_\_, as garnishee,  
(Name of Garnishee)

as a lis pendens

against real property of the defendant in name of garnishee as follows: \_\_\_\_\_  
(Specifically describe property)

\_\_\_\_\_  
(If space insufficient attach extra sheets)

- (5) Amount due \$ \_\_\_\_\_
- Interest from \_\_\_\_\_ \$ \_\_\_\_\_
- Attorneys' fees\*\* \$ \_\_\_\_\_
- [Costs to be added] \$ \_\_\_\_\_

\*\* Where judgment has been entered under Rule 2951(a), attorneys' fees may be included if they are authorized in the instrument and there has been a record appearance of counsel at any stage of the proceedings.

Certification

I certify that

(a) This praecipe is based upon a judgment entered by confession, and

(Delete four of the following paragraphs which are inapplicable.)

(b) Notice has been served pursuant to Rule 2958.1 at least thirty days prior to the filing of this praecipe as evidenced by a return of service filed of record.

(c) Notice will be served with the writ of execution pursuant to Rule 2958.2.

(d) Notice will be served at least thirty days prior to the date of the sheriff's sale of real property pursuant to Rule 2958.3.

(e) Notice was served in connection with a prior execution on this judgment and, pursuant to Rule 2958.4(b), no further notice is required.

(f) Notice is not required under Rule 2956.1(c) because a petition to open or strike the judgment was previously filed.

\_\_\_\_\_  
(Attorney for Plaintiff)

**Official Note:** Under paragraph (1) when the writ is directed to the sheriff of another county as authorized by Rule 3103(b), the county should be indicated. Under Rule

3103(c) a writ issued on a transferred judgment may be directed only to the sheriff of the county in which issued. Paragraph (3) above should be completed only if a named garnishee is to be included in the writ. Paragraph (4)(a) should be completed only if indexing of the execution in the county of issuance is desired as authorized by Rule 3104(a). When the writ issues to another county indexing is required as of course in that county by the prothonotary. See Rule 3104(b). Paragraph (4)(b) should be completed only if real property in the name of a garnishee is attached and indexing as a lis pendens is desired. See Rule 3104(c).

Certification as to waiver of exemption may be included in the praecipe. Specific directions to the sheriff as to property to be levied upon may be included in the praecipe or by separate direction at the option of plaintiff.

**Rule 2964. Notice of Judgment and Execution Required by Rule 2958.1. Form.**

The notice required by Rule 2958.1 shall be substantially in the following form:

(Caption)

Notice Under Rule 2958.1 of Judgment and  
Execution Thereon

\_\_\_\_\_  
Notice of Defendant's Rights

To: \_\_\_\_\_  
Defendant(s)

A judgment in the amount of \$ \_\_\_\_\_ has been entered against you and in favor of the plaintiff without any prior notice or hearing based on a confession of judgment contained in a written agreement or other paper allegedly signed by you. The sheriff may take your money or other property to pay the judgment at any time after thirty (30) days after the date on which this notice is served on you.

You may have legal rights to defeat the judgment or to prevent your money or property from being taken. YOU MUST FILE A PETITION SEEKING RELIEF FROM THE JUDGMENT AND PRESENT IT TO A JUDGE WITHIN THIRTY (30) DAYS AFTER THE DATE ON WHICH THIS NOTICE IS SERVED ON YOU OR YOU MAY LOSE YOUR RIGHTS.

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

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

**Rule 2965. Notice of Judgment and Execution Required by Rule 2958.2. Form.**

The notice required by Rule 2958.2 shall be substantially in the following form:

(Caption)

Notice Under Rule 2958.2 of Judgment and Execution Thereon

Notice of Defendant's Rights

To: \_\_\_\_\_  
Defendant(s)

A judgment in the amount of \$ \_\_\_\_\_ has been entered against you and in favor of the plaintiff without any prior notice or hearing based on a confession of judgment contained in a written agreement or other paper allegedly signed by you. The court has issued a writ of execution which directs the sheriff to levy upon and sell certain real property owned by you to pay the judgment. The sheriff's sale has been scheduled for

\_\_\_\_\_  
(Date)

You may have legal rights to defeat the judgment or to prevent or delay the sheriff's sale.

I. YOU MUST FILE A PETITION SEEKING RELIEF FROM THE JUDGMENT OR DELAY OF THE SHERIFF'S SALE PRIOR TO THE SHERIFF'S SALE OR YOU MAY LOSE YOUR RIGHTS.

II. YOU MUST FILE A PETITION SEEKING RELIEF FROM THE JUDGMENT AND PRESENT IT TO A JUDGE WITHIN THIRTY (30) DAYS AFTER THE DATE ON WHICH THIS NOTICE IS SERVED ON YOU OR YOU MAY LOSE YOUR RIGHTS.

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:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

**Rule 2966. Notice of Judgment and Execution Required by Rule 2958.3. Form.**

The notice required by Rule 2958.3 shall be substantially in the following form:

(Caption)

Notice Under Rule 2958.3 of Judgment and Execution Thereon

Notice of Defendant's Rights

To: \_\_\_\_\_  
Defendant(s)

A judgment in the amount of \$ \_\_\_\_\_ has been entered against you and in favor of the plaintiff without any prior notice or hearing based on a confession of judgment contained in a written agreement or other paper allegedly signed by you. The court has issued a writ of execution which directs the sheriff to take your money or other property owned by you to pay the judgment.

If your money or property has been taken, you have the right to get the money or property back if you did not voluntarily, intelligently and knowingly give up your constitutional right to notice and hearing prior to the entry of judgment or if you have defenses or other valid objections to the judgment.

You have a right to a prompt court hearing if you claim that you did not voluntarily, intelligently and knowingly give up your rights to notice and hearing prior to the entry of the judgment. If you wish to exercise this right, you must immediately fill out and sign the petition to strike the judgment which accompanies the writ of execution and deliver it to the Sheriff of \_\_\_\_\_ County at \_\_\_\_\_.

