

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 81]

#### Amendments to the Pennsylvania Rules of Professional Conduct; No. 25 Disciplinary Rules; Doc. No. 1

#### Order

*Per Curiam:*

*And Now*, this 22nd day of December, 2003, Rule 1.19 and the Comment to Rule 1.6 of the Pennsylvania Rules of Professional Conduct are promulgated to read as follows.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration. The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin* and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending.

#### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart A. PROFESSIONAL RESPONSIBILITY

#### CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

##### Subchapter A. RULES OF PROFESSIONAL CONDUCT

#### § 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

#### CLIENT-LAWYER RELATIONSHIP

##### Rule 1.6. Confidentiality of Information.

\* \* \* \* \*

**Comment**

\* \* \* \* \*

A lawyer who acts as a lobbyist on behalf of a client may disclose information relating to the representation in order to comply with any legal obligation imposed on the lawyer-lobbyist by the legislature, the executive branch or an agency of the Commonwealth which are consistent with the Rules of Professional Conduct. Such disclosure is explicitly authorized to carry out the representation. The Disciplinary Board of the Supreme Court shall retain jurisdiction over any violation of this Rule.

##### Rule 1.19. Lawyers Acting as Lobbyists.

(a) A lawyer acting as lobbyist, as defined in any statute, or in any regulation passed or adopted by either house of the Legislature, or in any regulation promul-

gated by the Executive Branch or any agency of the Commonwealth of Pennsylvania shall comply with all regulation, disclosure, or other requirements of such statute, resolution, or regulation which are consistent with the Rules of Professional Conduct.

(b) Any disclosure of information relating to representation of a client made by the lawyer-lobbyist in order to comply with such a statute, resolution, or regulation is a disclosure explicitly authorized to carry out the representation and does not violate RPC 1.6.

[Pa.B. Doc. No. 04-2. Filed for public inspection January 2, 2004, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [231 PA. CODE CHS. 200, 400, 1000, 1500, 1600, 2000, 2020, 2050, 2100, 2120, 2150, 2170, 2200, 2220, 2250, 2300, 2320, 2350, 3000 AND 4000]

#### Consolidation of the Action in Equity with the Civil Action; No. 402 Civil Procedural Rules; Doc. No. 5

#### Order

*Per Curiam:*

*And Now*, this 16th day of December, 2003, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. Rules 1505, 1507, 1514, 1515, 1523 through 1527, 1529, 1530, and 1536 are rescinded.
2. Rules 1501, 1502, 1503, 1508, 1509, 1510, 1511, 1512, 1513, 1516, 1517, 1520, 1522, 1528, 1576, 1577 and 1580 are rescinded and notes are added to read as follows.
3. Rules 205.4 note, 227.1, 227.4, 236, 237, 249, 250, 400, 440, 1001, 1006, 1007.1, 1020, 1028, 1031, 1032, 1037, 1038, 1066, 1141, 1521, 1531, 1532, 1533, 1549, 1550, 1551, 1569, 1570, 1573, 1601, 1602, 2001, 2026, 2051, 2101, 2126, 2129, 2130, 2151, 2154, 2156, 2176, 2178, 2179, 2201, 2226, 2251, 2301, 2318, 2326, 2328, 2351, 3001, 3101, 3131 and 4001 are amended to read as follows.
4. New Rule 1038.3 is promulgated to read as follows.
5. Paragraph (b) of the Order effective February 8, 1969, entitled "Captioning and Docketing of Actions and Proceedings in the Courts of Common Pleas," is suspended.<sup>1</sup>

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 2004.

<sup>1</sup>The Order of 1969 is published in the Pennsylvania Rules of Court Pamphlet (West Group 2003) following Rule of Civil Procedure 1018.

Annex A  
**TITLE 231. RULES OF CIVIL PROCEDURE**  
**PART I. GENERAL**  
**CHAPTER 1000. ACTIONS AT LAW**  
**Subchapter A. CIVIL ACTION**  
**GENERAL**

**Rule 1001. Definition. Scope.**

(a) As used in this chapter and in Rules 1506, 1521, and 1531 through 1535, "action" means a civil action brought in or appealed to any court which is subject to these rules.

**[ (b)(1) All claims heretofore asserted in assumpsit or trespass shall be asserted in one form of action to be known as "civil action." ]**

**(b) There shall be a "civil action" in which shall be brought all claims for relief heretofore asserted in**

- (1) the action of assumpsit,**
- (2) the action of trespass, and**
- (3) the action in equity.**

**Official Note:** The procedural distinctions between the forms of action in assumpsit [ and ], trespass and equity are abolished.

**The following rules govern particular types of equitable relief: Rule 1506 (stockholder's derivative suits, Rule 1531 (injunctions), Rule 1532 (perpetuation of testimony), Rule 1533 (receivers), Rule 1534 (Accounting by Fiduciaries) and Rule 1535 (objections to security).**

**The action to prevent waste has been abolished. The relief formerly available in that action may be obtained in a civil action seeking equitable relief**

See Rule 104.1 for special provisions governing asbestos litigation.

**[ (2) ] (c) \* \* \***  
\* \* \* \* \*

**VENUE AND PROCESS**

**Rule 1006. Venue. Change of Venue.**

(a) Except as otherwise provided by subdivisions (a.1), (b) and (c) of this rule, an action against an individual may be brought in and only in a county in which

**(1) the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law[ . ], or**  
\* \* \* \* \*

**(2) the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.**  
\* \* \* \* \*

**Rule 1007.1. Jury Trial. Demand. Waiver.**

(a) In any action in which the right to jury trial exists, that right shall be deemed waived unless a party files and serves a written demand for a jury trial not later than twenty days after service of the last permissible pleading. The demand shall be made by endorsement on a pleading or by a separate writing.

**Official Note:** Rule 1007.1(a) gives no specific guidance on the existence of a right to jury trial. It could not, in the face of Rule 128(f).

\* \* \* \* \*

**[ (d) Rescinded.**

**Official Note:** The Act of June 25, 1937, P. L. 2090, 12 P. S. § 695 relating to demand for or waiver of jury trial in Philadelphia County, formerly suspended by subdivision (d), has been repealed by Act 1978-53, the Judiciary Act Repealer Act. ]

**PLEADINGS**

**Rule 1020. Pleading More Than One Cause of Action. Alternative Pleading. Failure to Join. Bar.**

(a) The plaintiff may state in the complaint more than one cause of action **cognizable in a civil action** against the same defendant **[ heretofore asserted in assumpsit or trespass ]**. Each cause of action and any special damage related thereto shall be stated in a separate count containing a demand for relief.  
\* \* \* \* \*

**(d)[ (1) ]** If a transaction or occurrence gives rise to more than one cause of action **heretofore asserted in assumpsit and trespass**, against the same person, including causes of action in the alternative, they shall be joined in separate counts in the action against any such person. **Failure to join a cause of action as required by this subdivision shall be deemed a waiver of that cause of action as against all parties to the action.**

**Official Note:** [ Subdivision (d)(1) requires the joinder of related causes of action. The joinder of unrelated causes of action is permissive. See subdivision (a). ]

**Mandatory joinder is limited to related causes of action heretofore asserted in assumpsit and trespass. There is no mandatory joinder of related causes of action in equity.**

**[ For Rules governing joinder of parties, see ]** See Rule 2226 et seq. governing joinder of parties.

**See Rule 213(a) and (b) governing the consolidation and severance of causes of action.**

**[ (2) Rescinded.**

**(3) Rescinded.**

**Official Note:** Former subdivision (d)(3) governed election of remedies between assumpsit and trespass, joint trial of multiple causes of action, submission of specific questions to the jury and molding the verdict.

**Any reference to election of remedies has become procedurally irrelevant as the result of the creation of the single form of civil action.**

**See Rule 213(a) and (b) governing the consolidation and severance of causes of action.**

**(4) Failure to join a cause of action as required by subdivision (d)(1) of this Rule shall be deemed a waiver of that cause of action as against all parties to the action.**

**(5) Rescinded. ]**

**Rule 1028. Preliminary Objections.**

(a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:

\* \* \* \* \*

(4) legal insufficiency of a pleading (demurrer); [ and ]

\* \* \* \* \*

(5) lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action; [ and ]

(6) pendency of a prior action or agreement for alternative dispute resolution [ . ];

\* \* \* \* \*

(7) failure to exercise or exhaust a statutory remedy, and

(8) full, complete and adequate non-statutory remedy at law.

\* \* \* \* \*

(c)(1) A party may file an amended pleading as of course within twenty days after service of a copy of preliminary objections. If a party has filed an amended pleading as of course, the preliminary objections to the original pleading shall be deemed moot.

(2) The court shall determine promptly all preliminary objections. If an issue of fact is raised, the court shall consider evidence by depositions or otherwise.

**Official Note:** Preliminary objections raising an issue under subdivision (a)(1), (5) [ or ], (6), (7) or (8) cannot be determined from facts of record. In such a case, the preliminary objections must be endorsed with a notice to plead or no response will be required under Rule 1029(d).

\* \* \* \* \*

**Rule 1031. Counterclaim.**

(a) The defendant may set forth in the answer under the heading "Counterclaim" any cause of action [ heretofore asserted in assumpsit or trespass ] cognizable in a civil action which the defendant has against the plaintiff at the time of filing the answer.

\* \* \* \* \*

**Rule 1032. Waiver of Defenses. Exceptions. Suggestion of Lack of Subject Matter Jurisdiction or Failure to Join Indispensable Party.**

(a) A party waives all defenses and objections which are not presented either by preliminary objection, answer or reply, except a defense which is not required to be pleaded under Rule 1030(b), the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, the objection of failure to state a legal defense to a claim, the defenses of failure to exercise or exhaust a statutory remedy and an adequate remedy at law and any other nonwaivable defense or objection.

\* \* \* \* \*

**JUDGMENT UPON DEFAULT OR ADMISSION**

**Rule 1037. Judgment Upon Default or Admission. Assessment of Damages.**

\* \* \* \* \*

(b) The prothonotary, on praecipe of the plaintiff, shall enter judgment against the defendant for failure to file within the required time a pleading to a complaint which

contains a notice to defend or, **except as provided by subdivision (d)**, for any relief admitted to be due by the defendant's pleadings.

**Official Note:**

\* \* \* \* \*

**While the prothonotary may enter a default judgment in an action legal or equitable, only the court may grant equitable relief. See subdivision (d).**

\* \* \* \* \*

**(d) In all cases in which equitable relief is sought, the court shall enter an appropriate order upon the judgment of default or admission and may take testimony to assist in its decision and in framing the order.**

**Rule 1038. Trial Without Jury.**

(a) Except as otherwise provided in this rule, the trial of an action by a judge sitting without a jury shall be conducted as nearly as may be as a trial by jury is conducted and the parties shall have like rights and privileges, including the right to [ suffer or ] move for nonsuit.

\* \* \* \* \*

(c) The decision may be made orally in open court at the end of the trial, and in that event shall be forthwith transcribed and filed in the office of the prothonotary, or it may be made thereafter in writing and filed forthwith. In either event the prothonotary shall notify all parties or their attorneys of the date of filing. The trial judge shall render a decision within seven days after the conclusion of the trial except in protracted cases or cases of extraordinary complexity.

**Official Note:** A decision includes what were formerly known as a decree nisi and an adjudication. A decision is not a final decree, also known as a judgment.

For post-trial relief following a trial without jury, see Rule 227.1.

For entry of judgment upon praecipe of a party, see Rule 227.4.

[ (d) (Rescinded). ]

**Official Note:** For post-trial relief following a trial without jury, see Rule 227.1.

(e) (Rescinded).

**Official Note:** For entry of judgment upon praecipe of a party, see Rule 227.4.

(f) (Rescinded).

**(g) Rule VIII of the Special Rules, Courts of Common Pleas, First Judicial District, Philadelphia County, adopted July 31, 1963 is suspended. ]**

**Rule 1038.3. Equitable Relief. Advisory Verdict by Jury.**

In any case in which there is a claim for equitable relief, the court on its own motion or upon the petition of any party may submit to trial by jury any or all issues of fact arising from that claim. The advisory verdict of the jury shall be in the form of answers to specific questions and shall not be binding upon the court.

**Official Note:** Rule 1038.3 does not confer a right to trial by jury if the right did not exist prior to the consolidation of the action in equity with the civil action.

The rule preserves the practice under former Equity Rule 1513 of allowing a court in its discretion to submit such claims to trial by jury for an advisory verdict.

CHAPTER 1500. [ ACTION IN EQUITY ]  
EQUITABLE RELIEF

Subchapter A. RULES

Rule 1501. [ Conformity to Civil Action ] (Rescinded).

*Official Note:* The action in equity has been abolished. Equitable relief may be obtained through a civil action, Rule 1001 et seq. Rules 1506, 1521 and 1531 through 1535 are special rules governing equitable relief sought in a civil action.

Rule 1502. [ Court Open ] (Rescinded).

