

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 100, 200, 400 AND 1000]

Proposed Amendments Providing for Filing Copies of Legal Papers and Service of Legal Papers by Facsimile Transmission; Proposed Recommendation No. 146

The Civil Procedural Rules Committee proposes to amend the rules of civil procedure to provide for the filing of copies of legal papers and the service of legal papers by facsimile transmission. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

All communications in reference to the proposed recommendation should be sent not later than January 9, 1998 to: Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, PA 17055; or E-Mail to civil.rules@court.state.pa.us.

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure nor will it be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 100 RULES OF CONSTRUCTION

Rule 76. Definitions.

The following words and phrases when used in any rule promulgated by the Supreme Court under the authority of Article V, Section 10(c) of the Constitution of 1968, or of any Act of Assembly, shall have the following meanings, respectively, unless the context clearly indicates otherwise or the particular word or phrase is expressly defined in the chapter in which the particular rule is included:

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Facsimile copy—A copy of a document transmitted and received by facsimile equipment;

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CHAPTER 200. BUSINESS OF COURTS

[This is a new rule.]

Rule 205.3. Filing Copies of Legal Papers with the Prothonotary; facsimile copies.

(a) A copy, including a facsimile copy, of a pleading or other legal paper may be filed with the prothonotary provided that the copy shows that the pleading or other legal paper was properly signed and, where applicable, verified. Except as otherwise provided by law, the copy shall be deemed the equivalent of the original document.

Official Note: See Rule 76 for the definition of facsimile copy.

The facsimile copy must be on paper of good quality. See Pa.R.A.P. 124(a)(1).

This rule is not intended to alter the requirement of Rule 2951(c)(2) that a judgment by confession be entered pursuant to complaint if the original cannot be produced for filing.

This rule does not authorize the filing of legal papers by facsimile transmission.

(b) A party may require the filing of an original document by filing with the prothonotary and serving upon the party who filed the copy a notice to file the original document with the prothonotary within fourteen days of the filing of the notice.

CHAPTER 400. SERVICE OF ORIGINAL PROCESS SERVICE OF LEGAL PAPERS OTHER THAN ORIGINAL PROCESS

Rule 440. Service of Legal Papers other than Original Process.

(a)(1) Copies of all legal papers other than original process filed in an action or served upon any party to an action shall be served upon every other party to the action. Service shall be made

(i) by handing or mailing a copy to or leaving a copy for each party at the address of the party's attorney of record endorsed on an appearance or prior pleading of the party, [**but if**] or at such other address as a party may agree, or

Official Note: Such other address as a party may agree might include a mailbox in the prothonotary's office or an e-mail address.

(ii) by transmitting a copy by facsimile to the party's attorney of record as provided by subdivision (d).

(2)(i) If there is no attorney of record, [**then (1)**] service shall be made by handing a copy to the party or by mailing a copy to or leaving a copy for the party at the address endorsed on an appearance or prior pleading or the residence or place of business of the party, [**but if**] or by transmitting a copy by facsimile as provided by subdivision (d).

(ii) If such service cannot be made, [**then (2)**] service shall be made by leaving a copy at or mailing a copy to the last known address of the party to be served.

Official Note:

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(3) Legal papers served after 5:00 p.m. shall be deemed served on the following business day.

* * * * *

(d)(1) A copy may be served by facsimile transmission if the parties agree thereto or if a telephone number for facsimile transmission is endorsed on an appearance or prior legal paper.

(2) The copy served shall begin with a cover sheet containing (i) the name, firm, address, telephone number, of both the party making service and the party served, (ii) the facsimile telephone number of the party making service and the facsimile telephone number to which the copy was

transmitted, (iii) the title of the legal paper served and (iv) the number of pages transmitted.

(3) Service is complete when transmission is complete.

**CHAPTER 1000. ACTIONS AT LAW
PLEADINGS**

Rule 1025. Endorsement.

(a) Every pleading or other legal paper of a party represented by an attorney shall be endorsed with the name of the attorney, and every pleading or other legal paper of a party not represented by an attorney shall be endorsed with the name of the party, together in each case with an address within the Commonwealth.

(b) The endorsement by a party willing to accept service of pleadings or other legal papers by facsimile transmission shall include the facsimile telephone number at which documents may be received.

Official Note: See Rule 440(d) governing service by facsimile transmission.

Explanatory Comment

It is proposed that the rules of civil procedure be amended to allow the filing of a copy of a document, including a "faxed" document, and service by "fax" of a document other than original process.

