

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 200, 1300 AND 3000]

Proposed Amendments Governing Liens Upon Real Property and Revival of Judgments; Proposed Recommendation No. 151

The Civil Procedural Rules Committee proposes that the Rules of Civil Procedure be amended as provided herein with respect to liens upon real property and revival of judgments. 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 February 12, 1999 to: Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, Pennsylvania 17055, or E-Mail to civil.rules@supreme.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. The comment will neither constitute part of the rules of civil procedure nor be officially adopted or promulgated by the Court.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

(Editor's Note: The following is a new rule. It is printed in regular type to enhance readability.)

Rule 227.5. Entry of Judgment in Judgment Index.

(a) Upon entry of judgment by the court or on order of court or praecipe of a party, the prothonotary shall immediately index the judgment in the judgment index.

(b) The entry in the judgment index shall state

- (1) the names of the parties,
- (2) the number of the case,
- (3) the amount of the judgment if for a sum certain, and
- (4) the date of indexing.

Official Note: Section 8142 of the Judicial Code, 42 Pa.C.S. § 8142(e), requires the prothonotary to "note on the dockets in such office where each verdict, judgment, order, instrument or writ creating a lien against real property is entered, the time it was recorded, rendered, left for filing, or issued."

CHAPTER 1300. COMPULSORY ARBITRATION

Rule 1307. Award. Docketing. Notice. Lien. Judgment. Molding the Award.

* * * * *

(b) The award for the payment of money when entered in the judgment index shall be a lien [upon the party's real estate,] which shall bind the real prop-

erty, located within the county, title to which is recorded in the name of the person against whom the award was entered. The lien shall continue [during the pendency of an appeal or until extinguished according to law.] for five years from the date on which the award was entered in the judgment index or until sooner discharged according to law, regardless of the pendency of an appeal. If the appeal is not concluded or the lien is not discharged within five years after the date on which the award was indexed in the judgment index, the court may extend the lien as provided by Rule 3030(c).

[Official Note: Subdivision (b) continues the practice under the Act of June 16, 1836, P. L. 715, 5 P. S. § 54, repealed by the Judiciary Act Repealer Act of 1978 (JARA), 42 P. S. 20002(a)[149].]

(c) If no appeal is taken within thirty days after the entry of the award on the docket, the prothonotary on praecipe shall enter judgment on the award.

[Official Note: Subdivision (c) continues the practice under the Act of June 16, 1836, P. L. 715, 5 P. S. § 58, repealed by JARA, and under superseded Rule 247.1.]

CHAPTER 3000. JUDGMENTS

Editor's Note: Rules 3020 and 3021 are new rules. They are printed in regular type to enhance readability.)

Rule 3020. Verdict or Order. Indexing. Lien. Award of Arbitrators.

(a) The prothonotary shall index a verdict or order for a specific sum of money in the judgment index with the notation "verdict" or "order" and include its amount and the date and time it was rendered.

(b) A verdict or order when indexed in the judgment index shall be a lien which shall

(1) date from the time of its rendition, provided that no innocent purchaser without notice shall be prejudiced,

(2) bind the real property, located within the county, title to which at the time of the verdict's rendition is recorded in the name of the person against whom the verdict or order was rendered, and

(3) continue for five years from the date on which the verdict or order was indexed in the judgment index or until sooner discharged according to law.

(c) An award of arbitrators shall be a lien as provided by Rule 1307(b).

Official Note: An order is defined by section 102 of the Judicial Code, 42 Pa.C.S. § 102, to include, inter alia, a decision, a decree and an adjudication.

Section 8141(3) of the Judicial Code provides that the lien of a verdict for a specific sum of money shall have priority from the time it is recorded by the court. Section 8142(b) provides for the endorsement of time on recorded verdicts.

Rule 3021. Judgment. Lien. Duration.

(a) Except as provided by subdivisions (b) and (c), a judgment entered and indexed in the judgment index in a court of record in any county in this Commonwealth shall be a lien which shall bind real property, located in the

county, title to which at the time of indexing is recorded in the name of the person against whom the judgment is indexed.

Official Note: See Rule 3001 et seq. for the transfer of a judgment to another county.

(b) The lien of a judgment entered upon a verdict or order indexed as provided by Rule 3020 shall

(1) date from the time the verdict or order was rendered, provided that no innocent purchaser without notice shall be prejudiced, and

(2) bind real property, located in the county, title to which is recorded in the name of the person against whom the judgment was indexed, both at the time the verdict or order was indexed and at the time the judgment is indexed.

(c) The lien of a judgment entered upon an award pursuant to Rule 1307(c) shall

(1) date from the time of the indexing of the award in the judgment index, and

(2) bind real property, located in the county, title to which is recorded in the name of the person against whom the award was indexed, both at the time the award was indexed and at the time the judgment is indexed.

(d) The lien shall continue for five years from the date the judgment was entered in the judgment index unless the judgment is revived or sooner discharged.

Official Note: A judgment may be revived in the manner provided by Rule 3025 et seq.

Subchapter B. REVIVAL OF JUDGMENTS

Rule 3025. Commencement of Proceedings. Venue.

A proceeding to revive and continue the lien of a judgment may be commenced by filing with the prothonotary of the county in which the judgment has been entered

(1) a praecipe for a writ of revival in substantially the form provided by Rule [3033] 3032, or

(2) an agreement to revive judgment in substantially the form provided by Rule 3034.