*Official Note:* The court is “always open for the transaction of judicial business.” See Section 324 of the Judicial Code, 42 Pa.C.S. § 324

Rule 1503. [ Venue ] (Rescinded).

*Official Note:* See Rule 1006 governing venue in a civil action.

Rule 1505. [ Defendant Not Served ] (Rescinded).

Rule 1507. [ Specific Averments. Possible Persons Interested in Property. Appointment of a Representative ] (Rescinded).

Rule 1508. [ Pleading More Than One Cause of Action ] (Rescinded).

*Official Note:* See Rule 1020 governing the pleading of more than one cause of action.

Rule 1509. [ Preliminary Objections ] (Rescinded).

*Official Note:* See Rule 1028 governing preliminary objections.

Rule 1510. [ Counterclaim ] (Rescinded).

*Official Note:* See Rule 1031 governing counterclaim in a civil action.

Rule 1511. [ Judgment upon Default or Admission ] (Rescinded).

*Official Note:* See Rule 1037 governing judgment upon default or admission.

Rule 1512. [ Nonsuit ] (Rescinded).

*Official Note:* See Rules 230 and 230.1 governing voluntary nonsuit and nonsuit at trial, respectively.

Rule 1513. [ Trial by Jury. Advisory Verdict ] (Rescinded).

*Official Note:* See Rule 1038.3 governing advisory verdict by jury.

Rule 1514. [ Examiners, Masters and Auditors ] (Rescinded).

Rule 1515. [ Accountants and Experts ] (Rescinded).

Rule 1516. [ Oral Argument. Limitation on Requests for Findings and Conclusions ] (Rescinded).

*Official Note:* See Rule 1038 for the conduct of a trial without a jury.

Rule 1517. [ The Adjudication. Notice ] (Rescinded).

*Official Note:* See Rule 1038 for the decision in a trial without a jury.

Rule 1520. [ Form of Decree ] (Rescinded).

*Official Note:* See Rule 1038 for the decision in a trial without a jury.

Rule 1521. Indexing of Decree. Lien and Revival of Decree for Payment of Money.

(a) [ Decrees, nisi ] Orders, interlocutory or final, shall be entered on the judgment index [ of the law side of the court ].

(b) [ Decrees ] Orders for the payment of money shall be a lien on the real estate of the defendant named in the [ decree ] order in the manner, for the period and with the same effect as the lien of judgments [ rendered by the law side of the court ] for the payment of money.

(c) [ Decrees ] Orders for the payment of money or costs and not satisfied may be revived from time to time in the manner provided by law for the revival of judgments.

Rule 1522. [ Rehearing ] (Rescinded).

*Official Note:* See Rule of Appellate Procedure 1701(b) governing reconsideration of an order.

Rule 1523. [ Costs ] (Rescinded).

Rule 1524. [ Security for Costs ] (Rescinded).

Rule 1525. [ Interlocutory Order for Costs ] (Rescinded).

Rule 1526. [ Liability for Costs ] (Rescinded).

Rule 1527. [ Taxation of Costs ] (Rescinded).

Rule 1528. [ Amendments ] (Rescinded).

*Official Note:* See Rule 1033 governing amendment of pleadings.

Rule 1529. [ Enforcement of Orders. Execution Process ] (Rescinded).

Rule 1530. [ Special Relief. Accounting ] (Rescinded).

Rule 1531. Special Relief. Injunctions.

\* \* \* \* \*

(f)(1) When a preliminary or special injunction involving freedom of expression is issued, either without notice or after notice and hearing, the court shall hold a final hearing within three days after demand by the defendant. A final [ decree ] order shall be filed in the office of the prothonotary within twenty-four hours after the close of the hearing. If the final hearing is not held within the three-day period, or if the final [ decree ] order is not filed within twenty-four hours after the close of the hearing, the injunction shall be deemed dissolved.

*Official Note:* The three-day period is the maximum time. In particular cases a shorter period may be required. [ The equity side of the Court is always open. See Rule 1502. ] The court is “always open for the transaction of judicial business.” See Section 324 of the Judicial Code, 42 Pa.C.S. § 324.

(2) When the defendant demands such a final hearing, no further pleadings shall be required and Rule [ 1517 ] 1038(b) and (c) relating to [ adjudication and decree nisi ] decision in a trial without jury and Rules 227.1 to 227.3 relating to post-trial relief shall not apply.

(3) The trial judge shall file a written memorandum supporting the final [ decree ] order within five days after it is filed.

**Rule 1532. Special Relief. Perpetuation of Testimony.**

\* \* \* \* \*

(b) In an action to perpetuate testimony, the testimony may be taken before the court or by depositions. The procedure for the taking of the testimony by depositions shall conform as nearly as practicable to the proceedings under the rules on depositions and discovery. The final [ decree ] order shall direct whether or not the testimony or a part thereof shall be perpetuated.

\* \* \* \* \*

**Rule 1533. Special Relief. Receivers.**

\* \* \* \* \*

(e) Except in the case of a public utility, a [ decree ] order authorizing a receiver to operate a business shall be limited to a fixed period, which may be extended from time to time upon cause shown after notice to all parties in interest.

\* \* \* \* \*

(g) Every [ decree ] order appointing a permanent receiver shall fix the time within which the receiver shall file a report setting forth the property of the debtor, the interests in and claims against it, its income-producing capacity and recommendations as to the best method of realizing its value for the benefit of those entitled.

\* \* \* \* \*

**Rule 1536. [ Effective Date. Pending Actions ] (Re-scinded).**

**Rule 1549. Acts of Assembly Not Suspended.**

[ These ] The rules governing a civil action shall not be deemed to suspend or affect the following Acts of Assembly:

(1) Sections 1 and 2 of the Act approved May 4, 1869, P. L. 1251, 68 P. S. §§ 115, 116.

**Official Note:** These sections make unlawful the cutting, removing or selling of timber by the owner of an undivided interest in land, without the written consent of all interests and authorize proceedings for recovery of timber or damages.

(1.1) Sections 12 and 15 of the Act approved June 4, 1901, P. L. 404, No. 231, 39 P. S. §§ 42, 48.

\* \* \* \* \*

**Rule 1550. Acts of Assembly Suspended.**

The following Acts of Assembly are suspended insofar as they apply to the practice and procedure in [ actions in equity ] a civil action to the extent hereinafter set forth, in accordance with Article V, Section 10(c) of the Constitution of 1968:

\* \* \* \* \*

**CONFORMING AMENDMENTS**

**CHAPTER 200. BUSINESS OF COURTS**

**Rule 205.4. Electronic Filing and Service of Legal Papers.**

\* \* \* \* \*

(g) Copies of all legal papers other than original process filed in an action or served upon any party to an action may be served

\* \* \* \* \*

(2) by electronic transmission, other than facsimile transmission, if the parties agree thereto or an electronic mail address is included on an appearance or prior legal paper filed with the court in the action. Service is complete when the legal paper is sent. A paper served electronically is subject to the certifications set forth in subdivision (b)(1).

**Official Note:**

\* \* \* \* \*

See Rule 236(d) providing for the prothonotary to give notice of orders [ , decrees ] and judgments, and also other matters, by facsimile transmission or other electronic means.

\* \* \* \* \*

**Rule 227.1. Post-Trial Relief.**

(a) After trial and upon the written Motion for Post-Trial Relief filed by any party, the court may

\* \* \* \* \*

(4) affirm, modify or change the decision [ or decree nisi ]; or

(5) enter any other appropriate order.

**Official Note:** The motion for post-trial relief replaces the following motions and exceptions: motion for new trial, motion for judgment notwithstanding the verdict, motion upon the whole record after disagreement of a jury, motion in arrest of judgment, motion to remove a nonsuit [ , ] and exceptions following the decision of the judge in a trial without jury [ and exceptions following the adjudication of the judge in an action in equity. However, certain rules retain ]

The following rules provide for the filing of exceptions, e.g., Equity Rule 1530 (exceptions to an auditor's report), Equity Rule 1534 (exceptions to a fiduciary's account), Partition Rule 1569 (exceptions to a master's report) and Divorce Rule 1920.55-2 (exceptions to a master's report), Support Rule 1910.12(e) (exceptions to a hearing officer's report) and Execution Rule 3136(d) (exceptions to sheriff's schedule of proposed distribution).

\* \* \* \* \*

(c) Post-trial motions shall be filed within ten days after

\* \* \* \* \*

(2) notice of nonsuit or the filing of the decision [ or adjudication ] in the case of a trial without jury [ or equity trial ].

If a party has filed a timely post-trial motion, any other party may file a post-trial motion within ten days after the filing of the first post-trial motion.

**Official Note:** A motion for post-trial relief may be filed following a trial by jury[, ] or a trial by a judge without a jury [in an action at law] pursuant to Rule 1038 [or a trial by a judge without a jury in an action in equity]. A motion for post-trial relief may not be filed to orders disposing of preliminary objections, motions for judgment on the pleadings or for summary judgment, motions relating to discovery or other proceedings which do not constitute a trial. See *U. S. National Bank in Johnstown v. Johnson*, 506 Pa. 622, 487 A.2d 809 (1985).

\* \* \* \* \*

**Rule 227.4. Entry of Judgment upon Praecept of a Party.**

In addition to the provisions of any Rule of Civil Procedure or Act of Assembly authorizing the prothonotary to enter judgment upon praecipe of a party, the prothonotary shall, upon praecipe of a party:

(1) enter judgment upon the verdict of a jury or the decision of a judge following a trial without jury, [or enter the decree nisi as the final decree, ] if

\* \* \* \* \*

(2) enter judgment when a court grants or denies relief but does not itself enter judgment or order the prothonotary to do so.

**Official Note:** See Rule 236 requiring the prothonotary to give notice of the entry of an order[, decree] or judgment and Rule 237 requiring notice of filing of praecipe for judgment. For illustrative Rules of Civil Procedure specifically authorizing entry of judgment by the prothonotary on praecipe of a party, see Rules 1037, 1511(a), 1659, 3031(a), and 3146.

Rule 236. Notice by Prothonotary of Entry of Order[, Decree, ] or Judgment.

(a) The prothonotary shall immediately give written notice of the entry of

\* \* \* \* \*

(2) any other order[, decree] or judgment to each party's attorney of record or, if unrepresented, to each party. The notice shall include a copy of the order[, decree] or judgment.

\* \* \* \* \*

(d) The prothonotary may give the notice required by subdivision (a) or notice of other matters by facsimile transmission or other electronic means if the party to whom the notice is to be given or the party's attorney has filed a written request for such method of notification or has included a facsimile or other electronic address on a prior legal paper filed in the action.

**Official Note:**

\* \* \* \* \*

Notice by facsimile transmission or other electronic means is applicable not only to [decrees, ] orders and judgments under subdivision (a) but also to "other matters" such as the scheduling of a conference, hearing or trial or other administrative matters. Where the technology involved provides an acknowledgment for the mailing or the receipt of the notice, the prothonotary should retain that acknowledgment as part of his or her file.

\* \* \* \* \*

Rule 237. Notice of Praecept for Final Judgment [or Decree].

No praecipe for judgment on a verdict[, ] or for judgment on a decision in a trial without a jury [or for a final decree following a decree nisi in equity] shall be accepted by the prothonotary unless it includes a certificate that a copy of the praecipe has been mailed to each other party who has appeared in the action or to the attorney of record for each other party.

**Rule 249. Authority of Individual Judge.**

(a) Except where the court is required to act en banc, a [law] judge may perform any function of the court, including the entry of interlocutory or ex parte orders[, decrees] and other matters in the nature thereof.

(b) A [law] judge may perform a function of the court, other than trying an action, at any time and at any place within the judicial district.

\* \* \* \* \*

**Rule 250. Scope of Chapter.**

The rules of this chapter shall apply to all civil actions and proceedings [at law and in equity].

**CHAPTER 400. SERVICE OF ORIGINAL PROCESS  
SERVICE GENERALLY**

**Rule 400. Person to Make Service.**

\* \* \* \* \*

(b) In addition to service by the sheriff, original process may be served also by a competent adult in the following actions: [equity, ]

(1) civil action in which the complaint includes a request for injunctive relief under Rule 1531, perpetuation of testimony under Rule 1532 or appointment of a receiver under Rule 1533,

(2) partition, [prevent waste, ] and

(3) declaratory judgment when declaratory relief is the only relief sought.

\* \* \* \* \*

**SERVICE OF LEGAL PAPERS OTHER THAN ORIGINAL PROCESS**

**Rule 440. Service of Legal Papers Other than Original Process.**

\* \* \* \* \*

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

\* \* \* \* \*

(3) Service is complete when transmission is confirmed as complete

**Official Note:** See Rule 236(d) providing for the prothonotary to give notice of orders[, decrees] and judgments, and also other matters, by facsimile or other electronic means.