The term "facsimile" is defined by Black's Law Dictionary, (Sixth Edition 1990) as "an exact copy, preserving all the marks of the original." Narrowing this definition, a proposed amendment to Rule 76 limits the term to copies transmitted and received by facsimile equipment, that is, copies which are faxed.

New Rule 205.3 proposes that a copy of a document, including a faxed document, may be filed with the prothonotary and treated as an original "provided that the copy shows that the pleading or other legal paper was properly signed and, where applicable, verified." A note emphasizes that the proposed rule does not provide for the filing of a document by means of facsimile transmission.

Proposed Rule 205.3(a) expressly states a copy of a document is deemed to be the equivalent of an original except as otherwise provided by law. An example of that exception is Rule 2951(c)(2) which requires that a judgment by confession be entered pursuant to complaint if the original cannot be produced for filing. A note to the proposed rule states that the rule is not intended to alter this requirement.

Subdivision (b) of proposed Rule 205.3 also provides that, if a copy of a document is filed of record, another party may require that the original document be filed. However, unless the genuineness of a document or signature is in question, it is not anticipated that this provision would be much used.

Amendments to Rules 440 and 1025 provide for service of documents upon parties by facsimile transmission. A party agrees to be served by this method by endorsing the party's fax telephone number on a prior pleading or other legal paper.

Subdivision (a) of Rule 440 is restyled, breaking the subdivision into three numbered paragraphs. New subdivision (a)(3) provides that a document other than original process must be served by 5:00 p.m. or it is deemed to be served the following business day. This provision extends

to all legal papers whether served by fax or other means.
By the Civil Procedural Rules Committee

EDWIN L. KLETT,
Chairperson

[Pa.B. Doc. No. 97-1820. Filed for public inspection November 14, 1997, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 3000 AND 4000]

Proposed Amendments to Rule 3101 et seq. Governing the Enforcement of Judgments for the Payment of Money; Proposed Amendment of the Note to Rule 4009.22 Governing Discovery; Proposed Recommendation No. 145

The Civil Procedural Rules Committee proposes to recommend the amendment of Rule 3101 et seq. governing the enforcement of judgments for the payment of money and the amendment of the note to Rule 4009.22 governing discovery. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

All communications in reference to the proposed recommendation should be sent not later than January 9, 1998 to: Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, PA 17055; or E-Mail to civil.rules@court.state.pa.us.

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure nor will it be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 3000. JUDGMENTS

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

Rule 3101. Definitions; garnishee.

The note following Rule 3101(b)(5) is rescinded and a new note is substituted to read as follows:

* * * * *

Official Note: Judgments against the Commonwealth, political subdivisions and public authorities constituting bodies corporate and politic, shall be enforced in accord with the appropriate Acts of Assembly which remain unsuspended.

As to first class townships, see The First Class Township Code of June 24, 1931, P. L. 1206, § 1711, as amended, 53 P. S. § 56711.

As to second class townships, see Second Class Township Code of May 1, 1933, P. L. 103, No. 69, § 3205, as amended, 53 P. S. § 68205.

As to boroughs, see the Borough Code of February 1, 1966, P. L. (1965) _____, No. 581, § 1303, as amended, 53 P. S. § 46303.

As to school districts, see the Act of March 10, 1949, P. L. 30, § 611, as amended, 24 P. S. § 6-611.

As to municipal authorities, state highway authorities, bridge authorities, parking authorities, public housing authorities, General State Authority and other like public corporations, see the various applicable acts creating them, limiting the remedies of both bondholders and creditors.

The following Acts of Assembly were repealed by the Judiciary Act Repealer Act (JARA). Pursuant to Section (3)(b) of that Act, 42 Pa.C.S. § 20003(b), these statutes remain part of the common law of the Commonwealth. For an example of the application of Section 3(b) of the act, see *Ricci V. Cuisine Management Services*, 423 Pa. Super Ct. 371, 621 A.2d 163, 165 (1993).

The County Code of August 9, 1955, P. L. 323, § 2804, 16 P. S. § 2804, as amended.

The Act of July 28, 1953, P. L. 723, § 3204, 16 P. S. § 6204 pertaining to second class counties.

Rule 3102. Writ of execution.

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Official Note: Civil Arrest has been abolished except as provided [in Rules 3250 and 1481.] by Section 5108(b) of the Judicial Code, 42 Pa.C.S. § 5108(b).