IT IS IMPORTANT THAT YOU ACT PROMPTLY. IT WILL BE TOO LATE TO REGAIN YOUR PROPERTY IF YOU WAIT UNTIL AFTER THE PROPERTY HAS BEEN SOLD BY THE SHERIFF OR TURNED OVER TO THE PLAINTIFF.

YOU MUST FILE A PETITION SEEKING RELIEF FROM THE JUDGMENT AND PRESENT IT TO A JUDGE WITHIN THIRTY (30) DAYS AFTER THE DATE ON WHICH THIS NOTICE IS SERVED ON YOU OR YOU MAY LOSE YOUR RIGHTS.

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:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

**Rule 2967. Petition to Strike Judgment. Form.**

The petition to strike judgment required by Rules 2958.3 and 2973.3 shall be substantially in the following form:

(Caption)

PETITION TO STRIKE JUDGMENT

REQUEST FOR PROMPT HEARING

I hereby certify that I did not voluntarily, intelligently and knowingly give up my right to notice and hearing prior to the entry of judgment. I petition the court to strike the judgment on this ground and request a prompt hearing on this issue.

I verify that the statements made in this Request for Hearing 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.

Notice of the hearing should be given to me at

Street Address

City, State

Telephone Number

Dated: \_\_\_\_\_ Defendant(s)

**CHAPTER 2980. STATUTORY ACTION TO CONFORM CONFESSED JUDGMENT**

**Rule 2986. Judgment. Conforming the Confessed Judgment.**

(a) Judgment shall be entered in the action for the amount, if any, due the plaintiff from the defendant or the amount, if any, due the defendant from the plaintiff. That judgment shall merge with the confessed judgment. The court shall enter an appropriate order conforming the confessed judgment to the judgment in the action.

**Official Note:** Under Rule 214(g) trial of the action may be advanced by the court for good cause.

**Once the judgment is conformed, it is enforced in the same manner as other money judgments pursuant to Rule 3101 et seq. Notice under Rule 2956.1(c) is not required when a confessed judgment has been conformed pursuant to this rule.**

\* \* \* \* \*

**CHAPTER 3000. JUDGMENTS**

**SUBCHAPTER D. ENFORCEMENT OF MONEY JUDGMENTS FOR THE PAYMENT OF MONEY**

**Rule 3103. Commencement; issuance.**

(a) Execution shall be commenced by filing a praecipe for a writ of execution with the prothonotary of any county in which judgment has been entered. **Except as otherwise prescribed by Rule 2963 governing a judgment entered by confession, the praecipe shall be in the form prescribed by Rule 3251.**

\* \* \* \* \*

**Rule 3129.2. Notice of sale; handbills; written notice; publication.**

\* \* \* \* \*

(c) The written notice shall be prepared by the plaintiff, shall contain the same information as the handbills or may consist of the handbill and shall be served at least thirty days before the sale on all persons whose names and addresses are set forth in the affidavit required by Rule 3129.1.

(1) Service of the notice shall be made

(i) upon a defendant in the judgment who has not entered an appearance and upon the owner of the property

(A) by the sheriff **or by a competent adult who is not a party to the action** in the manner prescribed by Rule 402(a) for the service of original process upon a defendant, or

\* \* \* \* \*

**Subchapter E. ENFORCEMENT OF JUDGMENTS IN SPECIAL ACTIONS**

**FORMS**

**Rule 3251. Praecipe for writ of execution—money judgments.**

**[ The ] Except as provided by Rule 2963 governing execution upon a judgment entered by confession, the praecipe for a writ of execution shall be substantially in the following form:**

\* \* \* \* \*

**Explanatory Comment**

The rules of civil procedure governing confession of judgment for money have been revised in two major respects: the abolition of confession of judgment in a consumer credit transaction and the imposition of a requirement of notice prior to or with execution upon a confessed judgment.

**I. Consumer Credit Transactions**

Abolition of confession of judgment in connection with consumer credit transactions is effected by excluding the transactions from the scope of the action. Three rules are amended. Rule 2950 is revised by adding a definition of the term "consumer credit transaction" and defining the term "action" to exclude those transactions. Rules 2951 and 2952 are revised to require that the plaintiff file an affidavit if proceeding under Rule 2951(a) or aver in the complaint if proceeding under Rule 2951(b) that the judgment is not being entered in a consumer credit transaction.

**II. Notice**

The provisions for notice are intended to aid the bench and bar in complying with *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250 (C.A. 3 1994). The significance of the opinion was stated by Judge R. Stanton Wettick, Jr. in *S&T Bank v. Coyne*, No. GD 94-12141 (Allegheny County, August 11, 1994):

The *Jordan* opinion is significant only because the judgment creditor and its attorneys are now also subject to a § 1983 claim by a judgment debtor who did not waive its constitutional rights to notice and a hearing.

New rules have been promulgated to provide for notice to be served upon the defendant in most cases prior to or



during execution on a judgment entered by confession. There are three notices but only one need be given in a particular case.

1. New Rule 2958.1 provides for a notice to be served at least thirty days prior to the filing of the praecipe for a writ of execution upon real or personal property. The form of notice is prescribed by new Rule 2964.

2. New Rule 2958.2 provides for a notice to be served with the notice of the sale of real property when the property levied upon is solely real property or when the property levied upon is real property and personal property to be sold with the real property pursuant to Section 9501(d) of the Uniform Commercial Code. The form of notice is prescribed by new Rule 2965.

3. New Rule 2958.3 provides for a notice to be served with the writ of execution when the property to be levied upon includes personal property or personal and real property and when the plaintiff determines that advance notice of the execution might not be appropriate. The form of the notice is prescribed by new Rule 2966.