Official Note: [For the substantive law governing the revival of judgments against defendants and terre-tenants see the Judgment Lien Law of 1947, 12 P. S. 877 et seq.

The Acts approved September 26, 1951, P. L. 1505, 12 P. S. 885, as amended, and May 16, 1923, P. L. 207, as amended, 53 P. S. 7183, providing additional methods of revival of judgments in favor of the Commonwealth and for municipal and tax claims by the filing of suggestion of nonpayment remain unsuspended by these rules.

The Act approved April 22, 1909, P. L. 112, 12 P. S. 875 providing for consolidation and revival of separate judgments against the same defendant remains unsuspended by these rules.]

Section 5526(1) of the Judicial Code requires that an action for revival of a judgment lien must be commenced within five years. See also Section 605 of the Goods and Services Installment Sales Act, 69 P. S. § 1605(b), requiring that a proceeding for revival of a judgment subject to the Act and entered by confession be commenced within one year from the lapse of the lien.

The following statutes provide for revival or continuation of liens by filing with the prothonotary a suggestion of nonpayment and an averment of default:

Section 1404 of the Act of April 9, 1929, P. L. 343, as amended, 72 P. S. § 1404, providing for revival of liens for state taxes, unpaid bonus, interest and penalties;

Section 15 of the Act of May 16, 1923, P. L. 207, as amended, 53 P. S. § 7183, providing for continuation of liens on municipal and tax claims;

Section 9 of the Act of May 16, 1923, P. L. 207, as amended, 53 P. S. § 7143 relating to municipal claims for taxes, water rents or rates, lighting rates, power rates and sewer rates.

See also statutory provisions relating to revival of municipal claims and liens, 53 P. S. § 7391 et seq.

Tax liens required to be filed by the Department of Revenue continue without the necessity of revival. See the Act of April 9, 1929, P. L. 343, No. 176, § 1404.1, 72 P. S. § 1404.1, added by Section 5 of the Act of December 12, 1994, P. L. 1015, No. 138.

(Editor's Note: The following is a new rule. It is printed in regular type to enhance readability.)

Rule 3025.1. Consolidation of Judgments.

(a) A plaintiff who owns two or more judgments recovered against the same person in a particular county may combine and consolidate the judgments by filing a single praecipe requesting the issuance of a single writ of revival. The praecipe shall contain the court, number and amount of each judgment being consolidated. The new judgment, when entered, shall include the amounts due on all the old judgments.

(b) Two or more judgments against the same person may also be consolidated and revived by an agreement, substantially in the form provided by Rule 3034, which states the court, number and amount of each judgment and provides for the consolidation of the judgments, and sets forth the amount of the consolidated revived judgment.

Official Note: The terms "plaintiff" and "defendant" as used in the rules governing judgment liens and revival of judgments refer generally to the judgment creditor and judgment debtor, respectively. Thus, a defendant who holds a judgment against the plaintiff on a counterclaim would be a plaintiff for the purpose of these rules.

Rule 3026. Parties. Generally.

(a) The plaintiff shall name in the caption the original defendant and any terre-tenant against whom [**he seeks to revive and continue**] the lien of the judgment is to be revived and continued.

(b) If the judgment has been assigned or transferred, the caption shall contain the name of the original judgment plaintiff and the name of the real party in interest.

Official Note: [For the effect of failure to name a defendant or terre tenant, see § 3 of the Judgment Lien Law of 1947, 12 P. S. 879.] As to joinder of personal representatives of a deceased defendant, see Section 3382 of the Probate, Estates and Fiduciaries Code, [**Act of June 30, 1972, P. L. 508, No. 164, § 3382,**] 20 Pa.C.S. § 3382.

See Rule 3026.2 governing terre-tenants as parties and Rule 3026.3 governing revival against a terre-tenant.

(*Editor's Note:* Rules 3026.1—3026.3 are new rules. They are printed in regular type to enhance readability.)

Rule 3026.1. Parties. Joint Defendants.

(a) Except as provided by subdivision (b), if there is a judgment against two or more joint defendants, no revival shall be effective against any of such defendants unless all joint defendants are made parties to the revival proceedings.

(b) If all or fewer than all joint defendants agree to be bound, the revival shall be effective against all of the defendants so agreeing.

Rule 3026.2 Parties. Terre-Tenants.

(a) As used in Rule 3025 et seq., a terre-tenant is a person in whom title to real property subject to a lien provided by the Rules of Civil Procedure has vested.

Official Note: The rules governing the action of mortgage foreclosure use the term "real owner" in a similar sense. See Rule 1144(a)(3).

See Rule 3020 which provides for the lien of a verdict or order or compulsory arbitration award, Rule 3021 which provides for the lien of a judgment, Rule 3027 which provides for the lien of a writ or agreement of revival and Rule 3104 which provides for the lien of a writ of execution.

(b) The term "terre-tenant" shall not include

(1) any person claiming under or whose claim of title passes through a deed which is not recorded in the county where the real property is located, or

(2) any person claiming under or through a deceased defendant or terre-tenant whose will has not been filed with, or letters of administration on whose estate have not been issued by, the register of wills or orphans' court of such county.