Writs of [fi. fa.] fieri facias, attachment execution, vendex, liberari facias and all other forms of execution writs on money judgments against property of the defendant are [suspended by these rules and] supplanted by the writ of execution provided by these rules.

Exemption and immunity of property from execution remain as heretofore. For limitations as to execution against partners or association members on judgments against partnerships or unincorporated associations, see Rules 2132 and 2155.

The notes to Rule 3103(a) and (b) are rescinded and new notes are substituted, and subdivision (e) is amended to read as follows:

Rule 3103. Commencement; issuance.

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Official Note: The following Acts of Assembly contain special procedures in connection with the issuance of the writ:

Section 428 of the Act approved June 2, 1915, P. L. 736, as amended, 77 P. S. § 951, providing for filing with the prothonotary an affidavit of default in payments before execution may issue on workmen's compensation judgments.

Section 712 of the Act approved May 15, 1933, P. L. 565, as amended, 71 P. S. § 733-712 requiring leave of court for execution against a financial institution of which the Secretary of Banking is in possession as receiver.

Section 3377 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 3377, providing that execution may not issue on judgments against decedents other than on mortgages, ground rents or conditional sales of real or personal property without agreement in writing of the personal representative or approval of the Orphans' Court.

The Soldier's and Sailor's Civil Relief Act, 50 U.S.C.A. Appendix 520.

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Official Note: Rule 2959(a)(1) authorizes the defendant in a confessed judgment to move to open judgment either in the county of entry or of execution.

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(e) Upon issuance of the writ the prothonotary shall transmit it directly to the sheriff to whom it is directed or upon plaintiff's request deliver it to the plaintiff or [his] the plaintiff's representative for transmittal.

Rule 3108. Service of [writ]Writ[;]. [notice] Notice of [execution]Execution.

(a) Service of the writ shall be made by the sheriff in the case of

(1) tangible personal property, by levy thereon or, if the property is in possession of a third person who prevents a levy or fails to make the property of the defendant [in his possession] available to the sheriff for levy, by serving [him] the third person as garnishee;

Official Note: The following Acts of Assembly remain unsuspended:

The Uniform Commercial Code, 13 Pa.C.S. § 7602, requiring seizure, surrender or injunction against negotiation of negotiable documents of title covering goods in the possession of a bailee.

The Uniform Commercial Code, 13 Pa.C.S. § [8317] 8112, [requiring seizure or surrender or attachment at the source of investment securities] providing for the legal process by a creditor to reach a certificated security, an uncertificated security and a security entitlement.

The Pawn Brokerage Act of April 6, 1937, P. L. 200, § 21, 63 P. S. § 281-21, providing that pawnbrokers shall not be required by legal process to [redeem] deliver a pledge without [seizure,] surrender[, or injunction against the negotiation] of the pawn ticket unless the pawn ticket has been impounded or its negotiation enjoined.

For special provisions relating to access to safe deposit boxes see Rule 3110.

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Official Note: Only personal service upon the mortgagor or judgment debtor in the same manner as a writ of summons in a civil action will attach the personal liability of the mortgagor on [his] the bond or the personal liability of the judgment debtor on [his] the judgment.

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(6) all other real property in the county, by noting upon the writ a brief description of the real property levied upon and a statement that [he] the sheriff has levied upon the defendant's interest therein.

(b) Upon levy or attachment, the sheriff shall mail a copy of the writ to the execution defendant at [his] the last known address. The plaintiff shall provide the sheriff with copies of the writ and envelopes for mailing properly stamped and addressed. The sheriff shall note in [his] the return the mailing of the writ and the date thereof.

Rule 3112. Service of the writ upon garnishee; real property of defendant in name of third party.

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Official Note: Registered mail includes certified mail. See Definition Rule 76.

The remedies available under the [**Fraudulent Conveyance Act of May 21, 1921, P.L. 1045, 39 P.S. §§ 359, 360,**] **Pennsylvania Uniform Fraudulent Transfer Act, 12 Pa.C.S. § 5107,** are not suspended by these rules.

Rule 3115. Writs of several plaintiffs; notation of levy.

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[**Official Note: By the Act of June 16, 1836, P.L. 255 [755], § 85, 68 P.S. § 325, which remains unsuspended by these rules, there can be no stay of execution sale without the consent of the landlord where the goods are liable for payment of rent.**

The limitations on stay as to judgments for wages are preserved by **Rule 3231(13).**]

Rule 3117. Discovery in aid of execution.