Under new Rule 2959(a)(3), a defendant must file a petition within thirty days of service of the notice to obtain relief from the judgment or to prevent execution. After thirty days, the defendant is barred from relief unless there are "compelling reasons for the delay".

In the case of notice given under Rule 2958.3, the defendant is advised of the right to a hearing on the sole issue of the validity of the waiver of due process rights. The notice also advises the defendant of the right to request a prompt hearing which must be held within three business days after the sheriff presents the request to the court. Execution is stayed pending a determination of the validity of the waiver. The court is to determine whether "the plaintiff has shown by a preponderance of the evidence that the defendant knowingly, voluntarily and intelligently waived the right to notice and hearing prior to the entry of judgment". Rule 2958.3 imposes the burden of proof on the plaintiff who is asserting that a constitutional right has been waived. The quantum of evidence required to satisfy the rule is an evidentiary matter outside the scope of the rule.

Under Rule 2958.4, the plaintiff must choose whether to give thirty-days' advance notice under Rule 2958.1 or to give notice as part of the execution process under Rules 2958.2 and 2958.3. Subdivision (a) of the rule provides that a plaintiff who has given notice pursuant to Rule 2958.1 may not proceed also under Rule 2958.2 or Rule 2958.3. However, once having given the required notice, the plaintiff need not give notice again on a subsequent execution on the same judgment.

The intent of these rules is to limit the necessity for hearings on issues of due process and waiver by providing the defendant with a pre-deprivation notice and opportunity for hearing on the merits. However, new Rule 2959(a)(2) specifies three instances when the issue of the voluntary, intelligent and knowing waiver of due process rights may be raised. The first is in support of a request for a stay when the court has already denied a prior request for a stay despite timely filing of that request and "the presentation of prima facie evidence of a defense." The second is when personal property has been levied upon or attached without prior notice and hearing under new Rule 2958.2. The third is when a defendant in possession of leased residential real property has been evicted without prior notice and hearing under new Rule

2973.3. In all other instances, the issues upon a petition for relief from the judgment will be the merits and not the waiver of due process rights.

### III. Conforming Amendments

A paragraph has been added to the note to present Rule 2986 stating that, once a confessed judgment has been conformed pursuant to Rule 2981 et seq., the judgment is enforced in the same manner as other money judgments.

Execution Rules 3103(a) and 3251 have been amended to cross-refer to the form of praecipe to issue a writ of execution upon a confessed judgment prescribed by new Rule 2963.

Rule 3129.2(c)(1)(i)(A) governing notice of the execution sale of real property has been amended to provide for service of the notice of sale upon a defendant who has not appeared in the action "by a competent adult who is not a party to the action" as well as by the sheriff.

### IV. Application to Pending Actions

Rule 2961 governing the application of amendments to pending actions has been amended by deleting the former text and substituting two new subdivisions. New subdivision (a) provides that the amendments prohibiting the entry of a confessed judgment in connection with a consumer credit transaction are applicable to actions commenced after the effective date specified in the order of the Supreme Court. Subdivision (b) provides that the amendments relating to execution on a confessed judgment are applicable to executions commenced after the effective date.

*By the Civil Procedural Rules Committee,*

EDWIN L. KLETT,  
*Chairperson*

[Pa.B. Doc. No. 96-621. Filed for public inspection April 19, 1996, 9:00 a.m.]

## [231 PA. CODE CHS. 2970 AND 3000]

### Amendment of Rules Governing Confession of Judgment in Ejectment for Possession of Real Property; No. 257; Doc. No. 5

#### Order

*Per Curiam:*

*And Now*, this 1st day of April, 1996, the Pennsylvania Rules of Civil Procedure governing confession of judgment in ejectment for possession of real property are amended as follows:

1. Rules 2970, 2971, 2974, 2976, 3161, and 3254 are amended to read as follows.
2. Rules 2973 is rescinded.
3. New Rules 2973.1, 2973.2, 2973.3, 2973.4, 2974.1, 2974.2, 2974.3, 2975 and 3161.1 are promulgated to read as follows.

This Order shall be effective July 1, 1996 and shall be processed in accordance with Rule of Judicial Administration 103(b).

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 2970. CONFESSION OF JUDGMENT FOR POSSESSION OF REAL PROPERTY

Rule 2970. Conformity. **Scope.**

Except as otherwise provided in this chapter, the procedure in an action to enter a judgment in ejectment for possession of real property by confession pursuant to an instrument, **other than a residential lease executed by a natural person**, authorizing such confession shall be in accordance with the rules relating to confession of judgment for money.

**Official Note:** [ The United States District Courts in Pennsylvania have held the procedure governing confession of judgment in ejectment to be unconstitutional insofar as the procedure applies to residential leases. Attorneys should ascertain whether such an action is permissible in the particular county. ]

**Confession of judgment in ejectment is abolished with respect to a residential lease executed by a natural person.**

**Rule 2971. Commencement of Action.**

(a) An action shall be commenced by filing with the prothonotary a complaint substantially in the form provided by Rule 2952. The complaint shall also contain

**(1) an averment, in place of that required by Rule 2952(a)(3), that the judgment is not being entered against a natural person in connection with a residential lease, and**

- (2) a description of the property and
- (3) a demand for judgment in ejectment.

\* \* \* \* \*

Rule 2973. **Rescinded.**

**Rule 2973.1. Execution.**

Except as otherwise provided by subdivisions (b) and (c), a judgment in ejectment entered by confession shall be enforced in the manner provided by Rule 3160 et seq. governing the enforcement of a judgment in an action of ejectment.

**Official Note:** The form of praecipe required by subdivision (b) is in place of the form of praecipe prescribed by Rule 3254. The notice required by subdivision (c) is in addition to the procedural requirements of Rule 3160 et seq.

(b) Execution shall be commenced by filing a praecipe for a writ of possession in the form prescribed by Rule 2974.1.