(c) Any person claiming under or through a deceased defendant or terre-tenant who was not a resident of the county at the time of death, may qualify as a terre-tenant under this rule by recording in the office of the recorder of deeds of the county where the real property is located, a certified copy of the will of the decedent, or, if the decedent died intestate, a declaration of interest accompanied by a certificate of the register of wills or probate court or officer of the county, state or country in which the decedent resided at the time of death that letters of administration have been issued in the estate of the decedent.

Rule 3026.3. Revival of Lien of Judgment as to Property of Terre-Tenant.

(a) Except as provided by subdivision (b), if an interest in real property bound by the lien of a judgment has been acquired by a terre-tenant, then the lien of the judgment on the property shall be revived only if the terre-tenant joins in an agreement to revive or is made a party to the writ of revival.

(b) If a writ of revival or an agreement to revive is indexed against the defendant at a time when a terre-tenant's deed or other evidence of title is of record, but without the joinder of the terre-tenant, the lien may be revived as to the terre-tenant within five years after the recording of the terre-tenant's deed or other evidence of title by (1) agreement between the plaintiff and the terre-tenant alone or between the plaintiff, defendant and

terre-tenant, or (2) by writ of revival issued against the terre-tenant alone, or against the defendant and terre-tenant jointly. The lien shall continue as to the terre-tenant for the same period as it continues against the defendant, when it must be revived against both parties.

Official Note: The mere recording of a terre-tenant's deed or other evidence of title is ineffective to revive a lien as to any part of the property acquired by a terre-tenant without specific revival by agreement or by writ.

For the effect of a judgment of revival against a terre-tenant, see Rule 3031.1(c).

Rule 3027. Writ of Revival. Indexing. Lien.

(a) Upon issuance of the writ of revival or the filing of an agreement for a judgment of revival, the prothonotary shall index it in the judgment index against each defendant and terre-tenant named therein.

(b) The writ **or agreement**, when indexed, shall be a lien [**upon all**] which shall bind real property [**within**] located in the county

(1) title to which at the time of indexing is [**owned by the defendant**] recorded in the name of the person against whom the original judgment [**is entered.**] was indexed, and

(2) which is subject to the lien of the original judgment or a revival thereof but title to which is recorded in the name of a terre-tenant.

Official Note: The lien attaches whether or not the real property was owned by the defendant at the time the judgment was indexed or previously revived and whether or not the lien of the judgment had been lost as to the property.

(c) The lien of a writ of revival **or an agreement of revival** shall continue for a period of five years from the date on which the writ **or agreement** was indexed.

Rule 3028. Service of the Writ.

[**The writ shall be served in the manner provided by Rule 400 et seq. for service of original process. A return of no service shall be equivalent to personal service.**]

Official Note: See Rule 400 et seq. governing service and return.]

The writ shall be served within ninety days after its issuance by the sheriff or a competent adult who is not a party to the action

(1) by handing a copy in the manner provided by Rule 402,

(2) by mailing a copy in the manner provided by Rule 403, or

(3) if service cannot be made as provided by subparagraphs (1) and (2), then by publication in the manner prescribed by Rule 430(b).

Note: A special order of court under Rule 430(a) is not a prerequisite to service by publication under this rule.

Rule 3029. Reissuance and Substitution of Writ.

The writ may be reissued or substituted as in a civil action.

Official Note: See Rule [1010] 401(b) governing reissuance and substitution of a writ of summons.

Rule 3031. Judgment upon default or admission. Assessment of damages.

(a) The prothonotary, on praecipe of the plaintiff, shall enter judgment against a defendant or terre-tenant for failure within the required time to plead to the writ or for any relief admitted to be due by the defendant's or terre-tenant's pleading. The prothonotary shall assess damages as directed in the praecipe for judgment.

Official Note: See the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. § 520 requiring an affidavit setting forth facts showing that the defendant is not in military service as a prerequisite to the entry of a default judgment.

(b) In all cases the court, on motion of a party, may enter an appropriate judgment against a party upon default or admission.

(Editor's Note: The following is a new rule. It is printed in regular type to enhance readability.)

Rule 3031.1. Judgment of Revival. Duration of Lien.

(a) Except as provided by subdivisions (b) and (c), the extent and duration of a lien of a judgment of revival shall be as provided by Rule 3021 governing the liens of judgments generally.

(b) If judgment entered on a writ of revival is not indexed within a period of five years after the issuance of the writ or if an order continuing the lien has not been entered as provided by Rule 3030(c), the lien shall continue only for a period of five years from the date on which the writ was indexed.

(c) If an interest in real property bound by the lien of a judgment has been acquired by a terre-tenant and a judgment of revival is entered against the terre-tenant, the revived judgment shall not be a personal judgment against the terre-tenant and shall not extend to any other property of the terre-tenant.

Rule 3032. Praecipe for Writ of Revival. **Form.**

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

[Caption]

PRAECIPE FOR WRIT OF REVIVAL

To the Prothonotary:

Issue writ of revival of judgment entered [to] at _____ and
(Court [, Term,] Number)

Index it in the judgment index against _____ and _____
(Name of Defendant(s)) (Name of Terre-Tenant(s))

in the amount of \$ _____ with interest from _____.

Attorney for Plaintiff

Official Note: For the definition of terre-tenant and the substantive effect of omission of a defendant, a joint defendant, or a terre-tenant, see [the Judgment Lien Law of 1947, 12 P. S. 877 et seq.] Rules 3026, 3026.1 and 3026.2.