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(b) All reasonable expenses in connection with the discovery may be taxed against the defendant as costs if it is ascertained by the discovery proceedings that [**he**] **the defendant** has property liable to execution.

Official Note: The immunity provisions of [**the Act of May 9, 1913, P.L. 197, 12 P.S. § 2243**] **Section 5941(b) of the Judicial Code, 42 Pa.C.S. § 5941(b),** relating to the judgment debtor remain unsuspended by these rules.

Rule 3121. Stay of execution; setting aside execution.

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[**Official Note: As to limitations on stay against landlords and wage claimants, see Note to Rule 3115(c).**]

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Official Note: [**The Acts of Assembly requiring inquisition and condemnation of real property as a prerequisite to sale are suspended absolutely by these rules.**] The defendant may under these rules obtain a stay upon a showing that the net rents or income can satisfy the judgment, interest and costs within a reasonable time, that a stay will not imperil the ultimate collection of the judgment and that in balancing the equities no undue hardship will be inflicted on the plaintiff. The court may in granting stay provide for payment to the plaintiff or may order sequestration of the rents or income.

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Rule 3122. Venue of stay and other proceedings.

Official Note: By Rule 3141(b) the garnishee is given a similar option as to the venue of the proceedings.

[**The Act of March 27, 1945, P.L. 83, 12 P.S. §§ 913-914, authorizing**] **Rule 2959(a)(1) authorizes the defendant in a confessed [judgements] judgment to petition to open the judgment in the county in which the judgment [was originally] is entered or in the county of execution [, remains unsuspended by these rules] .**

Rule 3123.1. Claim for exemption or immunity of property; prompt hearing.

Official Note: Pennsylvania and Federal law provide numerous exemptions of property from execution, including the following:

Exemptions under Pennsylvania Law

1. General \$300 statutory exemption, 42 Pa.C.S. § 8123.

2. Particular personal property exemption—**wearing apparel**, bibles and school books, sewing machines, uniforms and equipment, 42 Pa.C.S. § 8124(a).

3. Certain retirement funds and accounts, 42 Pa.C.S. § 8124(b):

Public School Employees' **Retirement Fund**, 24 [**P.S.**] **Pa.C.S. § 8533 and 42 Pa.C.S. § 8124(b)(1)(i).**

State Employees' **Retirement Fund**, 42 Pa.C.S. § **8124(b)(1)(ii)** and 71 [**P.S.**] **Pa.C.S. § 5953.**

Police Pension Funds, [**53 P.S. § 761**] **42 Pa.C.S. § 8124(b)(1)(iii).**

Philadelphia Pension Fund, [**53 P.S. § 13431**] **42 Pa.C.S. § 8124(b)(1)(iv).**

Pittsburgh Pension Fund, [**53 P.S. § 23561**] **42 Pa.C.S. § 8124 (b)(1)(v).**

Pennsylvania Municipal [**Employees**] **Retirement Fund**, [**53 P.S. § 881.101 et seq.**] **42 Pa.C.S. § 8124(b)(1)(vi).**

Private employees' pensions or annuity funds, 42 Pa.C.S. § [**8124(b)(7)**] **8124(b)(1)(vii).**

Self-employed retirement or annuity funds, 42 Pa.C.S. § [**8124(b)(8)**] **8124(b)(1)(viii).**

Retirement or annuity funds provided for under the Internal Revenue Code, 42 Pa.C.S. § 8124(b)(1)(ix).

4. Certain insurance proceeds, 42 Pa.C.S. § 8124(c): Fraternal society benefits, 42 Pa.C.S. § 8124(c)(1), (8).

Workmen's [**Compensation**] **compensation, 42 Pa.C.S. § 8124(c)(2).**

Group insurance, 42 Pa.C.S. § 8124(c)(5).

Life insurance and annuities, 42 Pa.C.S. § 8124(c)(3), (4), (6).

Accident and disability **insurance**, 42 Pa.C.S. § 8124(c)(7).

No-fault motor vehicle accident benefits, [**40 P.S. § 1009.106(f)**] **42 Pa.C.S. § 8124(c)(9).**

Unemployment Compensation, 42 Pa.C.S. § 8124(c)(10).

5. Personal earnings, subject to the exceptions **under 23 Pa.C.S. Pt. IV relating to divorce and for support, board, certain damages arising from a residential lease, and student loan obligations**, 42 Pa.C.S. § 8127.