\* \* \* \* \*

**CHAPTER 1000. ACTIONS AT LAW**

**Subchapter D. ACTION TO QUIET TITLE**

**Rule 1066. Form of Judgment or Order.**

\* \* \* \* \*

(b) Upon granting relief to the plaintiff, the court

\* \* \* \* \*

(3) shall enter a final judgment ordering the defendant, the prothonotary, or the recorder of deeds to file, record, cancel, surrender or satisfy of record, as the case may be, any plan, document, obligation or deed determined to be valid, invalid, satisfied or discharged, and to execute and deliver any document, obligation or deed necessary to make the [ **decree** ] **order** effective; or

\* \* \* \* \*

**Subchapter I. ACTION OF MORTGAGE FORECLOSURE**

**Rule 1141. Definition. Conformity to Civil Action.**

(a) As used in this chapter,

“action” means an action [ **at law** ] to foreclose a mortgage upon any estate, leasehold or interest in land but shall not include an action to enforce a personal liability

\* \* \* \* \*

**CHAPTER 1500. ACTION IN EQUITY**

**Subchapter B. PARTITION OF REAL PROPERTY**

**Rule 1551. Form of Action.**

Except as otherwise provided in this chapter, the procedure in an action for the partition of real estate shall be in accordance with the rules relating to the **civil** action [ **in equity** ].

\* \* \* \* \*

**Rule 1569. Master’s Report. Exceptions.**

(a) A master who is appointed by the court shall file a report with respect to the matters submitted. The report shall follow the form of [ **adjudication** ] **decision** in Rule 1570, insofar as the scope of the reference to the master permits.

(b) The master shall give all persons in interest written notice of the date on which he or she intends to file the report and proposed [ **decree** ] **order** and shall specify an address within the county where they may be examined. The master may change the report and proposed [ **decree** ] **order** as he or she deems proper before filing them, but if any changes are made written notice thereof shall be given to all parties.

(c) Within ten days after notice of the filing of the report exceptions may be filed by any party to rulings on evidence, to findings of fact, to conclusions of law and to the proposed [ **decree nisi** ] **order**. The court may, with or without taking testimony, remand the report or enter [ **an adjudication** ] **a decision** in accordance with Rule 1570 which may incorporate by reference the findings and conclusions of the master in whole or in part.

**Rule 1570. [ Adjudication and Decree ] Decision and Order.**

(a) The [ **adjudication** ] **decision** shall include findings of fact as follows:

\* \* \* \* \*

(b) The [ **decree** ] **order** shall include:

\* \* \* \* \*

(4) [ **an order for** ] a public or private sale of the property or part thereof where required.

**Rule 1573. Return of Sale and Schedule of Distribution.**

(a) Where the sale has been conducted by a master, the master shall promptly file with the prothonotary a return of sale together with a proposed [ **decree** ] **order** which shall

\* \* \* \* \*

(b) The master shall give all persons in interest written notice of the date on which he or she intends to file the return of sale and proposed [ **decree** ] **order** and shall specify an address within the county where they may be examined. The master may change the return of sale and proposed [ **decree** ] **order** as he or she deems proper before filing them, but if any changes are made written notice thereof shall be given to all parties.

(c) If the court approves the return of sale in whole or in part, the court shall enter an appropriate [ **decree nisi** ] **order**. Any part of the [ **decree nisi** ] **order** as to which a motion for post-trial relief is not filed within ten days shall become final.

**Subchapter C. ACTIONS TO PREVENT WASTE**

**Rule 1576. [ Remedies in Pending Actions ] (Rescinded).**

*Official Note:* A claim to prevent waste may be brought as a civil action for equitable relief.

**Rule 1577. [ Original Actions. Conformity to Equity ] (Rescinded).**

*Official Note:* An original action to restrain waste should be brought as a civil action seeking equitable relief.

**Subchapter D. ACTS OF ASSEMBLY NOT SUSPENDED**

**Rule 1580. [ Actions to Prevent Waste. Act of Assembly Not Suspended ] (Rescinded).**

*Official Note:* The provision of this rule has been transferred to Rule 1549(1).

**CHAPTER 1600. ACTION FOR DECLARATORY JUDGMENT**

**Rule 1601. Action for Declaratory Relief Alone. Jury Trial. Waiver.**

(a) A plaintiff seeking only declaratory relief shall commence an action by filing a complaint captioned “Action for Declaratory Judgment.” The practice and procedure shall follow, as nearly as may be, the rules governing the [ **Action in Equity** ] **civil action**.

\* \* \* \* \*

*Official Note:* Rule 1601(b) gives no specific guidance on the existence of a right to jury trial. It could not, in the face of Rule 128(f). Section 7539(b) of the Judicial Code provides:

\* \* \* \* \*

The existence of a right to jury trial on disputed issues of fact will be a matter of determination in each action where only declaratory relief is sought. If the right is

claimed and disputed, the court must determine the question on the basis of the nature of the cause of action, the right to be enforced and the "other civil action" which would be brought to enforce it if declaratory judgment did not exist. The flexible Federal practice under Fed. R. Civ. P. 38, 39 and 57, including the procedure for the jury trial of selected issues, may be helpful. Pa. R.C.P. [ 1513 ] 1038.3 may also be applicable.

**Rule 1602. Declaratory Judgment as Ancillary Relief.**

In any civil action [ at law or in equity ], a party may include in the claim for relief a prayer for declaratory relief and the practice and procedure shall follow, as nearly as may be, the rules governing that action.

**CHAPTER 2000. ACTIONS BY REAL PARTIES IN INTEREST**

**Rule 2001. Definitions**

As used in this chapter

"action" means any civil action or proceeding [ at law or in equity ] brought in or appealed to any court of record which is subject to these rules.

**CHAPTER 2020. MINORS AS PARTIES**

**Rule 2026. Definitions.**

As used in this chapter

"action" means any civil action or proceeding [ at law or in equity ] brought in or appealed to any court of record which is subject to these rules;

\* \* \* \* \*

"judgment" means any final judgment or final [ decree ] order entered in any action.

**CHAPTER 2050. INCAPACITATED PERSONS AS PARTIES**

**Rule 2051. Definitions.**

As used in this chapter

"action" means any civil action or proceeding [ at law or in equity ] brought in or appealed to any court of record which is subject to these rules;

\* \* \* \* \*

**CHAPTER 2100. THE COMMONWEALTH AND POLITICAL SUBDIVISIONS AS PARTIES**

**Rule 2101. Definitions.**

As used in this chapter

"action" means any civil action or proceeding [ at law or in equity ] brought in or appealed to any court which is subject to these rules.

\* \* \* \* \*

**CHAPTER 2120. PARTNERSHIPS AS PARTIES**

**Rule 2126. Definitions.**

As used in this chapter

"action" means any civil action or proceeding [ at law or in equity ] brought in or appealed to any court which is subject to these rules;

\* \* \* \* \*

**Rule 2129. Actions between partnerships and partners.**

An action may be prosecuted [ at law ] by a partnership against one or more of the partners thereof, or against such partners together with persons not partners; or by one or more partners, or by such partners together with other persons not partners, against the partnership. [ No such action may be prosecuted in equity unless there is ground for equitable jurisdiction other than the fact that the action is between a partnership and one or more partners. ]

**Rule 2130. Venue.**

(a) Except as otherwise provided by Rule 1006(a.1) and by subdivision (c) of this rule, an action against a partnership may be brought in and only in a county where the partnership regularly conducts business, or in the county where the cause of action arose or in a county where a transaction or occurrence took place out of which the cause of actions arose or in the county where the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

\* \* \* \* \*

**CHAPTER 2150. UNINCORPORATED ASSOCIATIONS AS PARTIES**

**Rule 2151. Definitions.**

As used in this chapter

"action" means any civil action or proceeding [ at law or in equity ] brought in or appealed to any court which is subject to these rules;

\* \* \* \* \*

**Rule 2154. Actions between associations and members.**

An action may be prosecuted [ at law ] by an association against one or more of the members thereof, or against such members together with persons not members; or by one or more members, or by such members together with other persons not members, against the association. [ No such action may be prosecuted in equity unless there is ground for equitable jurisdiction other than the fact that the action is between an association and one or more members. ]

\* \* \* \* \*

**Rule 2156. Venue.**

(a) Except as otherwise provided by Rule 1006(a.1) and by subdivision (b) of this rule, an action against an association may be brought in and only in a county where the association regularly conducts business or any association activity, or in the county where the cause of action arose or in a county where a transaction or occurrence took place out of which the cause of actions arose or in the county where the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

\* \* \* \* \*

**CHAPTER 2170. CORPORATIONS AND SIMILAR ENTITIES AS PARTIES**

**Rule 2176. Definitions.**

As used in this chapter



“action” means any civil action or proceeding [ **at law or in equity** ] brought in or appealed to any court which is subject to these rules;

\* \* \* \* \*

**Rule 2178. Actions between a corporation or similar entity and members thereof.**

An action may be prosecuted by a corporation or similar entity against one or more of the members thereof, or against members together with persons not members; or by one or more members, or by members together with other persons not members, against the corporation or similar entity. [ **No such action may be prosecuted in equity unless there is ground for equitable jurisdiction other than the fact that the action is between a corporation or similar entity and one or more members thereof.** ]

*Official Note:* This rule is [ **an adaptation of Pa. R.C.P. No. 2129 (Partnerships as Parties), and Pa. R.C.P. No. 2154 (Unincorporated associations as parties).** ]

It is ] designed to apply to all actions between a corporation or similar entity and its members, including those actions in which an accounting has been asked.

**Rule 2179. Venue.**

(a) Except as otherwise provided by an Act of Assembly, by Rule 1006(a.1) or by subdivision (b) of this rule, a personal action against a corporation or similar entity may be brought in and only in

\* \* \* \* \*

(3) the county where the cause of action arose; [ **or** ]

(4) a county where a transaction or occurrence took place out of which the cause of action arose[ . ], **or**

(5) **a county where the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.**

\* \* \* \* \*

**CHAPTER 2200. ACTIONS FOR WRONGFUL DEATH**

**Rule 2201. Definitions.**

As used in this chapter

“action” means any civil action or proceeding [ **at law** ] brought in or appealed to any court of record which is subject to these rules;

\* \* \* \* \*

**CHAPTER 2220. JOINDER OF PARTIES**

**Rule 2226. Definitions.**

As used in this chapter

“action” means any civil action or proceeding [ **at law or in equity** ] brought in or appealed to any court of record which is subject to these rules.

**CHAPTER 2250. JOINDER OF ADDITIONAL DEFENDANTS**

**Rule 2251. Definitions.**

As used in this chapter

“action” means any civil action or proceeding [ **at law or in equity** ] brought in or appealed to any court of record which is subject to these rules.

\* \* \* \* \*

**CHAPTER 2300. INTERPLEADER BY DEFENDANTS**

**Rule 2301. Definitions.**

As used in this chapter

“action” means any civil action or proceeding [ **at law or in equity** ] brought in or appealed to any court which is subject to these rules;

\* \* \* \* \*

Rule 2318. Exclusive method [ **at law; equity** ]. **Civil Action** interpleader preserved.

The right of interpleader conferred by these rules shall be the exclusive method of interpleader in any action [ **at law** ] and shall be in addition to, and not in lieu of, the right to [ **file a bill in equity** ] **commence a civil action** for an interpleader.

**CHAPTER 2320. INTERVENTION**

**Rule 2326. Definitions.**

As used in this chapter

“action” means any civil action or proceeding [ **at law or in equity** ] brought in or appealed to any court of record which is subject to these rules.

**Rule 2328. Petition to intervene.**

(a) Application for leave to intervene shall be made by a petition in the form of and verified in the manner of a plaintiff’s initial pleading in a civil action, setting forth the ground on which intervention is sought and a statement of the relief or the defense which the petitioner desires to demand or assert. The petitioner shall attach to the petition a copy of any pleading which the petitioner will file in the action if permitted to intervene or shall state in the petition that the petitioner adopts by reference in whole or in part certain named pleadings or parts of pleadings already filed in the action.

[ *Official Note:* This subdivision adopts the equity practice. See *Franklin Nat. Bank v. Kennerly Coal & Coke Co.*, 300 Pa. 479, 483, 484, 150 A. 902 (1930). ]

\* \* \* \* \*

**CHAPTER 2350. SUBSTITUTION OF PARTIES**

**Rule 2351. Definitions.**

As used in this chapter

“action” means any civil action or proceeding [ **at law or in equity** ] brought in or appealed to any court of record which is subject to these rules, including actions to obtain judgment upon a mechanics’ lien claim but shall not include actions to enforce municipal liens and claims;

\* \* \* \* \*

**CHAPTER 3000. JUDGMENTS**

**Subchapter A. TRANSFER OF JUDGMENTS TO OTHER COUNTIES**

**Rule 3001. Definition.**

As used in this chapter

“judgment” means a judgment[, ] or order [ or decree ] requiring the payment of money or adjudicating the right to possession in an action of replevin, including a final or interlocutory order for the payment of costs entered in any court which is subject to these rules, either originally or upon transcript or certification from another court within the same county.