Rule 3033. Writ of revival. **Form.**

The writ of revival shall be substantially in the following form:

[Caption]

WRIT OF REVIVAL

To _____ :
(Name of Defendant(s) and Terre-tenant(s))

(1) You are notified that the plaintiff has commenced a proceeding to revive and continue the lien of the judgment entered [to] at _____ .

(Court, [Term,] Number)

(2) The plaintiff claims that the amount due and unpaid is \$ _____ with interest from _____ .

(3) You are required within twenty (20) days after service of this writ to file an answer or otherwise plead to [this writ] it. If you fail to do so judgment of revival in the amount claimed by the plaintiff will be entered without a hearing and you may lose your property or other important rights.

YOU SHOULD TAKE THIS WRIT OF REVIVAL TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

(Name of Office)

(Address of Office)

(Telephone Number)

Date: _____

(Name of Prothonotary (Clerk))

By _____
(Deputy)

Official Note: For definition of terre-tenant, see [**Sec. 3(d) of the Judgment Lien Law of 1947, 12 P. S. 879(d).**] **Rule 3026.2.**

Rule 3034. Agreement to Revive. **Form.**

The agreement to revive shall be substantially in the following form:

[Caption]

AGREEMENT TO REVIVE

The undersigned hereby agree(s) that the judgment entered on _____ [, 19____ to] at _____ **Date** be revived and the lien continued and authorize(s) _____ (Court, [**Term,**] Number) the prothonotary to enter and index a judgment of revival in the amount of \$ _____ plus costs.

Signed and dated [**this** ____ day of _____ , 19____]: _____.

(Defendants(s))

(Terre-Tenant(s))

Official Note: For the substantive effect of omission of a defendant, a joint defendant or a terre-tenant see [**the Judgment Lien Law of 1947.**] **Rules 3026, 3026.1 and 3026.2.**

See Rule 3125.1(b) for additional requirements when there is an agreement to consolidate and revive two or more judgments against the same person.

Rule 3048. Acts of Assembly not suspended.

The Rules governing the Revival of Judgment shall not be deemed to suspend or affect:

(1) [**Section 1 of the Act approved April 22, 1909, P. L. 112, 12 P. S. 875.**] **Section 9 of the Act of May 16, 1923, P. L. 207, as amended, 53 P. S. § 7143;**

Official Note: This Section provides for [**consolidation and revival of separate judgments against the same person in one proceeding.**] **revival of municipal claims for taxes, water rents or rates, lighting rates, power rates and sewer rates.**

(2) Section 15 of the Act approved May 16, 1923, P. L. 207, as [**last**] amended [**June 7, 1961, P. L. 263**], 53 P. S. § 7183 insofar as it authorizes revival of municipal claims by suggestion of nonpayment and averment of default [.];

(3) Section 1404 of the Fiscal Code of April 9, 1929, P. L. 343 as [**last**] amended [**by Act No. 296 approved August 7, 1963**], 72 P. S. § 1404 [.];

Official Note: This Section provides for revival of liens for State taxes by the filing of a suggestion of nonpayment and averment of default.

(4) [**The Act approved September 26, 1951, P. L. 1505, as last amended May 3, 1956, P. L. (1955) 1528,**

12 P. S. 885.] **Section 1404.1 of the Act of April 9, 1929, P. L. 343, No. 176, added by Section 5 of the Act of December 12, 1994, P. L. 1015, No. 138, 72 P. S. § 1404.1;**

Official Note: [**This Act provides for revival of judgment in favor of the Commonwealth by filing and notice of suggestion of nonpayment.**] **This section provides for the continuation without the necessity of revival of tax liens required to be filed by the Department of Revenue.**

(5) **Section 605 of the Act of October 28, 1966, Special Session No. 1, P. L. 55, known as the Goods and Services Installment Sales Act, added by Section 6 of the Act of March 25, 1982, P. L. 199, No. 68, 69 P. S. § 1605;**

Official Note: **This section requires that a proceeding for revival of a judgment entered by confession, which is subject to the Act, be commenced within one year from the lapse of the lien.**

(6) **Section 3382 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 3382;**

Official Note: **Section 3382 provides for the joinder of the personal representative of a decedent as a defendant and for the continuation of the lien on a decedent's real estate.**

(7) **Section 5526(1) of the Judicial Code, 42 Pa.C.S. § 5526(1);**

Official Note: **This section requires that an action for revival of a judgment lien must be commenced within five years.**

(8) **And all other Acts or parts of Acts authorizing special procedures for the Revival of Judgments in favor of the Commonwealth or political subdivisions.**

Rule 3049. Acts of Assembly suspended.**Rescinded.**

Official Note: The statutory provisions governing revival of judgments suspended by Rule 3049 have been repealed.

**Subchapter D. ENFORCEMENT OF MONEY
JUDGMENTS**

FOR THE PAYMENT OF MONEY

Rule 3104. Indexing. Lien of Writ of Execution.

(a)(1) When **issuing the writ the prothonotary [issues the writ he]** shall, upon praecipe of the plaintiff, index it against the defendant in the judgment index. **The writ, when indexed, shall**

(i) continue the lien upon real property which is then subject to the lien of the judgment, and

(ii) become a lien which shall bind real property acquired by the defendant subsequent to the entry of the judgment, located in the county, title to which is recorded in the name of the defendant at the time of indexing.