[**Unemployment Compensation, 43 P.S. § 863.**]

6. Tangible personal property on international exhibition, 42 Pa.C.S. § 8125.

7. Common carrier, property in interstate transit, 42 Pa.C.S. § 8126.

8. Certain veteran benefits:

Veterans' litigation awards (Vietnam herbicide), 51 Pa.C.S. § 7902(a).

Sums payable under:

the Veterans' Compensation Act, 51 P. S. § 20012.
the World War II Veterans Compensation Act, 51 P. S. § 20048.

the Korean Conflict Veterans Compensation Act, 51 P. S. § 20098.

the Vietnam Conflict Veterans' Compensation Act, 51 P. S. § 20127.

the Persian Gulf Conflict Veteran's Compensation and Bond Act, 51 P. S. § 20307.

Exemptions under Federal Law

1. Certain wages and compensation:

Longshoremen's and harborworkers' compensation, 33 U.S.C. § 916.

[Merchant seamen's wages, 46 U.S.C. § 601.]

Injury or death resulting from war-risk hazard, 42 U.S.C. § 1717.

2. Social Security benefits, 42 U.S.C. § 407.

3. Certain retirement funds and accounts:

Civil Service, 5 U.S.C. § 8346(a).

Foreign Service, 22 U.S.C. § [1104] 4060(c).

Railroad Retirement, 45 U.S.C. § [§ 228L,] 231m.

Judges' widows' annuities, 28 U.S.C. § 376(n).

4. Certain veteran and armed forces benefits:

Laws administered by the Veterans Administration, 38 U.S.C. [§ 3101] §§ 1970 and 5301.

Armed Forces Survivor Benefit Plan, 10 U.S.C. § 1450(i).

Savings deposited with armed forces, 10 U.S.C. § 1035(d).

Medal of Honor Roll Special Pension, 38 U.S.C. § 1562(c).

5. Miscellaneous:

Property of a foreign state, 28 U.S.C. §§ 1609, 1611.

[Homestead Land, 43 U.S.C. § 175.]

Rail Fund, 45 U.S.C. § 822(e).

Rule 3131. Sale of real property located in more than one county.

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(c) The court may enter judgment upon the pleadings or take evidence by deposition or otherwise, shall decree the extent of the real property which shall be subjected to execution, describing it by metes and bounds, shall designate the place of sale, and shall control the distribution of the proceeds of sale. **The court may apportion the proceeds so as to satisfy prior lienors, including those having a lien upon a portion of a single tract which lay in a different county and which was not sold on execution.**

[Official Note: Section 12 of the Act of June 13, 1840, P. L. 689, 12 P. S. § 2491, remains unsuspended insofar as it authorizes the court to apportion the proceeds for the satisfaction of liens. See Rule 3241(40).]

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Rule 3134. Transfer of personal property to purchaser.

When [the sheriff sells] selling personal property in execution [he] the sheriff shall, upon request of the purchaser, execute and deliver to the purchaser a sheriff's bill of sale setting forth the caption of the case and a description of the property. When [the sheriff sells] selling securities or documents of title, [he] the sheriff shall, upon request, endorse said document in the name of the defendant as follows:

"Defendant _____ by _____,
(Name of Defendant)

Sheriff of _____ County, pursuant to execution upon a judgment against the above named in the Court of _____ County, at Case Number _____ [, _____ Term 19____]."

Official Note: [The provisions of the Motor Vehicle Code] Sections 1114 and 1116 of the Vehicle Code, 75 Pa.C.S. §§ 1114, 1116, relating to transfer of [certificate of title pursuant to judicial sale] of vehicle by operation of law and prescribing the procedure, remain unsuspended by these rules. [See Act of April 29, 1959, P. L. 58, § 208, as last amended, October 26, 1972, P. L. 1020, No. 249, § 1, 75 P. S. § 208.]

Rule 3135. Sheriff's deed to real property; correction of deed.

(a) **[When the sheriff sells real property in execution, he shall, at the expiration of ten (10) days after the filing of the schedule of distribution, if no petition has been filed to set aside the sale, execute and acknowledge before the prothonotary a deed to the property sold.]** When real property is sold in execution and no petition to set aside the sale has been filed, the sheriff, at the expiration of ten days after the filing of the schedule of distribution, shall execute and acknowledge before the prothonotary a deed to the property sold. The sheriff shall forthwith deliver the deed to the appropriate officers for recording and for registry if required. Confirmation of the sale by the court shall not be required.