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

**Rule 3101. Definitions; garnishee.**

(a) As used in this chapter

“judgment” means a judgment[, ] or order[, or decree ] requiring the payment of money entered in any court which is subject to these rules, including a final or interlocutory order for payment of costs, except a judgment against the Commonwealth, a political subdivision or a public authority;

**Official Note:** The enforcement of judgments in special actions of ejectment, replevin and mortgage foreclosure [ are ] is governed by Rules of Civil Procedure 3160 et seq.

\* \* \* \* \*

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

\* \* \* \* \*

(c) The court may enter judgment upon the pleadings or take evidence by deposition or otherwise, shall [ decree ] order 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.

\* \* \* \* \*

**CHAPTER 4000. DEPOSITIONS AND DISCOVERY**

**Rule 4001. Scope. Definitions.**

(a) 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.

\* \* \* \* \*

**EXPLANATORY COMMENT**

**Consolidation of the Action in Equity with the Civil Action**

**Introduction**

**I. Amendments to the Rules Governing the Civil Action**

**II. Amendment of the Rules Governing the Action in Equity**

**III. Conforming Amendments Tables**

**Introduction**

The separate action in equity has been abolished and the rules governing the civil action have been amended to include equitable relief. The consolidated civil action

allows the court in a “unified judicial system” to grant the relief to which the parties are entitled, whether legal or equitable.

The amendments address the concept of form of action, not cause of action. In merging the action in equity into the civil action, the action in equity as a separate form of action has been abolished but the cause of action in equity remains. The amendments have no effect upon a party’s entitlement to equitable relief. Stated another way, a court may grant equitable relief only if a party is entitled to such relief as a matter of law.<sup>1</sup>

While a substantial number of civil action and equity rules have been affected by the consolidation, many rules remain unchanged. Table I appended to this comment lists the civil action and equity rules which have been amended. Table II lists those equity rules which have been rescinded. Table III sets forth those rules which are not affected by the consolidation of the civil action and the action in equity. Finally, Table IV lists the conforming amendments, i.e., additional rules of civil procedure affected by the consolidation.

**I. Amendments to the Rules Governing the Civil Action**

*a. Scope of the Civil Action*

Rule 1001(b) has been amended to define the civil action as one “in which shall be brought all claims for relief heretofore asserted in” the actions of assumpsit, trespass and equity. Rule 1501 conforming the procedure in the action in equity to the procedure of the civil action has been rescinded.

Rule 1506 (stockholder’s derivative suits), Rule 1521 (indexing of the decree), Rule 1531 (injunctive relief), Rule 1532 (perpetuation of testimony), Rule 1533 (receivers), Rule 1534 (accounting by fiduciaries) and Rule 1535 (objections to security) continue as part of the civil action. These rules provide the procedure when equitable relief is sought in the context of the civil action.

The action to prevent waste has been abolished. The relief sought in that action is injunctive relief which may be obtained in the consolidated civil action.

The action for declaratory judgment remains a separate form of action. Rule 1601 governing the action when declaratory relief alone is sought has been amended to provide that the procedure will conform to the civil action rather than to the action in equity. Rule 1602 governing the procedure when declaratory relief is sought as ancillary relief has been amended to delete the phrase “at law or in equity” but is otherwise unchanged.

The action for partition of real property also remains a separate form of action. Rules 1551, 1569, 1570 and 1573 are amended to conform the procedure to the civil action rather than the action in equity.

*b. Venue*

The former civil action venue provision in Rule 1006(a) continues as subdivision (a)(1). New subdivision (a)(2) has been added to provide venue when equitable relief is sought with respect to property. Similar to its counterpart in rescinded Rule 1503, subdivision (a)(2) authorizes venue in the county in which

(2) the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

<sup>1</sup>The discussion under Rule 1028 (Preliminary objections) of the objection of the existence of a full, complete and adequate non-statutory remedy at law illustrates this point.

Conforming amendments are made to Venue Rules 2130 (partnerships), 2156 (unincorporated associations) and 2178 (corporations and similar entities).

*c. Service of Original Process*

Prior to the present amendment, Rule 400(b), in relevant part, authorized service in an action in equity to be made by the sheriff or a competent adult. The rule as amended is more limited, applying to a "civil action in which the complaint includes a request for injunctive relief under Rule 1531, perpetuation of testimony under Rule 1532 or appointment of a receiver under Rule 1533."

Rule 400(b) is also amended to delete the reference to the action to prevent waste which, as noted above, is no longer a separate form of action.

The note to Service Rule 440(d) has been amended by deleting the reference to a "decree." As noted later in this comment, the term "decree" has been eliminated in favor of the term "order."

Equity Rule 1505. "Defendant Not Served," has been rescinded as unnecessary.

*d. Trial by Jury*

The right to trial by jury is either constitutionally mandated or provided by Act of Assembly. The merger of the action in equity into the civil action does not affect the right so provided.

Consequently, Rule 1007.1 governing trial by jury remains unchanged. A note has been added to Rule 1007.1(a) to cross-refer to Rule 128(f) providing that "no rule shall be construed to confer a right to trial by jury where such right does not otherwise exist." The elimination of the reference to subdivision (d) (previously rescinded) and the rescission of the note to subdivision (d) effect no change in practice.

Rule 1513 providing for trial by jury and an advisory verdict in the action in equity has been retained in the civil action as new Rule 1038.3. Language is added to ensure that the rule will be limited to civil actions in which there is a claim for equitable relief.

A case may involve claims, one or more of which are triable by jury and others which are triable by the court without a jury. Such a case will necessarily require that the court exercise its discretion in the manner in which the case will proceed. For instance, the court may need to decide whether all claims should be tried at the same time or certain claims should be bifurcated, whether claims triable by jury should be tried before or after claims tried to the court, and whether to invoke new Rule 1038.3 providing for an advisory verdict. Rules cannot dictate the procedure for a particular case. The course of the proceedings will depend upon the "good judgment" of the court in viewing the totality of the case.

*e. Joinder of Causes of Action*

Rule 1020(a) governing the permissive joinder of causes of action is revised to refer to a "cause of action cognizable in a civil action" rather than a "cause of action heretofore asserted in assumpsit and trespass." Causes of action cognizable in a civil action are set forth in Rule 1001(b) and include the former actions of assumpsit, trespass and equity.

Subdivision (d)(1) of Rule 1020 governs mandatory joinder of related causes of action. It is revised to include related causes of action "heretofore asserted in assumpsit and trespass" but makes no mention of causes of action in equity. Thus, the former mandatory provision is continued only as to related claims previously asserted in assumpsit

and trespass. The former practice of permissive joinder of related claims in equity is also continued.

The mandatory joinder of related causes of action for equitable relief is not feasible. It frequently occurs that equitable relief is needed quickly before a suit with all of its aspects may be prepared and filed. In addition, the full ramifications of a transaction or occurrence may not be fully known at the time an action is commenced, making it impossible to initially request all of the relief which eventually may be determined to be appropriate.

Subdivision (d) of Rule 1020 was formerly divided into five paragraphs, three of which were previously rescinded. Subdivision (d)(4) has been transposed to paragraph (1) as the second sentence. Consequently, subdivisions (d)(2) through (5) have been deleted and subdivision (d)(1) has become simply subdivision (d).

In light of the foregoing, Rule 1508 governing the pleading of more than one cause of action in equity has been rescinded.

With respect to a counterclaim, Equity Rule 1510 has been rescinded and Civil Action Rule 1031 has been amended to allow the pleading as a counterclaim of "any cause of action cognizable in a civil action."

*f. Preliminary Objections and Defenses*

Prior to the present amendment, Rule 1028(a) set forth six preliminary objections which applied to the civil action and which were incorporated into the action in equity by Rule 1509(a). These six preliminary objections, subdivision (a)(1) through (6), will continue to be applicable to the consolidated civil action.

Two new objections have been added to Rule 1028(a) as subparagraphs (7) and (8). These new provisions are derived from former Equity Rule 1509(b) and (c).

Rule 1509(b) provided for the objections of laches and failure to exercise or exhaust a statutory remedy to be raised by preliminary objection, answer or reply. However, the objections were not waived if not pleaded. These two objections have been disposed of separately. First, the objection of laches will be raised in new matter only. To this end, laches has not been included in amended Rule 1028(a) as a preliminary objection but continues as part of the list of defenses set forth in Rule 1030 governing new matter. Second, the objection of failure to exercise or exhaust a statutory remedy will be limited to preliminary objections. To this end, this objection has been included in Rule 1028(a) as new paragraph (7). Under Rule 1032(a) governing waiver of defenses, as amended, the objection of laches will be waived for failure to plead it but the objection of failure to exercise or exhaust a statutory remedy will not be waived.

Rule 1509(c) provided for the objection of the existence of a full, complete and adequate non-statutory remedy at law to be raised by preliminary objection. The rule made two points with respect to the objection. First, the objection was waived for failure to plead it. Second, if the objection was sustained, the court was required to certify the action to the law side of the court.

The objection of the existence of a full, complete and adequate non-statutory remedy at law has been added to Rule 1028(a) as new paragraph (8). At the same time, Rule 1032(a) has been amended to provide that there will be no waiver if the defense is not pleaded.

The provision of the present equity rule for transfer to the law side of the court in the event the objection is sustained, has not been continued. Under the consoli-

dated civil action, there is no law side and no equity side. There is simply "the court" which is empowered to grant appropriate relief whether legal or equitable.

Although the procedural aspect of the objection of the existence of a full, complete and adequate non-statutory remedy at law is not continued, the objection retains vitality as a principle of substantive law barring the court from granting equitable relief.

*g. Default Judgment*

Civil Action Rule 1037 (b) is revised to prohibit the prothonotary from granting equitable relief admitted to be due by the defendant's pleadings. This is left to new subdivision (d) which incorporates the substance of former Equity Rule 1511(b) providing that "In all cases, the court shall enter an appropriate final decree . . ." In view of the amendment to Rule 1037, Equity Rule 1511 has been rescinded.

*h. Decision and Adjudication*

Civil Action Rule 1038, "Trial without Jury," will govern trials of the consolidated civil action by a judge without a jury. There are two technical revisions to the rule which are unrelated to the basic purpose of consolidating the civil action and the action in equity. The first is a conforming amendment to subdivision (a)(1) deleting as unnecessary the words "suffer or" with respect to a nonsuit. The second is the deletion of references to previously rescinded subdivisions (d) through (f) and obsolete subdivision (g).

A note has been added to the rule explaining that a decision includes what were formerly known as an adjudication and a decree nisi. Thus, a trial judge sitting without a jury will, at the conclusion of the trial, render a decision which will grant or deny relief, whether legal or equitable, as may be appropriate. Unless there is an Act of Assembly or general rule to the contrary, the decision will not constitute a final order or judgment.

The former practice in an action in equity set forth in the following rules has been abolished:

1. Rule 1516 governing oral argument and providing a limitation on requests for findings and conclusions,
2. Rule 1517 governing the adjudication, and
3. Rule 1520 governing the form of decree.

**II. Amendments to the Rules Governing the Action in Equity**

*a. Equity Rules Rescinded*

The following rules were discussed In Part I and have been rescinded in light of amendments to the civil actions rules.

Rule 1501.	Conformity to Civil Action
Rule 1503.	Venue
Rule 1505.	Defendant Not Served
Rule 1508.	Pleading More than One Cause of Action
Rule 1509.	Preliminary Objections
Rule 1510.	Counterclaim
Rule 1511.	Judgment upon Default or Admission
Rule 1513.	Trial by Jury. Advisory Verdict
Rule 1516.	Oral Argument. Limitation on Requests for Findings and Conclusions
Rule 1517.	The Adjudication. Notice
Rule 1520.	Form of Decree

The following rules have also been rescinded:

*1. Rule 1502. Court Open*

Rule 1502 providing that the equity side of the court shall always be open has been rescinded as unnecessary in light of Section 324 of the Judicial Code, 42 Pa.C.S. § 324, which contains a similar provision.

*2. Rule 1507. Possible Persons Interested in Property*

Rule 1507 was concerned with "a person interested in property" who should be made a party "but the person's name or interest in the property cannot be ascertained and the person is not represented in the action." The rule has been rescinded as unnecessary since the subject of the rule is covered by the law relating to indispensable parties.

*3. Rule 1514. Examiners, Masters and Auditors*

*4. Rule 1515. Accountants and Experts*

The court has inherent power to appoint such persons as are necessary to enable or facilitate the court in deciding cases. Rules providing for the appointment of such persons or denying that power are not required in the consolidated civil action.

*5. Rule 1522. Rehearing*

Rule 1522 governing rehearing is rescinded as unnecessary in light of Rule of Appellate Procedure 1701(b) providing for reconsideration of an order.

*6. Rules 1523 through 1527. Costs*

Costs have been sought in a civil action though no rules prescribe a procedure to do so. Special rules are not required simply because the civil action will include equitable as well as legal relief. Thus, Rules 1523 through 1527 have been rescinded.