(c) If no petition to open or strike the judgment has been filed, written notice shall be served upon the defendant in the judgment either

- (1) prior to execution as provided by Rule 2973.2, or
- (2) with the writ of possession as provided by Rule 2973.3.

**Official Note:** The written notice provided by this rule is required only in connection with execution proceedings. The notice is in addition to the notice of the entry of judgment required by Rule 236.

**Rule 2973.2. Notice Served Prior to Execution.**

(a) A written notice in the form prescribed by Rule 2974.2 shall be served on the defendant at least thirty days prior to the filing of the praecipe for a writ of possession.

**Official Note:** If notice is served under this rule at least thirty days prior to the filing of the praecipe, notice need not be given under Rule 2973.3. Conversely, if notice is served under Rule 2973.3, notice need not be given under this rule.

Rule 2974.1 governing the form of the praecipe for the writ of possession requires a certification that notice has been given as provided by this rule.

Rule 2959(a)(3) requires a petition for relief from a confessed judgment to be filed within thirty days after service of notice pursuant to this rule.

(b) The notice shall be served

(1) upon a defendant in the judgment who has not entered an appearance

(i) by the sheriff or by a competent adult who is not a party to the action in the manner prescribed by Rule 402(a) for the service of original process upon a defendant, or

(ii) by the plaintiff mailing a copy in the manner prescribed by Rule 403, or

(iii) pursuant to special order of court as prescribed by Rule 430 if service cannot be made as provided in subparagraphs (i) or (ii), or

(2) upon a defendant in the judgment who has entered an appearance, by the plaintiff in the manner provided by Rule 440.

(c) The person serving the notice shall file a return of service as provided by Rule 405.

**Rule 2973.3. Notice Served with Writ of Possession. Prompt Hearing Limited to Issue of Waiver of Due Process Rights.**

(a) A written notice in the form prescribed by Rule 2974.3 and a form of petition to strike the judgment and request for prompt hearing prescribed by Rule 2967 shall be served upon the defendant with the writ of possession.

**Official Note:** If notice is served under this rule at least thirty days prior to the filing of the praecipe, notice need not be given under Rule 2973.2.

Rule 2974.1 governing the form of the praecipe for the writ of possession requires a certification that notice will be given as provided by this rule.

See Rule 2959(a)(3) which requires a petition for relief from a confessed judgment to be filed within thirty days after service of notice pursuant to this rule.

(b) A defendant who has been given notice pursuant to Rule 2973(a) may file with the sheriff a petition to strike the judgment in the form provided by Rule 2967. The petition shall be limited to the issue whether the defendant voluntarily, intelligently and knowingly waived the right to notice and hearing prior to the entry of the judgment. The defendant may include in the claim a demand for a prompt hearing. The sheriff shall immediately notify the plaintiff of the filing of the petition.

(c) The sheriff shall immediately present the matter to the court. The court shall hear the claim within three business days thereafter upon such notice to the parties

as the court shall direct and shall promptly dispose of the matter on the testimony, admissions or other evidence.

(1) If the court finds that the plaintiff has shown by a preponderance of the evidence that the defendant voluntarily, intelligently and knowingly waived the right to notice and hearing prior to the entry of judgment, it shall enter an order so determining and the stay of the execution proceedings under subdivision (d) shall terminate automatically.

(2) If the court finds that the plaintiff has not made the required showing, it shall enter an order vacating the writ of possession and striking the judgment. Upon entry of the order, any property from which the defendant has been evicted pursuant to the writ of possession shall be returned to the defendant's possession.

(d) Execution proceedings shall be stayed during the period from the time the defendant files the hearing request form with the sheriff to the time the court makes the determination on the petition.

**Rule 2973.4. Choice of Procedure. Notice Upon Subsequent Executions.**

(a) A plaintiff who has given notice pursuant to Rule 2973.2 may not proceed thereafter under Rule 2973.3.

(b) The notice required by Rules 2973.2 and 2973.3 need not be given upon subsequent executions on a judgment if the notice was given prior to or upon a previous execution on that judgment and either

(1) the defendant filed a petition for relief from the judgment and the court denied the relief, or

(2) the defendant failed to file a petition for relief from the judgment within thirty days after service of the notice as required by Rule 2959(a)(3).

**FORMS**

**Rule 2974. Confession of [ Judgments ] Judgment. Form.**

**The confession of judgment required by Rule 2971(b) shall be substantially in the following form:**

\* \* \* \* \*

**Rule 2974.1. Praecipe for Writ of Possession.**

The praecipe for a writ of possession shall be substantially in the following form:

[Caption]

PRAECIPE FOR WRIT OF POSSESSION UPON A  
CONFESSED JUDGMENT

To the Prothonotary:

Issue writ of possession upon the judgment in ejectment entered by confession in the above matter.

Certification

I certify that

(1) This praecipe is based upon a judgment entered by confession, and

(Delete three of the following paragraphs which are inapplicable.)

(2) Notice pursuant to Rule 2973.3 has been served at least thirty days prior to the filing of this praecipe as evidenced by a return of service filed of record.

(3) Notice pursuant to Rule 2973.4 will be served with the writ of possession.

(e) Notice was served in connection with a prior execution on this judgment and, pursuant to Rule 2973.4(b), no further notice is required.

(f) Notice is not required under Rule 2973.1(c) because a petition to open or strike the judgment was previously filed.

\_\_\_\_\_  
Attorney for

**Rule 2974.2. Notice of Judgment and Execution Required by Rule 2973.2. Form.**

The notice required by Rule 2973.2 shall be substantially in the following form:

(Caption)

Notice under Rule 2973.2 of Judgment and Execution

\_\_\_\_\_  
Notice of Defendant's Rights

To: \_\_\_\_\_  
Defendant(s)

A judgment for possession of real property has been entered against you and in favor of the plaintiff without prior notice and hearing based on a confession of judgment contained in a promissory note or other document allegedly executed by you. The sheriff may remove you from the property at any time after thirty days after the date on which this notice is served on you.