(b) **If the sheriff has made a defective return of the execution proceeding or has executed a defective deed, including the erroneous description of the real estate, the court upon petition of the purchaser or the purchaser's successors in title may correct the return or deed or order that a new return or deed be executed.**

[Official Note: The Acts of Assembly providing for correction of defective execution of the deed, defective return or errors or misdescriptions remain unsuspended by these rules. Acts of June 16, 1836, P. L. 755, § 104, 12 P. S. § 2543, April 21, 1846, P. L. 430, 12 P. S. § 2544, and June 24, 1895, P. L. 246, 12 P. S. § 2545.]

Rule 3143. Dissolution of attachment; release of property; bond.

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Official Note: For further remedies available to a third person claiming attached property, see Rules on Intervention, 2326 et seq.; Rules on Interpleader, 2301 et

seq. and **Rules on Sheriff's Interpleader [Act of June 22, 1931, P. L. 883, 12 P. S. § 2368.], 3201 et seq.**

[This is a new rule.]

Rule 3159. Acts of Assembly not suspended.

(a) The following Acts of Assembly shall not be deemed suspended or affected:

(1) Section 428 of the Act approved June 2, 1915, P. L. 736, as amended, 77 P. S. § 951.

Official Note: This Section of the Workmen's Compensation Act provides that execution may issue on a workmen's compensation judgment upon first filing with the prothonotary an affidavit of default in payments.

(2) Section 1 of the Act approved May 7, 1929, P. L. 1589, as amended, 68 P. S. § 322.

Official Note: This Act provides for landlord's priority for rent under execution sale against tenant.

(3) Section 1711 of the Act of June 24, 1931, P. L. 1206, as amended, 53 P. S. § 56711.

Official Note: This section of the First Class Township Code provides for a special levy to pay debts.

(4) Section 3205 of the Act of May 1, 1933, P. L. 103, No. 69, as amended, 53 P. S. § 68205.

Official Note: Subdivision (b) of this section of the Second Class Township Code provides for a special levy to pay debts.

(5) Section 712 of the Act of May 15, 1933, P. L. 565, as amended, 71 P. S. § 733-712.

Official Note: This section requires leave of court for execution against a financial institution of which the Secretary of Banking is in possession as receiver.

(6) Section 1 of the Act approved May 24, 1933, P. L. 987, 40 P. S. § 117.

Official Note: This Section relates to the right of plaintiff to maintain an action against an indemnity insurer upon return of execution unsatisfied against insured.

(7) Section 21 of the Act approved April 6, 1937, P. L. 200, 63 P. S. § 281-21.

Official Note: This section relates to pawnbrokers' liens on pledged goods and the prohibition against legal process requiring a pawnbroker to deliver a pledge without surrender of the ticket unless the ticket has been impounded or its negotiation enjoined.

(8) Section 611 of the Act of March 10, 1949, P. L. 30, as amended, 24 P. S. § 6-611.

Official Note: This section of the Public School Code of 1949 provides for the enforcement of judgments against school districts.

(9) As to boroughs, see the Borough Code of February 1, 1966, P. L. (1965) _____, No. 581, as amended, 53 P. S. § 46303.

Official Note: This section of the Borough Code provides for a special levy to pay debts.

(10) Any Act of Assembly providing immunity or exemption of property from execution.

Official Note: This Section is intended to preserve the numerous Acts of Assembly providing for immunity or exemption of particular types or classes of property from

execution. The practice and procedure as to claiming or waiving exemption or immunity is governed by these rules.

(b) The following provisions of the Consolidated Statutes shall not be deemed suspended or affected:

(1) Section 5107 of the Pennsylvania Uniform Fraudulent Transfer Act, 12 Pa.C.S. § 5107.

Official Note: This section of the Pennsylvania Uniform Fraudulent Transfer Act relates to remedies of creditors.

(2) The Uniform Commercial Code, 13 Pa.C.S. § 1101 et seq.

(3) Section 8345 of Associations Code, 15 Pa.C.S. § 8345.

Official Note: This Section of the Uniform Partnership Act relates to charging orders in execution against partnership interests.

(4) Section 8563 of the Associations Code, 15 Pa.C.S. § 8563.

Official Note: This Section of the Pennsylvania Revised Limited Partnership Act relates to charging orders in execution against limited partnership interests.

(5) Section 3377 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 3377.