Official Note: As to the effect of indexing, [see] Rule 3104 continues the practice under the Judgment Lien Law of 1947, 12 P. S. § 883 (repealed). See also Section 4303 of the Judicial Code, 42 Pa.C.S. § 4303.

[The provisions of the Allegheny County Court Act of May 5, 1911, P. L. 198, as amended providing that county court judgments shall not constitute liens on real property and providing for transfer to the common pleas remain unsuspending by these rules.]

(2) A lien obtained or continued solely by the indexing of a writ of execution shall continue for a period of five years from the date the writ was indexed.

(3) If more than five years have expired since the entry of the judgment or of the last preceding judgment of revival, no execution may issue until a writ of revival shall have issued and been reduced to judgment. The execution shall issue on the judgment so entered and not on the original judgment.

(b) [When a writ is received by the sheriff of another county, it shall be his duty to] Upon receiving a writ from another county, the sheriff shall deliver it to the prothonotary of [his] the sheriff's county who shall thereupon index it and return it to the sheriff for execution. Such indexing shall have the same effect as the indexing of a judgment against the defendant. If the plaintiff so directs, the sheriff may levy or attach under the writ before [he delivers] deliver- ing it to the prothonotary for indexing.

(c) When the writ directs attachment of real property of the defendant in the name of a garnishee, the prothonotary of the county in which the writ is to be executed, upon praecipe of the plaintiff so directing and describing the real property in that county, shall index the writ against the garnishee as a *lis pendens*. Indexing against the garnishee shall constitute a *lis pendens* against the described property only in the county where the writ is indexed and not against any other property of the garnishee.

Explanatory Comment

The Supreme Court of Pennsylvania promulgated Rules 3025 through 3049 in 1964 to provide the procedure in proceedings to revive and continue the lien of a judgment. The note to Rule 3025 advised the bench and bar: "For the substantive law governing the revival of judgment against defendants and *terre tenants* see the Judgment Lien Law of 1947, 12 P. S. 877 et seq."

The Judgment Lien Law was repealed by the Judiciary Act Repealer Act (JARA) in 1978 but no successor provisions were enacted as part of the Judicial Code or otherwise. A consequence of the repeal was that the 1947 Act disappeared from Purdon's Pennsylvania Statutes along with the rest of Title 12 relating to Judicial Procedures and Remedies. Unless the superseded volumes of former Title 12 were retained, the Judgment Lien Law became unavailable to the legal community. Yet, as no general rules had been promulgated to date to replace the repealed Act, the Judgment Lien Law continued as part of the common law of the Commonwealth under the fail-safe provision of JARA, 42 P. S. § 20003(b).

Recommendation No. 151 proposes to amend the rules of civil procedure to fill the void. The General Assembly in Section 1722(b)(1) of the Judicial Code, 42 Pa.C.S. § 1722(b)(1), has authorized the governing authority to prescribe and modify general rules governing:

(1) The effect of judgments and other orders of, and the right to and effect of attachments and other process issuing out of, a tribunal, and the manner of the enforcement of any thereof, including the time during which and the property with respect to which they shall be a lien, the relative priority of liens and other claims, stays of execution which may or shall be granted, satisfaction of judgments and dissolution of attachments, and all other matters relating to judgments and other orders and attachments and other process which have been regulated heretofore by statute.

The recommendation does not propose a radical change in the law of judgment liens and revival of judgments. Rather, the purpose is to make the law accessible to the bench and bar, to integrate the substantive and procedural law of judgment liens and revival, and to state the law in clear terms.

Terminology

The present rules and the proposed rules use the terms "plaintiff" and "defendant". The plaintiff is the party in whose favor the judgment is entered and the defendant the party against whom the judgment is entered. It may be that a judgment has been entered in favor of the defendant on a counterclaim in which case the defendant will be the "plaintiff" under these rules and the plaintiff will be the "defendant." A note has been added to Rule 3025 to this effect.

Liens

A new rule defines the duty of the prothonotary with respect to the judgment index. Several present and proposed rules impose liens upon real property.

Rule 227.5. Entry of Judgment in Judgment Index.

Section 2737 of the Judicial Code in providing that the "office of the prothonotary shall have the power and duty to . . . [e]nter all civil judgments, including judgments by confession" gives scant direction to the prothonotary with respect to the judgment index compared with prior statutes such as the Act of 1827, 16 P. S. § 9871.¹ The new

rule is designed to complement the proposed amendments by setting forth, first, the duty of the prothonotary to index judgments and, second, the content of the entry in the index.

Rule 1307. Award. Docketing. Notice. Lien. Judgment. Molding the Award (Compulsory Arbitration).

Rule 1307 is an existing rule governing compulsory arbitration which provides in subdivision (b) that the "award when entered in the judgment index shall be a lien upon the party's real estate, which shall continue during the pendency of an appeal or until extinguished according to law."

The amended rule clearly describes the nature of the lien and identifies the property to which the lien attaches. The rule provides that the effect of indexing an award in the judgment index is to create

a lien which shall bind the real property, located within the county, title to which is recorded in the name of the person against whom the award was entered.

The amended rule describes the life of the lien in the following language:

The lien shall continue for five years from the date on which the award was entered in the judgment index or until sooner discharged according to law, regardless of the pendency of an appeal

This language describing the lien reappears in almost identical form in the rules imposing liens on real property: Rules 3020, 3021, 3027 and 3104.

The proposed amendment also cross-refers to Rule 3030(c) governing extension of the lien when an appeal from an award is not concluded or the lien is not discharged within five years.