You may have legal rights to defeat the judgment or to prevent your being removed from the property. ANY PETITION SEEKING RELIEF FROM THE JUDGMENT MUST BE FILED WITHIN THIRTY (30) DAYS AFTER THE DATE ON WHICH THIS NOTICE IS SERVED ON YOU OR YOU MAY LOSE YOUR RIGHTS.

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:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

**Rule 2974.3. Notice of Judgment and Execution Required by Rule 2973.3. Form.**

The notice required by Rule 2973.3 shall be substantially in the following form:

(Caption)

Notice under Rule 2973.3 of Judgment and Execution Thereon

\_\_\_\_\_  
Notice of Defendant's Rights

To: \_\_\_\_\_  
Defendant(s)

A judgment for possession of real property has been entered against you and in favor of the plaintiff without

prior notice and hearing based on a confession of judgment contained in a promissory note or other document allegedly executed by you. The court has issued and the sheriff has served a writ of possession which directs the sheriff to remove you from possession of the real property.

You may have legal rights to defeat the judgment or to prevent your being removed from the property or to regain possession of the property if you have been removed, if you did not voluntarily, intelligently and knowingly give up your constitutional right to notice and hearing prior to the entry of judgment or if you have defenses or other valid objections to the judgment. ANY PETITION SEEKING RELIEF FROM THE JUDGMENT AND TO REGAIN POSSESSION MUST BE FILED WITHIN THIRTY (30) DAYS AFTER THE DATE ON WHICH THIS NOTICE IS SERVED ON YOU OR YOU MAY LOSE YOUR RIGHTS.

If you have been removed from the property without notice or the opportunity for a hearing, you have a right to a prompt court hearing if you claim that you did not voluntarily, intelligently and knowingly give up your rights to notice and hearing prior to the entry of the judgment. If you wish to exercise this right, you must immediately fill out and sign the request for hearing which accompanies the writ of possession and deliver it to the Sheriff of \_\_\_\_\_ County at \_\_\_\_\_.

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:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

**Official Note:** See Rule 2967 for the form of the Request for Hearing.

**Rule 2975. Application of Amendments to Pending Actions.**

(a) The amendments promulgated in 1996 to the rules of civil procedure prohibiting the entry of a judgment by confession for possession in connection with a residential lease shall apply to actions commenced after the effective date set forth in the Order of the Supreme Court.

**Official Note:** The amendments to Rules 2970 and 2971 relate to the prohibition against the entry of a judgment by confession arising from a consumer credit transaction.

(b) The amendments promulgated in 1996 to the rules governing execution on a judgment entered by confession for possession shall apply to executions commenced after the effective date set forth in the Order of the Supreme Court.

**Official Note:** The amendments to Rules 2973.1 through 2973.3 and 2974.1 through 2974.3 relate to execution upon a judgment entered by confession and relief from the judgment.

**Rule 2976. Suspension of Acts of Assembly. Abolition of Practice and Procedure Under Repealed Statutes.**

[ After the effective date of these rules,

(a) All Acts or parts of Acts of Assembly inconsistent with these rules are suspended to the extent of such inconsistency; and

(b) (1) the ] The practice and procedure provided in all former Acts of Assembly governing confession of judgment, which have been repealed [ effective June 27, 1978 and June 27, 1979 ] by the Judiciary Act Repealer Act (JARA), Act of April 28, 1978, No. 53, and which are now part of the common law of the Commonwealth by virtue of Section 3(b) of JARA, are hereby abolished and shall not continue as part of the common law of the Commonwealth [ ; and

(2) with respect to all Acts of Assembly relating to such practice and procedure, repeal of which will become effective June 27, 1980 as provided by Section 4(b) of JARA, this is a general rule within the meaning of Section 3(b) of JARA and the practice and procedure provided in those Acts of Assembly shall not continue as part of the common law of the Commonwealth ] .

**CHAPTER 3000. JUDGMENTS**

**Subchapter E. ENFORCEMENT OF JUDGMENTS IN SPECIAL ACTIONS**

**Rule 3161. Conformity to rules governing enforcement of judgments for payment of money.**

The procedure for the enforcement of a judgment for possession shall be in accordance with the rules governing the enforcement of judgments for the payment of money with respect to the following:

(a) Commencement and Issuance of Writ:—Rules [ 3103(a), ] 3103(e) and 3105.

\* \* \* \* \*

**Rule 3161.1. Commencement.**

Execution shall be commenced by filing a praecipe for a writ of execution with the prothonotary of any county in which judgment has been entered. Except as otherwise prescribed by Rule 2974.1 governing a judgment entered by confession, the praecipe shall be in the form prescribed by Rule 3254.

**Rule 3254. Praecipe for writ of possession.**

[ The ] Except as provided by Rule 2974.1 governing execution upon a judgment in ejectment entered by confession, the praecipe for a writ of possession shall be substantially in the following form:

\* \* \* \* \*

**Explanatory Comment**

The Supreme Court of Pennsylvania has promulgated two principal revisions to the rules of civil procedure governing confession of judgment for the possession of real property. First, the action has been redefined to abolish confession of judgment for the possession of real property in connection with a residential lease executed by a natural person. Second, the execution process has been revised by adding the requirement of a notice to be served upon the defendant prior to or with the writ of possession.

### I. Residential Leases Executed by Natural Persons

Confession of judgment for the possession of real property in connection with a residential lease executed by a natural person has been abolished. The abolition has been effected by amending Rule 2970 defining the scope of the action to include a confession of judgment for possession of real property arising from "an instrument, other than a residential lease executed by a natural person." Rule 2971 governing the commencement of the action has been revised by adding an averment to the complaint that judgment is not being entered against a natural person in connection with a residential lease.