*7. Rule 1528. Amendments*

Rule 1528 governed amendment of the prayer for relief in an action in equity. Civil Action Rule 1033 provides a procedure for the amendment of a pleading. Consequently, Rule 1528 has been rescinded as unnecessary.

*8. Rule 1529. Enforcement of Orders. Execution Process*

Rule 1529, concerned with several aspects of execution process, has been rescinded.

Subdivision (a) of the rule made execution process available in actions at law available also to actions in equity. With the consolidation of the forms of action, this provision is no longer necessary.

Subdivision (b) authorized the court to order the prothonotary or sheriff to perform an act which the party fails to perform. The power of contempt rendered this provision unnecessary.

Subdivision (c) referred to arrest by attachment. Arrest, though limited by the Judicial Code, is an inherent power for which a rule is not necessary.

*9. Rule 1530. Special Relief. Accounting*

Civil Action Rule 1021 presently permits a party to demand relief in the alternative or of several different types, "including an accounting." There are no special civil action rules governing an accounting yet the remedy is available in the civil action. No special rule is required to govern an accounting so that Rule 1530 has been rescinded.

*10. Rule 1536. Effective Date. Pending Actions*

Rule 1536 has been rescinded as obsolete. It had application only upon promulgation of the original equity rules in 1952.

b. *Equity Rules Amended*

1. *Rule 1521. Indexing of Decree. Lien and Revival of Decree for Payment of Money*

Rule 1521 is revised to eliminate references to the law side of the court. Otherwise, the rule remains unchanged.

2. *Rule 1531. Special Relief. Injunctions*

Rule 1531(f) is revised by substituting the term "order" in place of "decree." In addition, the cross-reference is revised as it referred to Rule 1517 which is rescinded. The revised reference is to Rule 1038(b) and (c) which govern trials without a jury whether the relief sought is legal or equitable.

3. *Rule 1532. Special Relief. Perpetuation of Testimony*

*Rule 1533. Special Relief. Receivers*

Rule 1532(b) and Rule 1533(e) and (g) of Rule 1533 are revised by substituting the term "order" in place of "decree."

c. *Equity Rules Unchanged*

Three former equity rules remain unchanged. However, instead of being viewed as rules governing the action in equity, they will be considered as rules governing equitable relief in the context of a civil action. These rules are:

1. Rule 1506. Stockholder's Derivative Action
2. Rule 1534. Accounting by Fiduciaries
3. Rule 1535. Objections to Security

**III. Conforming Amendments**

The conforming amendments revise various rules to accommodate the consolidated civil action. These amendments do not themselves affect practice or procedure. Generally, the amendments delete references to actions at law and actions in equity, replacing them with the "civil action." Similarly, the terms "decree" and "adjudication" found in a number of rules are deleted and replaced with the terms "order" and "decision."

*By the Civil Procedural Rules Committee*

R. STANTON WETTICK, Jr.,  
*Chair*

**Tables**

**I. Civil Action and Equity Rules Amended**

**Civil Action Rules**

Rule 1001.	Definition. Scope
Rule 1006.	Venue. Change of Venue
Rule 1007.1.	Jury Trial. Demand. Waiver
Rule 1020.	Pleading More than One Cause of action. Alternative Pleading. Failure to Join. Bar
Rule 1028.	Preliminary Objections
Rule 1031.	Counterclaim
Rule 1032.	Waiver of Defenses. Exceptions. Suggestion of Lack of Subject Matter Jurisdiction of Failure to Join Indispensable Party
Rule 1037.	Judgment Upon Default or Admission. Assessment of Damages
Rule 1038.	Trial Without Jury

Order Effective February 8, 1969

Captioning and Docketing of Actions and Proceedings in the Courts of Common Pleas

**Equity**

Rule 1521.	Indexing of Decree. Lien and Revival of Decree for Payment of Money
Rule 1531.	Special Relief. Injunctions
Rule 1532.	Special Relief. Perpetuation of Testimony
Rule 1533.	Special Relief. Receivers
Rule 1549.	Acts of Assembly Not Suspended
Rule 1550.	Acts of Assembly Suspended

**II. Equity Rules Rescinded**

Rule 1501.	Conformity to Civil Action
Rule 1502.	Court Open
Rule 1503.	Venue
Rule 1504.	(Previously rescinded)
Rule 1505.	Defendant Not Served
Rule 1507.	Specific Averments. Possible Persons Interested in Property. Appointment of a Representative
Rule 1508.	Pleading More than One Cause of Action
Rule 1509.	Preliminary Objections
Rule 1510.	Counterclaim
Rule 1511.	Judgment upon Default or Admission
Rule 1512.	Nonsuit
Rule 1513.	Trial by Jury. Advisory Verdict
Rule 1514.	Examiners, Masters and Auditors
Rule 1515.	Accountants and Experts
Rule 1516.	Oral Argument. Limitation On Requests for Findings and Conclusions
Rule 1517.	The Adjudication. Notice
Rule 1518.	(Previously rescinded)
Rule 1519.	(Previously rescinded)
Rule 1520.	Form of Decree
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[Pa.B. Doc. No. 04-3. Filed for public inspection January 2, 2004, 9:00 a.m.]

**[231 PA. CODE CHS. 1300, 2950 AND 3000]****Amendment of Rules of Civil Procedure Governing Judgment Liens and Revival of Judgment Liens; No. 403 Civil Procedural Rules; Doc. No. 5****Order**

*Per Curiam:*

*And Now*, 19th day of December, 2003, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. Rules 3028 and 3049 are rescinded.

2. Rules 1307, 2963, 3002, 3025, 3026, 3027, 3029 note, 3030, 3031 note, 3032, 3033, 3034, 3048, 3101, 3104 and 3251 are amended to read as follows.

3. New Rules 3020, 3021, 3022, 3023, 3025.1, 3026.1, 3026.2, 3026.3, 3028, 3031.1, 3049.1, and 3101.1 are promulgated to read as follows.

With respect to liens upon real property created or continued prior to the effective date, the rules and amendments to rules promulgated by this Order shall not govern (1) the procedures by which the liens were created or continued, (2) the creation of the liens, (3) the time of creation of the liens, or (4) the priority of the liens.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 2004.

**Annex A**

**TITLE 231. RULES OF CIVIL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 1300. COMPULSORY ARBITRATION**

**Subchapter A. RULES**

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

- (a) The prothonotary shall
  - (1) enter the award of record

\* \* \* \* \*

(B) when the award is for the payment of money, in the judgment index;

**Official Note: Rule 3021 governs the requirements for the entry in the judgment index.**

\* \* \* \* \*

(b) The award for the payment of money when entered in the judgment index shall create a lien [upon the party's real estate, which] on real property 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.

[ **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 2950. CONFESSION OF JUDGMENT FOR MONEY**

**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,

\* \* \* \* \*

(4) and [ **index** ] **enter this writ in the judgment index**

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

Paragraph (4)(a) should be completed only if [ **indexing** ] **entry** of the execution in the county of issuance is desired as authorized by Rule 3104(a). When the writ issues to another county [ **indexing** ] **entry** 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** ] **entry** as a lis pendens is desired. See Rule 3104(c).

\* \* \* \* \*

**CHAPTER 3000. JUDGMENTS**

**Subchapter A. TRANSFER OF JUDGMENTS TO OTHER COUNTIES**

**Rule 3002. Transfer to another county.**

\* \* \* \* \*

(b) The prothonotary of the court to which a judgment is transferred shall forthwith enter it in the appropriate docket and **in the judgment index [it]** against the defendant.

\* \* \* \* \*

**Rule 3020. Definition.**

As used in this chapter, "judgment" means a judgment, order or decree requiring the payment of money entered in any court which is subject to these rules, including a final or interlocutory order for payment of costs, except a judgment against the Commonwealth or a political subdivision.

**Official Note:** Political subdivision includes a municipal or other local authority. See Definition Rule 76.

**Rule 3021. Verdict. Order. Judgment. Entry in Judgment Index.**

(a) The prothonotary shall immediately enter in the judgment index

(1) a verdict or order for a specific sum of money with the notation "verdict" or "order." The entry shall state the amount of the verdict or order;

**Official Note:** See also Rule 1307(a) governing the entry by the prothonotary of an award in compulsory arbitration and Rule 3027(a) governing the entry of a writ of revival.

(2) an order for equitable relief, interlocutory or final; and

(3) a judgment, whether entered by the court, on order of court or on praecipe of a party. The entry shall state the amount of the judgment if for a sum certain.

**Official Note:** Section 8142(e) 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.”

The rule presumes a channel of communication between the court and prothonotary so that the prothonotary may “immediately” docket a judgment entered by the court.

(b) In all cases, the entry in the judgment index shall state the names of the parties, the number of the case, and the date and time of entry in the judgment index.

**Rule 3022. Verdict or Order. Lien. Duration.**

(a) A verdict or order for a specific sum of money when entered in the judgment index shall create a lien on real property located within the county, title to which at the time of entry is recorded in the name of the person against whom the verdict or order was rendered. The lien shall continue for five years unless the verdict is sooner reduced to judgment or the court sooner awards a new trial or enters a judgment notwithstanding the verdict.

**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 8142(b) of the Judicial Code, 42 Pa.C.S. § 8142(b), provides for the endorsement of time on recorded verdicts.

An award of arbitrators in compulsory arbitration is a lien as provided by Rule 1307(b).

“Overdue support obligations of this or any other state which are on record at the county domestic relations section shall constitute a lien by operation of law against all real property owned by the obligor within the county as provided in subsection (d.1).” See Section 4352(d) of the Domestic Relations Code, 23 Pa.C.S. § 4352(d).

(b)(1) Except as provided by paragraph (2), the lien of a verdict or order for a specific sum of money shall have the priority prescribed by Section 8141 of the Judicial Code from the time the verdict or order is entered in the judgment index.

(2) Paragraph (1) shall not affect the priority of the lien of a verdict or order for a specific sum of money created prior to the effective date of this rule.

**Official Note:** The effective date of this rule was

For the priority of the lien of a verdict or order governed by subdivision (b)(2), see Section 8141 of the Judicial Code.

(3) Section 8141(3) of the Judicial Code, 42 Pa.C.S. § 8141(3), is suspended in accordance with Article V, Section 10(c) of the Constitution of 1968 and Section 1722(b) of the Judicial Code, 42 Pa.C.S. § 1722(b), insofar as it is inconsistent with this rule.

**Official Note:** 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.

**Rule 3023. Judgment. Lien. Duration.**

(a) Except as provided by subdivision (b), a judgment when entered in the judgment index shall create a lien on real property located in the county, title to which at the

time of entry is recorded in the name of the person against whom the judgment is entered.

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

See Rule 3027 for the lien of the writ of revival or of the agreement to revive and Rule 3031.1 for the lien of a judgment of revival.

(b) A judgment upon a verdict, an order or an award in compulsory arbitration, when entered in the judgment index, shall

(1) continue the lien upon real property located in the county which is subject to the lien of the verdict, order or award upon which the judgment is entered, and

**Official Note:** The lien of a verdict or order dates from the time the verdict or order is entered in the judgment index. See Rule 3022(a).

The lien of an award in compulsory arbitration dates from entry of the award in the judgment index. See Rule 1307(b).

(2) create a lien upon all other real property located in the county, title to which at the time of entry in the judgment index is recorded in the name of the person against whom the judgment is entered.

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

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

Subchapter B. REVIVAL OF [ JUDGMENTS ]  
JUDGEMENT LIENS

**Rule 3025. Commencement of proceedings. Venue.**

A proceeding to revive [ and continue ] which continues or creates 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 in the form provided by Rule [ 3033 ] 3032, or

(2) an agreement to revive [ judgment in ] substantially in 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, 42 Pa.C.S. § 5526(1), requires that an action for revival of a judgment lien on real property 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 lien subject to the Act and entered by confession be commenced within one year from the lapse of the lien.

The revival of a judgment lien pursuant to the Commercial Real Estate Broker Lien Act is governed by these rules. See 68 P. S. § 1062.

A lien arising from an overdue support obligation retains its priority "without renewal or revival." See Section 4352(d.1)(5)(ii) of the Domestic Relations Code, 23 Pa.C.S. § 4352(d.1)(5)(ii).

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 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.

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 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;

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, added by Section 5 of the Act of December 12, 1994, P. L. 1015, No. 138, 72 P. S. § 1404.1.

#### Rule 3025.1. Consolidation of Judgments.

(a) A judgment creditor who holds two or more judgments entered against the same person in the same county may consolidate the judgments by filing

- (1) a single praecipe requesting the issuance of a single consolidated writ of revival, or
- (2) an agreement to enter a consolidated judgment and revive the lien thereof.

(b) The praecipe or the agreement shall contain the court, docket number and amount claimed to be due on each judgment being consolidated.

(c) The consolidated judgment shall be entered as of the docket number of one of the judgments being consolidated and shall include the amounts due on all the consolidated judgments.