Official Note: This section of the Probate, Estates and Fiduciaries Code provides that execution shall not issue against property of the estate of a decedent upon judgment, other than mortgages, ground rents, pledges or conditional sales of real or personal property, without agreement in writing of the personal representative or approval of the Orphans' Court.

(6) Section 2503(2) and (3) of the Judicial Code, 42 Pa.C.S. § 2503 (2) and (3).

Official Note: These sections relate to the right of a garnishee to receive counsel fees.

(7) Section 5105(f) of the Judicial Code, 42 Pa.C.S. § 5105(f).

Official Note: This Section provides that the reversal or modification of any order of a court in a matter in which the court has jurisdiction of the sale, mortgage, exchange or conveyance of real or personal property shall not impair or divest any estate or interest acquired thereunder by a person not a party to the appeal.

(8) Section 8151 of the Judicial Code, 42 Pa.C.S. § 8151.

Official Note: This section requires officers conducting judicial sales of property to give twenty days notice in writing to the Pennsylvania Department of Revenue.

(9) Sections 8123(b)(3) and (4) of the Judicial Code, 42 Pa.C.S. §§ 8123(b)(3) and (4).

Official Note: These Sections provide that there shall be no exemption of property in executions upon judgments for board for four weeks or less or for wages of \$100 or less for manual labor.

(10) Section 8127(b) of the Judicial Code, 42 Pa.C.S. § 8127(b).

Official Note: This Section prohibits the commencement of actions or transfer of claims for collection outside of the Commonwealth to defeat a claim for exemption.

(11) Sections 1114 and 1116 of the Vehicle Code, 75 Pa.C.S. §§ 1114, 1116.

Official Note: These sections relate to change of ownership by operation of law and the issuance of certificates of title.

ACTS OF ASSEMBLY NOT SUSPENDED

Rule 3231. Acts of Assembly not suspended.

Rescinded.

Official Note: See Rule 3159 for the preservation of the Acts of Assembly formerly preserved by this rule.

ACTS OF ASSEMBLY SUSPENDED

Rule 3241. Acts of Assembly suspended.

Rescinded.

Official Note: The statutes formerly suspended by this rule have been repealed.

FORMS

Rule 3251. Praeceptum for [writ] Writ of [execution] Execution. [—] [money] Money [judgment] Judgments.

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Official Note:

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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)(1). When the writ issues to another county indexing is required as of course in that county by the prothonotary. See Rule 3104(b).

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CHAPTER 4000. DEPOSITIONS AND DISCOVERY SUBPOENA UPON A PERSON NOT A PARTY

Rule 4009.22. Service of Subpoena.

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Official Note: For the form of the certificate, see Rule 4009.25.

The twenty-day advance notice is for the benefit of the parties and not the person served. The twenty-day notice period may be waived and the certificate modified accordingly.

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Explanatory Comment

I. Execution Rule 3101 et seq.

The Judiciary Act Repealer Act (JARA) became law in 1978, repealing literally thousands of statutory provisions governing civil practice and procedure and amending many others. Since that time the many references to these repealed and amended statutes contained in the Rules of Civil Procedure have gradually been eliminated. This recommendation proposes to continue this process and to eliminate from Rules 3101 through 3149, with the exception of Rule 3104, all obsolete references and citations and to make any conforming amendments necessary. These amendments are technical in nature and do not affect practice and procedure. Rule 3104 governing indexing the writ of execution will be the subject of a separate recommendation.

Several proposed revisions merit further mention.

Rule 3101

A new note to Rule 3101 replaces the current note. It incorporates the substance of the current note, deletes

references to repealed statutes and includes references to successor statutes. In addition, the note continues to advise that the enforcement of judgments against the Commonwealth, political subdivisions and public authorities must be in accord with the appropriate Act of Assembly. The note mentions two such statutes which, although repealed by JARA, contain practice and procedure which remain part of the common law of the Commonwealth pursuant to Section (3)(b) of that Act, 42 Pa.C.S. § 20003(b).

Rule 3131

Rule 3131 is amended by incorporating the practice under Section 12 of the Act of June 13, 1840, P. L. 689, 12 P. S. § 2491 (repealed), which authorized the court to apportion the proceeds of an execution sale of real property for the satisfaction of liens. That statute provided in relevant part:

§ 2491. Proceedings when lands in adjoining counties are levied on

... In case there shall be any liens on the parts of said lands, lying in the adjoining county or counties, in which the above mentioned proceedings are directed to be filed and entered, existing previous to filing and entering such proceedings, the court shall, after the return of the sale, ascertain and determine, in which manner as they may think proper, what proportion of the proceeds of such sale shall be applied in satisfaction of such previous liens.