A note to Rule 2970 formerly advised that the "United States District Courts in Pennsylvania have held the procedure governing confession of judgment in ejectment to be unconstitutional insofar as the procedure applies to residential leases." By abolishing the action as to such leases, the present amendment removes any uncertainty from the area and makes the practice uniform.

### II. Notice

The revision of the rules governing confession of judgment for possession of real property to provide for a notice to the defendant prior to or with execution parallels a similar revision of the rules governing confession of judgment for money. The amendments are as follows.

New Rule 2973.1 is an introductory rule which serves as a guide to execution on the confessed judgment. The rule prescribes a special form of praecipe for the writ of possession which is to be used in place of the usual form of praecipe prescribed by Execution Rule 3254. When no petition to open or strike the judgment has been filed, the rule imposes the requirement of notice to be served either prior to execution or with the writ of possession and cross-refers to the appropriate rules.

1. New Rule 2973.2 is virtually identical to its counterpart governing confession of judgment for money, Rule 2958.1. It provides for a notice to be served at least thirty days prior to the filing of the praecipe for a writ of possession. The form of notice is prescribed by new Rule 2974.2.

2. New Rule 2973.3 is also virtually identical to its counterpart governing confession of judgment for money, Rule 2958.3. The rule provides for a notice to be served with the writ of possession which advises the defendant of the right to a hearing on the sole issue of the validity of the waiver of due process rights. The notice also advises the defendant of the right to a prompt hearing which must be held within three business days after delivery of a hearing request to the sheriff. The form of the notice is prescribed by new Rule 2974.3. Execution is stayed pending a determination of the validity of the waiver. The court is to determine whether "the plaintiff has shown by a preponderance of the evidence that the defendant voluntarily, intelligently and knowingly waived the right to notice and hearing prior to the entry of judgment".

Subdivision (a) of Rule 2973.4 provides that a plaintiff who has given notice pursuant to Rule 2973.2 may not proceed also under Rule 2973.3. However, once having given notice required under one of those rules, the plaintiff need not give notice again on a subsequent execution on the same judgment.

A defendant served with a notice must file within thirty days of service of the notice a petition to obtain relief from the judgment or to prevent execution. After thirty

days, the defendant is barred from relief unless there are "compelling reasons for the delay" as provided by Rule 2959(a)(3).

### III. Conforming Amendments

Execution Rule 3161(a) has been amended to delete the incorporation by reference of Rule 3101(a) governing commencement of execution proceedings. Rule 3101(a) has been revised so that the references to the forms of praecipe apply solely to an execution upon a money judgment. New Rule 3161.1 has been added to govern the commencement of execution upon a judgment for possession. The new rule contains appropriate references to the rules providing the forms of praecipe for the writ of possession.

Execution Rule 3254 providing the form of the praecipe for a writ of possession has been amended to cross-refer to the praecipe to issue a writ of possession upon a confessed judgment prescribed by Rule 2974.1.

### IV. Application of Amendments to Pending Actions

Former Rule 2973 governing the effective date of the rules has been rescinded and new Rule 2975 promulgated. Subdivision (a) of the new rule provides that the amendments prohibiting the entry of a confessed judgment arising from an instrument constituting a residential lease executed by a natural person are applicable to actions commenced after the effective date specified in the order of the Supreme Court. Subdivision (b) provides that the amendments relating to execution on a confessed judgment apply to execution proceedings commenced after the effective date.

*By the Civil Procedural Rules Committee,*

EDWIN L. KLETT,  
*Chairperson*

[Pa.B. Doc. No. 96-622. Filed for public inspection April 19, 1996, 9:00 a.m.]

## [231 PA. CODE CHS. 1910, 1920 AND 4000] Proposed Amendments to the Rules Relating to Discovery in Domestic Relations Matters; Rec- ommendation 41

The Domestic Relations Committee proposes the following amendments to the Rules of Civil Procedure relating to discovery in domestic relations matters. The committee solicits comments and suggestions from all interested persons prior to submission of the proposed rule to the Supreme Court.

Written comments relating to the proposed amendments must be received no later than May 31, 1996, and must be directed to Linda C. Liechty, Esquire, Executive Director, Domestic Relations Committee, 429 Forbes Avenue, Suite 300, Pittsburgh, PA 15219, FAX (412) 565-2336.

The explanatory comment which appears in connection with the proposed amendments has been inserted by the Committee for the convenience of those using the rules. It will not constitute part of the rules nor will it be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.9. [ Discovery ] Earnings Information.

[ (a) There shall be no discovery unless authorized by special order of court. ]

[ (b) ] Where a party is employed, the court shall ascertain the party's earnings and may enter an order directing the employer to furnish earnings information to the court as provided by Rule 1910.27.

Rule 1910.11. Office Conference. Subsequent Proceedings. Order.

\* \* \* \* \*

(j) [ (1) ] Promptly after receipt of the notice of the scheduled hearing, a party may move the court for a separate listing where

- (i) there are complex questions of law, fact or both, or
- (ii) the hearing will be protracted, or
- (iii) the orderly administration of justice requires that the hearing be listed separately.

[ (2) The motion may include a request for discovery. If granted, the order may specify the scope of discovery. ]

\* \* \* \* \*

Rule 1910.12. Office Conference. Hearing. Record. Exceptions. Order.

\* \* \* \* \*

(c) (1) Except as set forth in subdivision (c)(2), promptly after conclusion of the conference, a party may move the court for a separate listing of the hearing where

- (i) there are complex questions of law, fact or both, or
- (ii) the hearing will be protracted, or
- (iii) the orderly administration of justice requires that the hearing be listed separately.

(2) Where the conference and hearing are scheduled on the same day, all requests for separate listing must be presented to the court at least seven days prior to the scheduled court date.