(d) The court and docket number of the consolidated judgment shall be noted on the docket of each original judgment substantially as follows: "Consolidated as part of the consolidated judgment entered at Docket No. \_\_\_\_\_ of the Court of Common Pleas of \_\_\_\_\_ County."

**Official Note:** Consolidation does not affect the lien priority of each judgment consolidated.

#### Rule 3026. Parties. Generally.

(a) The [ **plaintiff shall name in the** ] caption shall contain the name of the original defendant and any terre-tenant against whom [ **he** ] the plaintiff seeks to revive [ **and continue** ] the lien of the 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. See also Definition Rule 3101(a).

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

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.

#### 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 of the lien of the judgment 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.

**Official Note:** This rule does not apply where defendants are jointly and severally liable or severally liable only.

#### Rule 3026.2. Parties. Terre-Tenants.

(a) As used in Rule 3025 et seq., a terre-tenant is a person other than the original defendant 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 the following rules of civil procedure providing for liens upon real property: Rule 1307(b) (lien of an award in compulsory arbitration), Rule 3022 (lien of a verdict or order), Rule 3023 (lien of a judgment), Rule 3027 (lien of a writ of revival or an agreement to revive), Rule 3131.1 (lien of a judgment of revival) and Rule 3104 (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 a deceased 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,

(1) a certified copy of the will of the decedent, or,

(2) 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 subject to a 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 within the five-year period of Rule 3023(c) or Rule 3031.1(a) joins in an agreement to revive or is made a party to the writ of revival.

**Official Note:** The revival of a judgment lien continues or creates a lien upon real property. See Rule 3025.

(b) If a writ of revival or an agreement to revive is entered in the judgment index 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 of the judgment 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) a 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 Rules 3027(b)(3) and 3031.1(b).

\* \* \* \* \*

**Rule 3027. Writ of Revival. [ Indexing. ] Entry. Lien.**

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

\* \* \* \* \*

(b) [ The writ when indexed shall be a lien upon all real property within the county which at the time of indexing is owned by the defendant against whom the original judgment is entered. ] The writ or agreement, when entered in the judgment index, shall

(1) continue the lien upon real property located in the county which is subject to the lien of the judgment which is sought to be revived,

(2) create a lien upon all other real property located in the county, title to which at the time of entry in the judgment index is recorded in the name of the defendant, and

**Official Note:** The lien attaches whether or not the real property was owned by the defendant at the time the original judgment was [ indexed ] entered in the judgment index or the lien of the judgment was

previously revived and whether or not the lien of the judgment had been lost as to the property.

**The priority of the lien is preserved only if the praecipe or the agreement is filed within the five-year period prescribed by these rules.**

(3) create a lien upon all other real property located in the county, title to which at the time of entry in the judgment index is recorded in the name of a terre-tenant, and which was subject to the lien of the judgment sought to be revived but the lien lapsed prior to the entry of the writ or agreement in the judgment index.

(c) The lien of a writ of revival or of an agreement to revive shall continue for a period of five years from the date on which the writ or agreement was [ indexed ] entered in the judgment index.

**Rule 3028. Service of the Writ.**

(a) The writ shall be served within ninety days after its issuance by the sheriff by handing a copy in the manner provided by Rule 402 or by mailing a copy in the manner provided by Rule 403.

(b) If service cannot be made as provided by subdivision (a), then service may be made

(1) in the manner prescribed by order of court pursuant to Rule 430(a), or

**Official Note:** For example, where the Postal Service shows a good address and mail service under subdivision (a) is returned unclaimed, the court pursuant to Rule 430 may permit service by regular mail.

(2) by publication in the manner prescribed by Rule 430(b) upon the filing of an affidavit showing reasonable efforts to make service pursuant to subdivision (a) and the reasons why such service could not be made.

**Official 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 3030. Pleadings. Further Proceedings. Continuance of Lien.**

\* \* \* \* \*

(c) If judgment cannot be entered on the writ within a period of five years after the [ indexing ] entry of the writ in the judgment index because of the further proceedings, the court before which the further proceedings are pending may enter an order continuing the lien of the writ for a period not exceeding five years. The order shall become effective when [ indexed ] entered in the judgment index.

**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.

See Rule 237.1 et seq. which requires a ten-day notice as a prerequisite to the entry of a default judgment.

\* \* \* \* \*

**Rule 3031.1. Judgment of Revival. Lien.**

(a) A judgment of revival when entered in the judgment index shall continue or create a lien as provided by Rule 3027(b) governing the lien of a writ of revival. The lien shall continue for five years from the date the judgment was entered in the judgment index unless the judgment is sooner discharged or the lien is sooner revived.

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

**Subchapter C. FORMS**

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 lien of judgment entered [ to ] at \_\_\_\_\_ and [ index ] enter it

(Court, [ Term, ] Number) in the judgment index against \_\_\_\_\_ (Name of Defendant(s))

and \_\_\_\_\_ (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. ] Rule 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)

\* \* \* \* \*

(3) You are required within twenty (20) days after service of this writ to file an answer or otherwise plead to

this writ. If you fail to do so judgment of revival [ will ] in the amount claimed by the plaintiff may be entered without a hearing and you may lose your property or other important rights.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

\_\_\_\_\_  
(Name of Office)

\_\_\_\_\_  
(Address of Office)

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

Date: \_\_\_\_\_ (Name of Prothonotary (Clerk))  
By \_\_\_\_\_ (Deputy)

**Official Note:** For definition of terre-tenant, see [ § 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 lien of the judgment entered on \_\_\_\_\_ Date

[ 19 \_\_ to ] at \_\_\_\_\_ be  
(Court, [ Term, ] Number)

revived and [ the lien continued and ] authorize(s) the prothonotary to enter [ and ] in the judgment 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. See Rule 3025.1(b) for additional requirements when there is an agreement to consolidate two or more judgments against the same person and revive the lien thereof.

**Rule 3048. Acts of Assembly not suspended.**

The Rules governing the Revival of Judgment Liens 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[ . ];

(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[ . ];

\* \* \* \* \*

(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 that tax liens required to be filed by the Department of Revenue are continued without the necessity of revival.

(5) [ AND all other Acts or parts of Acts authorizing special procedures for the Revival of Judgments in favor of the Commonwealth or political subdivisions. ] 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 4352(d) and (d.1) of the Domestic Relations Code, 23 Pa.C.S. § 4352(d) and (d.1);

*Official Note:* Section 4352(d) imposes a lien upon real property for overdue support and Section 4352(d.1) provides for the lien to retain its priority without renewal or revival.

(8) 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.

(9) And all other Acts or parts of Acts authorizing special procedures for the revival of judgment liens in favor of the Commonwealth or political subdivisions.

Rule 3049. [ Acts of Assembly suspended ] (Rescinded).

*Official Note:* The statutory provisions governing revival of judgment liens previously suspended by Rule 3049 have been repealed.

**Rule 3049.1. Abolition of Practice and Procedure Under Repealed Statutes.**

The practice and procedure provided in the following Acts of Assembly which have been repealed by the Judiciary Act Repealer Act (JARA), Act of April 28, 1978, No. 53, are hereby abolished and shall not continue as part of the common law of the Commonwealth:

(1) Sections 1 and 2 of the Act of March 23, 1877, P. L. 34, 12 P. S. §§ 861, 862.

*Official Note:* The Act of 1877 relating to lien of verdict was repealed by Section 2(a) of JARA, 42 P. S. § 20002(a).

(2) Section 1 of the Act of April 22, 1909, P. L. 112, 12 P. S. § 875.

*Official Note:* The Act of 1909 relating to consolidation of judgments by scire facias was repealed by Section 2(a) of JARA, 42 P. S. § 20002(a).

(3) Sections 2 through 7 inclusive of the Act of July 3, 1947, P. L. 1234, No. 504, known as the Judgment Lien Law, 12 P. S. §§ 878 through 883.

*Official Note:* The Judgment Lien Law was repealed by Section 2(a) of JARA, 42 Pa.C.S. § 20002(a). The repealed sections concerned the property subject to lien and duration of lien (§ 2), the manner of reviving lien and duration of revived lien (§ 3), scire facias as lien (§ 4), revival of lien against person in armed forces (§ 5), service of scire facias; and judgment on return of nihil habet (§ 6), and property subject to execution, lien of execution and execution after five years (§ 7).

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

**Rule 3101. Definitions; garnishee.**

(a) As used in this chapter

“judgment” means a judgment, order, or decree requiring the payment of money entered in any court which is subject to these rules, including a final or interlocutory order for payment of costs, except a judgment against the Commonwealth[ , ] or a political subdivision [ or a public authority ];

*Official Note:*

\* \* \* \* \*

**Political subdivision includes a municipal or other local authority. See Definition Rule 76.**

\* \* \* \* \*

**Rule 3101.1. Property Subject to Execution. Execution Within and After Five Years.**

(a)(1) Execution may issue within five years after entry of the judgment sought to be enforced or any judgment of revival or agreement to revive, against

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

(ii) real property, title to which at the time of the entry of the writ of execution in the judgment index is recorded in the name of the person against whom the judgment is entered.

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

(b) Execution may issue against personal property within the time allowed by law.

**Official Note:** Subdivisions (a)(1) and (2) continue the practice under Section 7 of the Act of July 3, 1947, P. L. 1234, 12 P. S. § 883 (repealed) relating to property subject to execution and execution after five years.

For the applicable law under subdivision (b), see Section 5529(a) of the Judicial Code, 42 Pa.C.S. § 5529(a) (twenty-year limitation to issue execution upon personal property). See also *Shearer v. Naftzinger*, 747 A.2d 859 (Pa. 2000).

A proceeding to revive a judgment lien is not relevant to an execution upon personal property.

**Rule 3104. [Indexing] Writ of Execution. Entry. Lien.**

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

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

(ii) **create a lien on real property acquired by the defendant subsequent to the entry of the judgment, located in the county, title to which at the time of entry of the writ is recorded in the name of the defendant.**

**Official Note:** As to the effect of **[ indexing see ]** entry of the writ, **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 unsuspended by these rules. ]**

The praecipe for the writ of execution contains a direction to the prothonotary to enter the writ in the judgment index. See Rule 3251.

(2) A lien created or continued solely by the entry of a writ of execution in the judgment index shall continue for a period of five years from the date the writ was entered.

**Official Note:** The lien of a writ of execution is not subject to revival under Rule 3025 et seq. governing revival of the lien of a 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 or her county who shall thereupon **[ index ]** enter it in the judgment index and return it to the sheriff for execution. Such **[ indexing ]** entry shall have the same effect as the

**[ indexing ]** entry of a judgment against the defendant. **[ If the plaintiff so directs, the sheriff may levy or attach under the writ before he delivers 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 ]** enter the writ against the garnishee **in the judgment index** as a lis pendens. **[ Indexing ]** Entry against the garnishee shall constitute a lis pendens against the described property only in the county where the writ is **[ indexed ]** entered and not against any other property of the garnishee.

\* \* \* \* \*

**Subchapter E. ENFORCEMENT OF JUDGMENTS IN SPECIFIC ACTIONS FORMS**

**Rule 3251. Praecipe for Writ of Execution. Money Judgments.**

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:

(Caption)

PRAECIPE FOR WRIT OF EXECUTION

To the Prothonotary:

Issue writ of execution in the above matter,

\* \* \* \* \*

(4) and **[ index ]** enter this writ **in the judgment index**

(a) against \_\_\_\_\_, defendant, and  
(Name of Defendant)

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

Paragraph (4)(a) should be completed only if **[ indexing ]** entry 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 ]** entry 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 ]** entry as a lis pendens is desired. See Rule 3104(c).

\* \* \* \* \*

**EXPLANATORY COMMENT**

- I. Introduction**
- II. Terminology**
- III. Judgment Liens**
- IV. Revival of Judgment Liens**
- V. Enforcement of Judgments for the Payment of Money**

**I. Introduction**

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).

The amendments to the rules of civil procedure promulgated in 2003 fill the void. The General Assembly in Section 1722(b)(1) of the Judicial Code, 42 Pa.C.S. § 1722(b)(1), 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 amendments do not effect a radical change in the law of judgment liens and revival of judgment liens. Rather, their 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.

## II. Terminology

The rules use the terms “plaintiff” and “defendant.” In the context of a judgment, the plaintiff is the judgment creditor or the party in whose favor the judgment is entered and the defendant is the judgment debtor or 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 3026 to this effect.

Prior statutes referred to the “indexing” of verdicts and judgments and the rules of civil procedure promulgated when those statutes were in effect used that term. The present law, Section 4303 of the Judicial Code, refers to a judgment or order being a lien “when it is entered of record.” Consistent with the Judicial Code, the amended rules use the terms “entry,” “enter” and “entered” as may be appropriate.

## III. Judgments

A new chapter of four rules has been added which encompasses the entry of judgment in the judgment index and the effect of a judgment as a lien upon real property. The four rules are Rule 3020 (Definition), Rule 3021 (Verdict. Order. Judgment. Entry in Judgment Index),

Rule 3022 (Verdict or Order. Lien. Duration) and Rule 3023 (Judgment. Lien. Duration).