Rule 3135

JARA repealed the following Acts: the Act of June 16, 1836, P. L. 755, § 104, 12 P. S. § 2543, providing for correction of a defective execution of a sheriff's deed, the Act of April 21, 1846, P. L. 430, 12 P. S. § 2544, providing for amendment of a defective sheriff's return, and the Act of June 24, 1895, P. L. 246, 12 P. S. § 2545, providing for correction of an error in the description of real estate in a sheriff's deed. The recommendation proposes that Rule 3135 be revised to incorporate these correction practices. The text of these statutes is set forth in Endnote No. 1 following this comment.

Rules 3159 and 3231

Present Rule 3231 governs the preservation of Acts of Assembly relating to the enforcement of judgments for the payment of money. Many of the statutes preserved by Rule 3231 have been repealed by JARA. It is proposed that Rule 3231 be rescinded and that the provisions of Rule 3231 preserving statutes which have not been repealed be transferred to new Rule 3159. Subdivision (a) of the new rule preserves Acts which are part of the Unconsolidated Statutes (___ P. S. § ___) while subdivision (b) preserves Acts which form part of the Pennsylvania Consolidated Statutes (___ Pa.C.S. § ___).

II. Discovery Rule 4009.22

Members of the bar have expressed concern that Rule 4009.21 et seq. governing the subpoena for the production of documents or things from a person not a party does not contain any reference to a waiver of the twenty-day notice period. It was suggested that, if the parties agreed, they might dispense with the twenty-day period and thus expedite the production of the materials sought. Consequently, it is proposed that a second paragraph be added to the note to Rule 4009.22(a) advising of the ability to

waive the notice period and modify the certificate required by that rule as a prerequisite to service of the subpoena.

By the Civil Procedural Rules Committee

EDWIN L. KLETT,
Chairperson

Endnote

1. The repealed statutes read as follows:

§ 2543. Correction of defective execution

The several courts aforesaid shall have the like power to compel the sheriff or coroner making sale as aforesaid to perfect the title of purchasers, in cases of defective or informal execution of sheriffs' or coroners' deeds, and they may grant relief in the manner, and upon the terms and conditions aforesaid, and with like effect.

§ 2544. Amendments to defective returns

In all cases where any real estate hath been heretofore sold, or shall hereafter be sold, under any execution issued out of any of the courts of record in this Commonwealth, and the sheriff, or other officer making such sale, shall have made, or hereafter may make a defective or informal return of his proceedings upon each execution, it shall be lawful for the purchaser at such sale, or other person or persons interested therein, to apply by bill or petition to the court out of which such execution issued, setting forth the facts of the case; and after due notice, to be given in such manner as the court may direct, to such purchaser or defendant in the execution, as whose property the same may have been sold, or to the executors, or administrators and heirs of such purchaser or defendant, or devisee of such estate, and to all other persons

interested therein, to appear in such court, on a day certain, to be fixed by said court, and answer such bill or petition; and thereupon the said court shall have power to examine into the facts of the case, and make such order and decree therein as justice and equity may require, either by dismissing such bill or petition, or by correcting and amending such return to the execution, according to the truth of the case; and directing the sheriff, for the time being, to execute a deed of such real estate to the purchaser thereof, or to such other person or persons, for the use of such as may be entitled thereto, under such sale, upon such terms and conditions as the said court may determine, and justice and equity require; which deed, so executed and acknowledged, as sheriffs' deeds are usually acknowledged, shall be as effectual in law as if the proper return had been made, and the title had been completed according to law.

§ 2545. Correction of error in description

When real estate has been correctly described in the sheriff's return to the writ of fieri facias, and error has occurred in the description in the writ of venditioni exponas, or deed issued thereon, or both, the purchaser, or his successors in title, may apply within one year from the date of the aforesaid deed to the court of common pleas, by petition to correct the error; and the said court having jurisdiction of the aforesaid writ, after due notice to the defendant in the aforesaid writ and all parties in interest, may correct the aforesaid deed, or issue a new deed, in conformity with the writ of fieri facias, to be acknowledged by the acting sheriff, and fix the costs as for similar services which shall be paid by the applicant; Provided, the purchaser or purchasers, or his or their successors, have possession under the deed originally executed and no titles have passed: And provided further, that errors of description in the fieri facias shall not be cured by this act.

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