[ (3) The motion may include a request for discovery. If granted, the order may specify the scope of discovery. ]

\* \* \* \* \*

CHAPTER 1920. ACTION OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

Rule 1920.22. [ Discovery ] Rescinded.

[ (a) Except as provided by subdivision (b), there shall be no discovery in an action of divorce or for annulment or a claim which has been joined as permitted under the Divorce Code unless authorized by special order of court.

**Official Note:** Rule 1920.91 suspends § 3505(c) of the Divorce Code which provides for discovery in actions of divorce or for annulment of marriage.

(b) When a claim is made for alimony or the determination and distribution of property rights,

any party may serve upon any other party as of course within such time as not to delay the trial interrogatories limited to those claims. The practice and procedure shall be governed by the rules of civil procedure governing depositions and discovery. ]

Rule 1920.91. Suspension of Acts of Assembly.

\* \* \* \* \*

[ (2) Section 3505(c) of the Domestic Relations Code, 23 Pa.C.S. § 3505(c), absolutely;

**Official Note:** Suspended Section 3505(c) of the Divorce Code provides for discovery in actions of divorce or for annulment of marriage. Discovery in such actions is prescribed by Rule of Civil Procedure 1920.22. ]

[ (3) ] (2) Section 3505(b) of the Domestic Relations Code, 23 Pa.C.S. § 3505(b), absolutely;

**Official Note:** Suspended Section 3505(b) of the Divorce Code requires the submission to the court of an inventory and appraisal of property. Rule of Civil Procedure 1920.33(a) supplants this provision by requiring parties seeking the distribution of property to file an inventory while subdivision (b) of the rule requires the filing of pre-trial statement.

[ (4) ] (3) Section 3321 of the Domestic Relations Code, 23 Pa.C.S. § 3321, insofar as it prohibits the appointment of masters in partial custody or visitation matters.

**Official Note:** Suspended Section 3321 of the Divorce Code states that the court may appoint a master to hear testimony on all issues relating to a divorce except custody or paternity.

[ (5) ] (4) And all other Acts or parts of Acts of Assembly inconsistent with these rules to the extent of such inconsistency.

CHAPTER 4000. DEPOSITIONS AND DISCOVERY

Rule 4001. Scope. Definitions.

(a) [ (1) ] The rules of this chapter apply to any civil action or proceeding at law or in equity brought in or appealed to any court which is subject to these rules including any action pursuant to the Eminent Domain Code of 1964 or the Municipal Claims Act of 1923.

\* \* \* \* \*

[ (2) These rules shall not apply to an action of divorce or for annulment of marriage, an action for support, or an action for custody of minor children except to the extent prescribed by the rules governing those actions. ]

*All existing explanatory notes and comments pertaining to the rules listed below are replaced by the following:*

**Explanatory Comment—Rule 1910.9**

This proposed amendment to the support rules eliminates the need to obtain a special order of court before engaging in discovery. In accordance with the proposed revision, discovery would be available as provided by Rule of Civil Procedure 4001 et seq.

**Explanatory Comment—Rule 1915.5**

Under subdivision (a), the defendant may, but is not required to, plead to the complaint. All averments may be disputed by the defendant at the custody hearing. An

attorney who wishes to file another pleading may do so. However, the action is not to be delayed to permit its filing.

The proposed liberalization of discovery in other areas of domestic relations practice does not extend to custody. Discovery is not permitted in any custody action unless authorized by special order of court.

**Explanatory Comment—Rule 1920.22**

This proposed amendment to the divorce rules eliminates the need to obtain a special order of court before engaging in discovery. In accordance with the proposed revision, discovery would be available as provided by Rule of Civil Procedure 4001 et seq.

[Pa.B. Doc. No. 96-623. Filed for public inspection April 19, 1996, 9:00 a.m.]

**Title 25—LOCAL  
COURT RULES**

**CHESTER COUNTY**

**Amendments to Rules of Civil Procedure; No. 96-00000**

**Order**

And Now, this 18th day of March, 1996, the following amendments to the Chester County Rules of Civil Procedure are hereby adopted effective thirty (30) days after publication in the *Pennsylvania Bulletin*, in accordance with Pa.R.C.P. No. 239(d).

THOMAS G. GAVIN,  
*President Judge*

1. *Revise rule 206.1.A.(1) to read as follows:*

All motions, petitions and preliminary objections shall be in writing and shall be accompanied by a proposed form of order; a petition shall also be accompanied by an order allowing a rule to show cause in form as set forth below, which order is hereinafter sometimes referred to as a "rule" or a "rule to show cause". Every motion and petition shall refer to the procedural rule, statute, or other authority relied upon to justify the relief requested, and shall display the counsel's name, address, i.d. number and telephone number.

2. *Amend rule 206.1.B(3) to read as follows:*

(3) The procedure of Pa.R.C.P. No. 206.6 is adopted. An order containing a rule to show cause, except one which by its terms grants substantive relief or which contains a stay order or seeks to require an answer by respondent(s) in less than twenty (20) days, shall be issued per curiam when presented to the court administrator.

3. *Amend rule 206.1.B(5) to read as follows:*

(5) Admissions—All well-pled factual averments in a petition upon which a rule to show cause has been granted or in preliminary objections endorsed with a notice to plead and properly containing averments to fact shall be deemed admitted unless an answer specifically denying the same is filed on or before the close of court within twenty days after service of the petition upon the respondent(s), or such shorter time as the court may have allowed, or, in the case of preliminary objections, on the date on which an answer to the preliminary objections is

due pursuant to the Pennsylvania Rules of Civil Procedure. The requirements of Pa.R.C.P. No. 1029 shall apply to this provision.