### *Rule 3020. Definition and*

### *Rule 3101. Definitions. Garnishee*

Rule 3101(a) governing the enforcement of money judgments defines the term “judgment.” The definition has been amended by deleting the phrase “or a public authority.” This phrase became unnecessary in light of a recent amendment to Definition Rule 76 defining the term “political subdivision” to include “a municipal or other local authority.” The definition of “judgment” in Rule 3101(a) uses the term “political subdivision” and provides as follows:

“judgment” means a judgment, order, or decree requiring the payment of money entered in any court which is subject to these rules, including a final or interlocutory order for payment of costs, except a judgment against the Commonwealth or a political subdivision;

New Rule 3020 defines the term “judgment” using identical language and applies to the rules of the new chapter, Rule 3020 et seq.

Notes to both Rule 3020 and 3101(a) cross-refer to the definition of “political subdivision” found in Rule 76.

### *Rule 3021 Verdict. Judgment. Entry in Judgment Index*

Section 2737 of the Judicial Code provides that the “office of the prothonotary shall have the power and duty to . . . (3) Enter all civil judgments, including judgments by confession.” Section 4303(a) of the Judicial Code provides that any judgment or order for the payment of money shall be a lien upon real property when it is “entered of record” in the office of the clerk of the court of common pleas of the county where the real property is situated.

These sections of the Judicial Code give scant direction to the prothonotary with respect to the judgment index when contrasted with prior repealed statutes such as the Act of 1827, 16 P. S. § 9871. The new rule provides the necessary direction by setting forth, first, the duty of the prothonotary to enter verdicts, orders and judgments in the judgment index and, second, the content of the entry in the index.

### *Rule 3022. Verdict or Order. Entry. Lien*

New Rule 3022 is derived from the repealed Act of March 23, 1877, P. L. 34, § 1, 12 P. S. § 861. 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, the rule states:

(a) A verdict or order for a specific sum of money when entered in the judgment index shall be a lien on real property located within the county, title to which at the time of entry is recorded in the name of the person against whom the verdict or order was rendered. . . .

This rule changes the prior law with respect to the inception of the lien. Under the repealed Act of 1877 and current Section 8141(3) of the Judicial Code, the creation of the lien and its priority dated from the rendition of the verdict or order. Under New Rule 3022(a), a verdict or order for a specific sum of money creates a lien “when entered in the judgment index.” This new rule is consistent with Rule 1307 which provides that an award in compulsory arbitration for the payment of money creates

a lien "when entered in the judgment index" and also with Rule 3023 which similarly provides that a judgment shall create a lien "when entered in the judgment index." However, Rule 3022(a) is inconsistent with Section 8141(3) of the Judicial Code and subdivision (b)(3) of the rule suspends Section 8141(3) only to the extent of this inconsistency with the new rule.

Rule 3021(a) minimizes the opportunity of a judgment debtor to avoid the lien of a verdict or order by providing that the prothonotary shall "immediately" enter a verdict or order for the payment of money in the judgment index. A party aggrieved by the transfer of property to avoid the lien may pursue remedies provided by the law governing fraudulent transfers of property.

The language used in Rule 3022(a) is the basic formulation used to describe the lien in each rule prescribing a lien. Rules 1307, 3023, 3027 and 3104 all contain in almost identical form the following italicized language: "*a lien on real property located within the county, title to which at the time of entry is recorded in the name of the person against whom the verdict or order was entered.*"

Subdivision (a) also provides a five-year limit upon the life of the lien. The lien terminates earlier if, prior to the expiration of the five-year period, the verdict or order is reduced to judgment or the court awards a new trial or enters a judgment notwithstanding the verdict.

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." However, a judgment is specifically governed by Rule 3023.

#### *Rule 3023. Judgment. Lien*

New Rule 3023 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, and Section 2 of the Act of 1877, 12 P. S. § 862. Subdivision (a) states the general rule using the basic language of Rule 3022 governing the lien of a verdict and order but appropriately particularized to a judgment:

(a) Except as provided by subdivision (b), a judgment when entered in the judgment index shall create a lien on real property located in the county, title to which at the time of entry is recorded in the name of the person against whom the judgment is entered.

Subdivision (b) states the rule governing the lien of two particular judgments: a judgment entered upon a verdict or order and a judgment entered upon an award in compulsory arbitration. The subdivision begins with entry in the judgment index and then provides for the effect of the entry of the judgment as continuing or creating a lien on real property:

(b) A judgment upon a verdict, an order or an award in compulsory arbitration, when entered in the judgment index, shall

(1) continue the lien upon real property located in the county which is subject to the lien of the verdict, order or award upon which the judgment is entered, and

NOTE: . . .

(2) create a lien upon all other real property located within the county, title to which at the time of entry in the judgment index is recorded in the name of the person against whom the judgment is entered.

The continuing of a lien under subdivision (b)(1) parallels the concept of new Rule 3027(b)(1) by which the lien

of a writ of revival or agreement to revive when entered in the judgment index shall "continue the lien upon all real property located in the county which is subject to the lien of the judgment which is sought to be revived." Since the rule continues the lien of the verdict, the date of the commencement of the lien is determined by reference to Rule 3022, discussed above, which provides that a verdict or order for a specific sum of money shall be a lien when entered in the judgment index. Similarly, the date of commencement of the lien of an award in compulsory arbitration is determined by referring to Rule 1307(b), discussed below. A note to subdivision (b)(1) sets forth the cross-references.

The creating of a lien under subdivision (b)(2) parallels the concept of new Rule 3027(b)(2) by which the lien of a writ of revival or agreement to revive when entered in the judgment index shall "create a lien upon all other real property located in the county, title to which at the time of entry in the judgment index is recorded in the name of the defendant." Subdivision (b)(2) pertains to after-acquired property and generally follows the statute.

Subdivision (c) provides for a five-year duration of the lien and applies to the liens of all judgments under the rule. The life of the lien is unchanged from prior practice.

#### *Other Rules Affecting Liens*

Several additional rules of civil procedure govern liens on real property and are affected by the proposed amendments.

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

Rule 1307 is a rule governing compulsory arbitration which formerly provided 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 language has been revised to conform to that of other rules of civil procedure imposing a lien on real property:

(b) The award for the payment of money when entered in the judgment index shall create a lien on real property 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.

#### *Rule 3027. Writ of Revival. Entry. Lien*

*and*

#### *Rule 3031.1. Judgment of Revival. Lien*

Rule 3027 governing the entry 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. The present amendment to that rule and new Rule 3031.1 governing the entry and lien of a judgment of revival are described below under the comment discussing the revisions to the rules governing revival of judgment.

#### *Rule 3104. Writ of Execution. Entry. Lien*

The amendment to Rule 3104(a) incorporates without substantial change Section 7 of the Judgment Lien Law, 12 P. S. § 883, relating to the property subject to execution, the lien of execution and the duration of the lien. The rule is discussed at the end of the comment in connection with the rules governing the enforcement of judgments for the payment of money.

#### IV. Revival of Judgment Liens

The rules governing “revival of judgments” are revised generally to be gender neutral and to delete obsolete references. In addition, the phrase “revival of judgments” is revised to read “revival of judgment lien.”

The source of the revision providing for “revival of judgment lien” is the concurring opinion by Mr. Justice Zappala in *Shearer v. Naftzinger*, 747 A.2d 859, 861 (Pa. 2000), which described the effect of a judgment and the necessity for revival of a judgment lien:

... A money judgment acts as a lien against real property, but only for five years. The lien must be continued (or revived) to maintain (or obtain a new) place of priority. However, properly speaking, it is the lien that is revived, not the judgment. There is no outer time limit to executing against real property to satisfy a judgment, but the proceeds of such a sale must be distributed according to the priority of liens. . . .

##### *Rule 3025. Commencement of Proceedings. Venue*

In addition to providing for the venue and commencement of a proceeding to revive, Rule 3025 states the scope of the chapter. Prior to the present amendments, the scope of the chapter was described as a “proceeding to revive and continue the lien of a judgment.” This language is revised as follows: “A proceeding to revive which continues or creates the lien of a judgment.”

The words “which continues or creates the lien of a judgment” reveal the nature of the proceeding. The proceeding to revive will, first, continue the lien as to real property which is subject to an existing lien and, second, create a lien with respect to property which is not subject to an existing lien because either the lien has been lost or the lien had not attached to the property (after-acquired property). The concept is similar to that of Rule 3023(b) governing the lien of a judgment entered upon a verdict or order which provides that the judgment when entered in the judgment index shall “continue” the lien of the verdict or order as to property subject to the lien and “create” a lien as to all other property recorded in the name of the person against whom the judgment is entered.

##### (1) *Continuing a lien*

A proceeding to revive “continues . . . the lien of a judgment.” The continuing of a lien presupposes an existing lien. Rule 3023 governing the lien of a judgment provides that the “lien shall continue for five years from the date the judgment was entered in the judgment index unless the judgment is sooner discharged or the lien is sooner revived.” If a proceeding to revive a judgment lien is commenced within the five-year period prescribed by Rule 3023, there exists a lien to be continued. This is the import of Rule 3027(b)(1) which provides that a writ of revival or an agreement to revive when entered in the judgment index shall “continue the lien upon real property located in the county which is subject to the lien of the judgment which is sought to be revived.”

##### (2) *Creating a lien*

A proceeding to revive also “creates the lien of a judgment.” The creation of a lien presupposes that there is no existing lien. There may be no existing lien on real property because either the lien has been lost or because the lien did not attach.

If a proceeding to revive a judgment is not brought within the five-year period after entry of the judgment in

the judgment index as required by Rule 3023, the lien is lost as to property which had been subject to it and there exists no lien to continue. However, the proceeding will create a new lien on property as to which a lien has been lost. This is the import of Rule 3027(b)(2) which provides that a writ of revival or an agreement to revive when entered in the judgment index shall

(2) create a lien upon all other real property located in the county, title to which at the time of entry in the judgment index is recorded in the name of the defendant. . . .

Rule 3023(a) provides in part that “a judgment when entered in the judgment index shall create a lien on real property located in the county, title to which at the time of entry is recorded in the name of the person against whom the judgment is entered.” Thus, property which is acquired by the defendant after entry of the judgment in the judgment index is not subject to the lien of the judgment. In this case also, the proceeding to revive the judgment will create a lien as provided by Rule 3027(b)(2).

Rule 3027(b)(3) applies to property recorded in the name of a terre-tenant. It makes clear that the only property subject to the lien of a writ of revival or an agreement to revive is property which at the time of the entry of the writ or agreement in the judgment index had been subject to the lien of the judgment but the lien had lapsed. The lien does not attach to any other property of the terre-tenant. This provision is reinforced by Rule 3031.1(b) which provides that a judgment of revival is not a personal judgment against the terre-tenant.

Though a proceeding to revive a judgment may be commenced after the expiration of the five-year period, the importance of commencing a proceeding within the five-year period to continue a lien cannot be ignored. If a lien is lost, its priority is lost and the new lien will date from the entry of the writ of revival or agreement to revive in the judgment index. As stated by former Chief Justice Zappala in *Shearer v. Naftzinger*, 747 A.2d at 861, “The lien must be continued (or revived) to maintain (or obtain a new) place of priority.”

Rule 3025 with its “definition” of a proceeding to revive encapsulates the law and procedure of the chapter. Rules 3027 and 3031.1 provide the substantive effect of the writ of revival and judgment of revival while the remaining rules of the chapter provide the procedure to effectuate the substantive 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. Subdivision (b) adds the option of consolidating judgments by agreement.

There needs to be a trail leading to and from the consolidated judgment. Subdivisions (c) and (d) provide for cross-references to enable the searcher to trace the history of both the individual judgments and the consolidated judgment.

A note advises that consolidation does not affect the priority of the lien of each judgment consolidated.

##### *Rule 3026. Parties. Generally*

There is no change in substance to Rule 3026. The title is revised by adding the word “Generally” in light of new Rules 3026.1 through 3026.3 which govern specific parties, i.e., joint defendants and terre-tenants.



The two subdivisions which comprise Rule 3026 are revised to be parallel in style. A note is added to subdivision (a) describing the use in the rules of the words "plaintiff" and "defendant" to mean judgment creditor and judgment debtor, respectively. The note to subdivision (b) is made current by deleting obsolete material and adding cross-references to the new rules governing terre-tenants.

*Rule 3026.1. Parties. Joint Defendants*

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

*Rule 3026.2. Parties. Terre-Tenants*

and

*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."

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

A portion of Section 3 of the 1947 Act, 12 P. S. § 879(a), set 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 3027. Writ of Revival. Entry. Lien*

Rule 3027 is the heart of the rules governing revival of judgment liens, setting forth the substantive law pertaining both to the writ of revival and, by incorporation by reference in Rule 3031.1, to the judgment of revival.