Rule 3020. Verdict or Order. Indexing. Lien.

New Rule 3020 is derived from the repealed Act of March 23, 1877, P. L. 34, § 1, 12 P. S. § 861.² The statute provided in part that "the verdict shall be a lien upon the real estate situate within the proper county of the party or parties against whom said verdict shall be rendered. . . ." In its formulation of the nature of the lien, subdivision (b)(2) of the new rule follows amended Rule 1307.

The rule refers to an "order" as well as a "verdict". The term "order" is broadly defined by the Section 102 of the Judicial Code to include a "judgment, decision, decree, sentence and adjudication."

Rule 3021. Judgment. Lien. Duration.

New Rule 3021 sets forth the lien of a judgment and its duration and replaces two prior statutes, Section 2 of the Judgment Lien Law of 1947, 12 P. S. § 878,³ and Section 2 of the Act of 1877, 12 P. S. § 862.⁴ Subdivision (a) states the general rule that a judgment "shall be a lien which shall bind real property, located in the county, title to which at the time of indexing is recorded in the name of the person against whom the judgment is indexed."

Subdivisions (b) and (c) state rules for two particular judgments. Subdivision (b) governs the lien of a judgment entered upon a verdict or order while Subdivision (c) governs the lien of a judgment entered upon an award in compulsory arbitration.

Subdivision (d) governs the duration of the lien and applies to the liens of all judgment under the rule.

Rule 3027. Writ of Revival. Indexing. Lien.

Rule 3027 was amended in 1994 to provide for the lien of a writ of revival. The proposed amendment conforms the language of the rule to that of the other rules imposing a lien on real property and adds a provision making explicit the application of the lien to property owned by a terre-tenant.

Rule 3104. Indexing. Lien of Writ of Execution.

Rule 3104 providing for the indexing of a writ of execution is an existing rule found in the chapter governing enforcement of judgments for the payment of money. The amendment to Rule 3104 is intended to incorporate without substantial change Section 7 of the Judgment Lien Law, 12 P. S. § 883,⁵ relating to the property subject to execution, the lien of execution and the duration of the lien.

Revival of Judgments

The rules governing revival of judgments are revised generally to be gender neutral and to delete obsolete references.

The following proposed new rules incorporate provisions of the Judgment Lien Law.

Rule 3025.1. Consolidation of Judgments.

Subdivision (a) of this new rule governing consolidation of judgments provides for consolidation by writ of revival and is derived from the Judgment Lien Law of 1947, 12 P. S. § 875.⁶ Subdivision (b) adds the option of consolidating judgments by agreement.

Rule 3026.1. Parties. Joint Defendants.

New Rule 3026.1 relating to joint defendants incorporates the substance of Section 3 of the Judgment Lien Law, 12 P. S. § 879(b).⁷

Rule 3026.2. Parties. Joint Defendants.

Rule 3026.3. Revival of Lien of Judgment as to Property of Terre-Tenant.

New Rule 3026.2 provides a definition of the term "terre-tenant." Subdivision (a) is derived from Eberhart's Appeal, 39 Pa. 509, 512 (1861): "A terre-tenant is one in whom the title to the encumbered estate has vested."

Rule 3026.2(b) and (c) limiting the term "terre-tenant" incorporate a corresponding provision of the Judgment Lien Law, 12 P. S. § 879(d).⁸

A portion of Section 3 of the 1947 Act, 12 P. S. § 879(a),⁹ sets forth the manner of revival against the property of a terre-tenant. New Rule 3026.3 incorporates the substance of that provision, dividing it into two subdivisions and a note.

Rule 3031.1. Judgment of Revival. Duration of Lien.

Rule 3031.1 governs the judgment of revival and its lien. Subdivisions (a) and (b) of Rule 3031.1 replace the first sentence of section 3(c) of the Judgment Lien Law of 1947, 12 P. S. § 879(c).¹⁰ Subdivision (a) cross-refers to Rule 3021 for the extent and duration of the lien.

The second sentence¹¹ of subdivision (c) of the statute relating to extension of the lien was incorporated in 1994 into Rule 3030 as subdivision (c). Subdivision (b) of proposed Rule 3031.1 cross-refers to this provision.

Subdivision (c) of the proposed rule has no statutory antecedent and is a clarification of the extent of the judgment of revival against a terre-tenant.

The following amendments to existing rules go beyond matters of gender or style:

Rule 3027. Writ of Revival. Indexing. Lien.

Rule 3027 governing the indexing and lien of a writ of revival was amended in 1994 to incorporate the substance of Section 4 of the Judgment Lien Law, 12 P. S. § 880.¹² The present recommendation proposes to revise subdivisions (b) and (c) to refer to an agreement to revive in addition to the writ of revival.

Rule 3028. Service of the writ.

The present rule that a "return of no service shall be equivalent to personal service" is derived from at least two repealed statutory sources: Section 6 of the Judgment Lien Law, 12 P. S. § 882, and 12 P. S. § 295. Under the former¹³, the prothonotary was authorized to enter judgment of revival upon praecipe following a return of nihil habet. The latter provided that "a return of nihil habet shall be equivalent to personal service, in writs of scire facias to revive judgments entered in personal actions."