4. *Amend rule 206.1.B(7) to read as follows:*

(7) When Answer is Filed—When an answer has been timely filed and the issue raised by the petition is ripe for consideration, pursuant to the provisions of Pa.R.C.P. No. 206.7, any party may file a praecipe for determination in the form described by C.C.R.C.P. No. 206.2 along with a supporting brief. If a petitioner files a praecipe for determination on petition and answer, all averments of fact responsive to the petition and properly pleaded in the answer shall be deemed admitted. If a respondent orders the matter for argument on petition and answer without having taken depositions or such other discovery as the court may have allowed, then all averments of fact properly pleaded in the petition shall be deemed admitted for the purposes of the rule, unless the petitioner shall have failed to take depositions or such other discovery as the court may have allowed within the time required, in which event the petition shall be decided on petition and answer and all averments of fact responsive to the petition and properly pleaded in the answer, shall be deemed admitted pursuant to Pa.R.C.P. No. 206.7(c). Responsive briefs shall be filed within fifteen (15) days of the filing of the praecipe for determination. The assigned judge may, at his or her discretion, extend the time for filing briefs.

5. *Amend rule 206.1.B(8) to read as follows:*

(8) Form of Rule Returnable

[present subparagraphs (a), (b) & (c) deleted]

(a) The petitioner shall attach to the petition a proposed order substantially in the following form:

(CAPTION)

ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, upon consideration of the foregoing petition, it is hereby ordered that

- 1) A rule is issued upon the respondent to show cause why the petitioner is not entitled to the relief requested;
- 2) The respondent shall file an answer to the petition within twenty (20) days of service upon the respondent;
- 3) The petition shall be decided under Pa.R.C.P. No. 206.7;
- 4) Depositions shall be completed within forty-five (45) days of the service upon petitioner of the answer to the petition;
- 5) Notice of the entry of this order shall be provided to all parties by the petitioner.

BY THE COURT:

\_\_\_\_\_  
J.

(b) In instances where the order seeks a stay order or other substantive relief or seeks to have a hearing date set immediately or otherwise requests special immediate relief, the form of the order shall be modified accordingly and the order shall contain such of the following provisions as are appropriate:

A hearing on the within petition is hereby scheduled to be held on the \_\_\_\_\_ day of \_\_\_\_\_,

199 \_\_, in Courtroom No. \_\_, of the Courthouse of Chester County, West Chester, Pennsylvania.

and/or

[If a stay is being requested]

All proceedings shall stay in the meantime. The petitioner is directed to file a bond in the amount of \$ \_\_\_\_ by the following date: \_\_\_\_\_. Upon cause shown by the respondent, the court may increase the amount of the bond or security.

6. *Amend Rule 206.1.D(3) to read as follows:*

(3) Where the preliminary objections are in the form of a petition under Pa.R.C.P. No. 1028(a)(1), (5), or (6), no praecipe for determination or brief shall be required until the matter is ready to be submitted to the Court, either upon the basis of the preliminary objections alone, if no answer has been filed, or upon the basis of the preliminary objections and answer thereto, or after a record has been developed pursuant to Pa.R.C.P. No. 206.7. The provisions of C.C.R.C.P. No. 206.1.B(7) shall apply, the objecting party shall be deemed to be the petitioner, all other parties shall be deemed to be respondents, and, further, if the preliminary objections have been endorsed with a notice to plead and no answer thereto has been filed, then upon the filing of a praecipe for determination by any party, all averments of fact properly pleaded in the preliminary objections shall be deemed admitted for purposes of the preliminary objections only. If an answer is filed and any party wishes to develop a record on any disputed issues of material fact, depositions shall be completed within forty-five (45) days of the date of service of the answer to preliminary objection upon the party who filed the objections. The time limit for the taking of depositions may be shortened or extended by agreement of the parties or by the court.

7. *Amend Rule 1920.3.A as follows:*

Delete Rule 1920.3.A in its entirety.

8. *Amend Rule 212.1(A) as follows:*

Delete the words "At least sixty (60) days before" and substitute in their place the words, "Prior to the".

[Pa.B. Doc. No. 96-624. Filed for public inspection April 19, 1996, 9:00 a.m.]

**SUPREME COURT**

**Paid Holidays in 1997 for Staffs of the Appellate Courts and Administrative Office of Pennsylvania Courts; No. 166; Doc. No. 1**

**Order**

*And Now*, this 2nd day of April, 1996, it is hereby ordered that the following paid holidays for calendar year

1997 will be observed by all employes of the appellate courts and the Administrative Office of Pennsylvania Courts:

January 1, 1997	New Year's Day
January 20, 1997	Martin Luther King, Jr. Day
February 17, 1997	Presidents' Day
March 28, 1997	Good Friday
May 26, 1997	Memorial Day (Observed)
July 4, 1997	Independence Day
September 1, 1997	Labor Day
October 13, 1997	Columbus Day (Observed)
November 4, 1997	Election Day
November 11, 1997	Veterans Day
November 27, 1997	Thanksgiving Day
November 28, 1997	Day After Thanksgiving
December 25, 1997	Christmas Day

*By the Court*

ROBERT N.C. NIX, Jr.,  
*Chief Justice*

[Pa.B. Doc. No. 96-625. Filed for public inspection April 19, 1996, 9:00 a.m.]

**Sessions of the Supreme Court of Pennsylvania for the Year 1997; No. 99; Doc. No. 1**

**Order**

*And Now*, this 2nd day of April, 1996, it is ordered that the sessions of the Supreme Court of Pennsylvania shall be held in the year 1997 as follows:

Philadelphia	January 27 through January 31
Pittsburgh	March 3 through March 7
Philadelphia	April 1 through April 4
Harrisburg	May 5 through May 9
Philadelphia	June 2 through June 5 (Administrative Session)
Pittsburgh	September 15 through September 19
Philadelphia	October 20 through October 24
Philadelphia	December 1 through December 5

*By the Court*

ROBERT N.C. NIX, JR.,  
*Chief Justice*

[Pa.B. Doc. No. 96-626. Filed for public inspection April 19, 1996, 9:00 a.m.]