The proposed revision places a greater emphasis upon serving the writ of revival and provides procedures beyond those normally available for service or original process. Service may be made by the sheriff or a competent adult. The manner of service may be by handing a copy as provided by Rule 402 or mailing a copy as provided by Rule 403. If service cannot be made by handing or mailing a copy, then the rule provides a right of service by publication under Rule 430 without the necessity of obtaining a court order.

Rule 3031. Judgment upon default or admission. Assessment of damages.

The restyling of the title and the addition of a note are the only changes proposed to this rule governing judgment upon default or admission. The note which refers to the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. § 520, replaces Section 5 of the Judgment Lien Law of 1947, 12 P. S. § 881, relating to revival of a lien against a person in the armed forces.

Rules 3032, 3033 and 3034. Forms.

The revisions to the rules governing forms are directed primarily to matters of style and updating obsolete references. The only revision of substance is the addition to the form of writ of revival of a notice based upon the Notice to Defend of Rule 1018.1.

Rules 3048 and 3049. Acts of Assembly.

Rule 3048 governing Acts of Assembly Not Suspended has been revised to take cognizance of statutes which have been repealed as well as statutes enacted subsequent to the original promulgation of the rule. No change in practice is intended as the result of the revision of this rule.

Rule 3049 governing Acts of Assembly Suspended is rescinded as all of the statutes suspended by the rule have been repealed.

By the Civil Procedural Rules Committee

EDWIN L. KLETT,
Chairperson

Derivation Table

Rule	Purdon's
Business of the Courts	
227.5	16 P. S. § 9871 17 P. S. § 1922

Rule Purdon's

Compulsory Arbitration

1307 —

Liens

3020 12 P. S. § 861
3021 12 P. S. §§ 862, 878

Revival Of Judgments

3025 —
3025.1 12 P. S. § 875
3026 —
3026.1 12 P. S. § 879(b)
3026.2 12 P. S. § 879(d)
3026.3 12 P. S. § 879(a)
3027 12 P. S. § 880
3028 12 P. S. §§ 295, 313, 882
3029 —
3030(c) 12 P. S. § 879(c)
3031 12 P. S. § 881
3031.1(a) 12 P. S. § 879(c)
3032 —
3033 —
3034 —
3048 —
3049 —

Enforcement of Judgments

3104 12 P. S. § 883

Disposition Table

12 P. S. §	Rule
295	3028
313	3028
861	3020
862	3021
878	3021
879(a)	3026.3
879(b)	3026.1
879(c)	3030(c), 3031.1(a)
879(d)	3026.2
880	3027
881	3031
882	3028
883	3104

16 P. S. §	Rule
9871	227.5

17 P. S. §	Rule
1922	227.5

Endnotes

¹ § 9871. Judgment docket; contents; fee for entries

It shall be the duty of each of the prothonotaries of the several courts of common pleas district courts and circuit courts in this commonwealth, to make, prepare and keep a docket, to be called the judgment docket, in which said docket no case shall be entered until after there shall have been a judgment or award of arbitrators in such case, and into which shall be copied the entry of every judgment and every award of arbitrators, immediately

after the same shall have been entered; which entries, so to be made in the said judgment docket, shall be so made that one shall follow the other in the order of time in which the said judgments and awards shall have been rendered, entered or filed, as aforesaid; and the entries in each case in said judgment docket shall particularly state and set forth the names of the parties, the term and number of the case, and the date, and in the case of the judgment shall be for a sum certain, the amount of the judgment or award; and when any judgment shall be revived by scire facias or otherwise, or when any execution shall issue in any case, a note thereof shall be made in the proper judgment docket, at the place where the other entries in such case may have been made. . .

² § 861. Lien of verdict

Whenever a verdict is rendered by a jury in any of the courts of common pleas of this commonwealth for any specific sum of money, in such case the verdict shall be a lien upon the real estate situate within the proper county of the party or parties against whom said verdict shall be rendered, which lien shall remain unless the court grant a new trial or arrest the judgment; and it shall be the duty of the prothonotary of the court of common pleas to enter such verdict on the lien docket where judgments are entered, marking the same "verdict," and specifying the amount of said verdict and the date of its rendition.

³ § 878. Property subject to lien; duration of lien

Every judgment now or hereafter entered of record and indexed in any court of record in this Commonwealth shall be a lien upon all real property within the county where the judgment is entered, which at the time of the entry and indexing of the judgment is owned by the person against whom the judgment is entered, and shall, unless sooner discharged as provided by law, continue as a lien as to the defendant and all other persons for a period of five years from the date on which the judgment was entered, and no longer, unless the same is revived as hereinafter provided.

⁴ § 862. Lien of judgment to refer to date of verdict

In case the court shall overrule any motion for a new trial or in arrest of judgment, now pending, the lien of the verdict in such case shall date from the time of its rendition: Provided however, That no innocent purchaser without notice shall be prejudiced thereby.

⁵ § 883. Property subject to execution; lien of execution; execution after five years

(a) The holder of any judgment may, within five years after the entry thereof or after the entry of any judgment of revival thereon, have execution in the manner provided by law on such original judgment or on such judgment of revival, as the case may be, against any real property bound by the lien of the judgment, whether or not any interest therein has been acquired by a terre-tenant and against any real property acquired by the defendant subsequent to the entry of the original judgment or of the judgment of revival, as the case may be, and owned by him at the time of the indexing of the execution. In the case of after-acquired property, the execution, when docketed and indexed, shall become a lien upon such real property. In the case of real property which is then subject to the lien of the judgment, the execution, when docketed and indexed, shall continue such lien beyond the time it would otherwise have expired. Any lien obtained or continued solely as the result of the docketing and indexing of an execution shall continue only for a period of five years from the indexing of the execution.

(b) In all cases where more than five years have expired since the entry of the judgment, or the entry of the last preceding judgment of revival, as the case may be, no execution upon any real property may issue until a writ of scire facias shall have issued and been reduced to judgment, and the execution shall issue on the judgment so entered and not on the original judgment.

⁶ § 875. Consolidation of judgments by scire facias

Whenever hereafter any person or persons shall be the owner or owners of two or more judgments, all recovered against the same person or persons, which are overdue, or may become due at the same time, it shall be lawful for the owner or owners of said judgments, at their option, to combine and consolidate the same by the issue of a single writ or [sic] scire facias; and the new judgment, when entered, shall include the amounts due on all the old judgments.

⁷ § 879. Manner of reviving lien; duration of revived lien

* * *

(b) In the case of two or more joint defendants, no revival shall be effective against any of such defendants, or their real property, whether or not owned jointly with the other joint defendants, or any of them, unless all such joint defendants shall join in the agreement, or shall be made parties to the scire facias proceedings: Provided, That if any number less than all of the joint defendants shall agree to be bound the revival shall be effective against all of the defendants so agreeing.

* * *

⁸ § 879. Manner of reviving lien; duration of revived lien

* * *

(d) As used in this act, the term "terre-tenant" shall not include any person claiming under or whose claim of title passes through a deed which is not recorded in the county where the real property is located, or any person claiming under or through a deceased defendant or terre-tenant whose will has not been filed with, or letters of administration on whose estate have not been issued by, the register of wills or orphans' court of such county: Provided, That any person claiming under or through a deceased defendant or terre-tenant who was not a resident of the county at the time of his death, may qualify as a terre-tenant under the provisions of this act by recording in the office of the recorder of deeds of the county, where the real property is located, a certified copy of the will of such decedent if he died testate, or if he died intestate, a declaration of interest accompanied by a certificate of the register of wills or probate court or officer of the county, state or country in which the decedent resided at the time of his death that letters of administration have been issued in the estate of such decedent.

⁹ § 879. Manner of reviving lien; duration of revived lien

(a) * * *: Provided, further, That if revival shall have been had against the defendant at a time when a terre-tenant's deed is of record, but without the joinder of the terre-tenant, then, within a period of five years after the recording of the terre-tenant's deed or other evidence of title, the lien may be revived as to the terre-tenant by (1) agreement between the plaintiff and the terre-tenant alone or between the plaintiff, defendant and terre-tenant, or (2) by writ of scire facias issued against the

terre-tenant without joining the defendant, or against the defendant and terre-tenant, jointly, entered in, or issued out of, and indexed in the court in which the judgment was entered within such period of five years after the recording of the terre-tenant's deed or other evidence of title, and in such event the lien shall continue as to the terre-tenant for the same period only as it continues against the defendant, when it must be revived against both parties as hereinbefore provided. This proviso shall not be so construed as to revive any lien as to any part of the property acquired by a terre-tenant by the mere recording of a terre-tenant's deed or other evidence of title without specific revival by agreement or scire facias as above provided.

* * *

¹⁰ § 879. Manner of reviving lien; duration of revived lien

* * *

(c) The revived lien of any judgment shall, unless sooner discharged as provided by law, continue for a period of five years from the date on which the judgment of revival, whether entered by agreement or on writ of scire facias, was indexed, provided such judgment of revival, if entered on a writ of scire facias, was indexed within a period of five years after the issuance of such writ, otherwise such lien shall continue only for a period of five years from the date on which the writ of scire facias to revive was indexed, and in either case no longer unless the same is again revived as provided in this act.

* * *

* * *

¹¹ § 879. Manner of reviving lien; duration of revived lien

* * *

(c) * * * In any case where, by reason of pending litigation, judgment cannot be entered on the writ of scire facias within a period of five years after the indexing of such writ, the court, before which such litigation is

pending, may enter an order continuing the lien of such writ for such further period, not exceeding five years, as the court may direct, such order shall become effective when indexed.

* * *

¹² § 880. Scire facias as lien

A writ of scire facias issued to revive a judgment at any time either before or after the expiration of five years after the indexing thereof, or before or after five years after the indexing of the last preceding judgment of revival thereof, shall, when indexed in the judgment index, be a lien upon all real property within the county which at the time of the indexing thereof is owned by the defendant against whom the original judgment is entered, whether or not such real property was owned by him at the time the judgment was indexed or previously revived. All liens against after-acquired property, or against property as to which the lien of the original judgment has been lost, shall be effective as of the date when the writ of scire facias was indexed, and shall, unless sooner discharged as provided by law, continue as a lien for a period of five years from the date of the indexing of the judgment of revival thereon, and no longer, unless the same is revised as provided in this act.

¹³ § 882. Service of scire facias; judgment on return of nihil habet

* * * On return being made by the sheriff showing service on all such persons found in the county, and a return of nihil habet as to all those not so found, the prothonotary shall, at any time after the end of the period during which the writ runs, upon praecipe, enter and index judgment of revival of any such judgment during another period of five years against the real estate bound by the judgment, unless sufficient cause is shown to prevent the same.

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