Subdivision (a) provides for the prothonotary to enter the writ of revival or agreement to revive in the judgment index "against each defendant and terre-tenant named therein." The provision might be compared to the requirement of new Rule 3021 requiring the prothonotary to enter verdicts, orders and judgments into the judgment index.

Subdivision (b) provides for the effect of the writ or agreement when entered in the judgment index as continuing or creating a lien upon real property. The effect of this subdivision is described under the comment to Rule 3025.

Subdivision (c) providing for the lien to continue for five years has been revised only to accommodate the reference to an agreement to revive and to substitute the word "entered" in place of "indexed."

*Rule 3028. Service of the Writ*

The former rule that a "return of no service shall be equivalent to personal service" was derived from at least two repealed statutory sources: Section 6 of the Judgment Lien Law, 12 P. S. § 882, and Section 1 of the Act of 1901, 12 P. S. § 295. Under the former, 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 new rule places a greater emphasis upon serving the writ of revival and provides procedures beyond those normally available for service of original process. Subdivi-

sion (a) provides that the writ shall be served by the sheriff 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 subdivision (b) provides two alternatives. The first alternative is service pursuant to an order of court under Rule 430(a). The second is service by publication without an order of court but upon filing an affidavit "showing reasonable efforts to make service pursuant to subdivision (a) and the reasons why such service could not be made." In effect, the party seeking to make service by publication under subdivision (b)(2) is making a record by affidavit which will support the right granted by the rule.

*Rule 3029. Reissuance and Substitution of Writ*

There is no change in practice under the rule as only the note is revised. The note contained an obsolete reference to former Rule 1010 as governing reissuance and substitution of a writ of summons. A reference to the current rule, Rule 401(b), has been substituted.

*Rule 3030. Pleadings, Further Proceedings. Continuance of Lien*

Again, there is no change in practice under the revised rule. The only revision to the rule is the substitution in subdivision (c) of the new language relating to the "entry" of a judgment in the judgment index in place of the "indexing" of a judgment.

*Rule 3031. Judgment upon Default or Admission. Assessment of Damages*

The addition of a note is the only change 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.

*Rule 3031.1. Judgment of Revival. Lien*

Rule 3031.1 governs the judgment of revival and its lien. Subdivision (a) of Rule 3031.1 replaces the first sentence of section 3(c) of the Judgment Lien Law of 1947, 12 P. S. § 879(c) and cross-refers to Rule 3027 governing the lien of the writ of revival for the extent and duration of the lien. The comment set forth under Rule 3027 relating to the lien of a writ of revival applies equally to the lien of a judgment of revival under this rule.

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

The second sentence of section 3(c) of the Judgment Lien Law, 12 P. S. § 879(c), relating to extension of the lien was incorporated in 1994 into Rule 3030 as subdivision (c).

*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 prescribed by Rule 1018.1.

*Rules 3048, 3049 and 3049.1. 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 formerly suspended by the rule have been repealed. However, the practice and procedure under certain of these statutes have remained in force as the result of the "fail-safe" provision of Section 3(b) of JARA, 42 Pa.C.S. § 20003(b). New Rule 3049.1 sets forth those repealed statutes, the practice and procedure under which, as the result of the promulgation of these rules, will no longer continue as part of the common law of the Commonwealth.

#### V. Enforcement of Judgments for the Payment of Money

##### *Rule 3101. Definitions. Garnishee*

The amendment to the definition of the word "judgment" in Rule 3101, mentioned previously, deletes the phrase "or public authority." No change in practice is effected by this amendment as the term "political subdivision" used in the definition is defined by Rule 76 to include a municipal or other local authority.

##### *Rule 3101.1. Property Subject to Execution. Execution Within and After Five Years*

New Rule 3101.1 replaces two Acts of Assembly relating to the property subject to the execution, the lien of execution and execution after five years.

Subdivision (a) incorporates the substance of Section 7 of the Judgment Lien Law, 12 P.S. § 883 (repealed). Subdivision (a)(1) provides for execution against real property within five years of the entry of the original judgment, judgment of revival or agreement to revive. The execution may issue against real property which is subject to the lien of the judgment or against after-acquired real property (i.e., "real property, title to which at the time of the entry of the writ of execution in the judgment index is recorded in the name of the person against whom the judgment is entered"). The effect of the writ of execution as continuing or creating a lien is governed by Rule 3104(a).

Subdivision (a)(2) is concerned with an execution against real property where five years have elapsed since the entry of the original judgment, the last preceding judgment of revival or the last preceding agreement to revive. In that case, "no execution against real property may issue until a writ of revival shall have issued and been reduced to judgment or an agreement to revive shall have been entered." The execution is issued on the judgment of revival or agreement entered and not on the original judgment.

Subdivision (b) incorporates the Act of 1887, 12 P.S. § 2094 (repealed). This subdivision provides for execution upon personal property "within the time allowed by law." It is immaterial whether the judgment is a lien upon real property or whether the lien of the judgment has been revived within five years since the entry of the original judgment or any judgment of revival or agreement to revive. In distinguishing between execution upon real and personal property, Mr. Justice Zappala in *Shearer v. Naftzinger* stated, 747 A.2d at 861—862:

... There is no outer time limit to executing against real property to satisfy a judgment, but the proceeds of such a sale must be distributed according to the priority of liens. . . .

Different rules apply with respect to personal property. A judgment continues to exist, and can be executed on by having the sheriff sell personal property, whether or not a writ of revival is ever filed. . . .

Section 5529 simply places an outer limit of 20 years on executing against personal property to satisfy a judgment. . . .

The note to the rule cites Section 5529(a) of the Judicial Code, 42 Pa.C.S. § 5529(a), prescribing a twenty-year limitation upon execution against personal property. The note also refers to the *Shearer* case for additional guidance.

##### *Rule 3104. Writ of Execution. Entry. Lien*

Rule 3104, also a part of the chapter governing the enforcement of judgments for the payment of money, was previously entitled "Indexing" and provided for the indexing of a writ of execution. The title of the rule has been revised to indicate the subject matter of the rule.

The amendment to Rule 3104(a) is intended to incorporate without substantial change a portion of Section 7 of the Judgment Lien Law, 12 P.S. § 883, relating to the property subject to execution, the lien of execution and the duration of the lien. Subdivision (a)(1) tracks the language of the other rules creating liens and provides for the writ of execution not only to continue the lien upon property which is already subject to the lien of the judgment but also to create a lien upon property, not subject to the lien of the judgment, which is recorded in the name of the defendant at the time of the entry of the writ in the judgment index.

An additional revision to subdivision (a) is the deletion of the phrase "upon praecipe of the plaintiff." The writ of execution is issued upon a praecipe prescribed by Rule 3251 which contains a direction to the prothonotary to "enter this writ in the judgment index." It was not the intention of the rule that the plaintiff be required to file a second praecipe for the prothonotary to enter the writ in the judgment index. The deletion of the phrase quoted above and an addition to the note make this point clear.

Subdivision (b) of the rule governs the delivery of the writ of execution to the sheriff of another county. The last sentence formerly provided that the plaintiff could direct the sheriff to levy or attach under the writ before delivering it to the prothonotary for indexing. This sentence has been deleted. There should be no execution proceedings until the writ of execution is entered of record within the county.

*By the Civil Procedural Rules Committee*

R. STANTON WETTICK, Jr.,  
Chair

[Pa.B. Doc. No. 04-4. Filed for public inspection January 2, 2004, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 4]

### Suppression Motions in Summary Cases

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rule 450 (Suppression of Evidence). This new rule would require that suppression motions in summary cases only may be handled in the court of common pleas when a summary case is appealed for a trial de novo.

This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed new rule precedes the Report. We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

Anne T. Panfil, Chief Staff Counsel  
Supreme Court of Pennsylvania  
Criminal Procedural Rules Committee  
5035 Ritter Road, Suite 800  
Mechanicsburg, PA 17055  
fax: (717) 795-2106  
e-mail: criminal.rules@pacourts.us

no later than Friday, January 23, 2004.

*By the Criminal Procedural Rules Committee*

JOHN J. DRISCOLL,  
*Chair*

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 4. PROCEDURES IN SUMMARY CASES PART E. General Procedures in Summary Cases

#### Rule 450. Suppression of Evidence.

No district justice shall entertain a defendant's motion to suppress any evidence in a summary case alleged to have been obtained in violation of the defendant's rights. All such motions shall be made in the court of common pleas on an appeal for a trial de novo as provided in Rule 581.

#### Comment

This rule was adopted in 2004 to provide the procedures in summary cases for the suppression of evidence alleged to have been obtained in violation of the defendant's rights. See Rule 581 concerning suppression of evidence in court cases.

**Official Note:** Rule 450 adopted \_\_\_\_\_, effective \_\_\_\_\_.  
*Committee Explanatory Reports:*

Report explaining the proposed new rule published at 34 Pa.B. 35 (January 3, 2004).

#### REPORT

#### *Proposed New Pa.R.Crim.P. 450<sup>1</sup>*

#### SUPPRESSION MOTIONS IN SUMMARY CASES

The Criminal Procedural Rules Committee is proposing the Court adopt new Rule 450 (Suppression of Evidence). The new rule would prohibit district justices from hearing suppression issues in summary cases and provide that summary case suppression motions shall be made in the court of common on an appeal for a trial de novo. The new rule fills the existing gap in the summary case rules concerning the procedures for handling summary case suppression issues.

<sup>1</sup>The proposed new rule would be numbered Rule 450, a number reserved for motions in Chapter 4 Part E (General Procedures in Summary Cases).

#### *Background*

Over the past several years, the Committee has undertaken an ongoing review of the summary case rules. As part of this review, some members requested the Committee consider the issue of motions in summary cases before district justices generally, and specifically the issue of summary case suppression motions. The members and a number of correspondents pointed out that because the Criminal Rules are silent concerning summary case suppression issues, and the courts have not provided much guidance,<sup>2</sup> there is a lot of confusion among members of the bench and bar when a suppression issue is raised before the district justice: some district justices make rulings on suppression issues that are raised before them, and other district justices do not consider a suppression issue when a defendant raises one.

In view of the Committee's ongoing review of the summary case rules, the interest of the members and the correspondents in procedures for handling a summary case suppression issue raised before a district justice, the lack of uniformity in and among the judicial districts, and the controversy that has arisen concerning district justices deciding suppression motions, the Committee agreed that the summary case rules should be amended to provide the procedures for handling summary case suppression issues.

Agreeing that the rules should provide the procedures for summary case suppression issues was "easy;" much more difficult was deciding whether the rules should permit a district justice to make a ruling on a suppression motion when one is raised before or during a summary trial or whether the summary suppression motions should be handled in the common pleas court. The members of the Committee, as well as the correspondents, were divided on the issue.

#### *Discussion*

During our discussions, the Committee considered the option of providing that a district justice may hear the suppression motion and providing the attorney for the Commonwealth an immediate right to appeal to the court of common pleas if the decision on the suppression issue is adverse to the Commonwealth, and the final disposition of the summary trial would occur after the resolution of the Commonwealth appeal.<sup>3</sup> The members in favor of this option pointed out that because district justices are finders of fact and law and regularly hear admissibility issues, they should hear suppression issues. These members also argued that if the judicial function of a district justice is to preside over a summary offense, then they should preside over the whole proceeding including suppression issues, and referenced 42 Pa.C.S. § 1515 (Jurisdiction and venue). In addition, these members recognized that if the rules specifically do not permit the district justices to hear suppression motions, this will eradicate the "filtering mechanism" of the district justice courts. In addition, they pointed out that when important rights are violated they should be addressed as soon as practicable, and thought this procedure would serve to quickly address illegal police conduct. Finally, these members noted that when a defendant is precluded from raising the

<sup>2</sup>Our research revealed two cases that recognize the common pleas court has the duty to address motions to suppress when they are raised in a summary case. See *Commonwealth v. Trunzo*, 589 A.2d 1147 (Pa. Super. 1991) and *Commonwealth v. Breslin*, 732 A.2d 629 (Pa. Super. May 21, 1999). In addition, in *Commonwealth v. Taylor* (Lebanon County, September 25, 2002), Judge Bradford H. Charles held "District Justices in Lebanon County do not have jurisdiction to hear or decide suppression issues. Exclusive jurisdiction to decide these issues rests with the Court of Common Pleas."

<sup>3</sup>This procedure would be similar to the procedure in Municipal Court cases set forth in Rule 1005 (Pretrial Application for Relief).

suppression issue in the district justice court, then most will not raise it because they will "just want to get the case over and pay the fine," rather than wait to have the issue addressed by the common pleas court on appeal for a trial de novo.

The members who were not in favor of having district justices rule on suppression issues pointed out that the minor court is not a court of record. These members strongly felt there should be a record created when suppression matters are heard, and since the district justices cannot put the suppression proceedings on the record, they should not be hearing suppression issues. In addition, these members reasoned that many district justices do not have legal backgrounds, and suppression issues are among the most complicated and controversial issues facing the courts.

After debating at length all these considerations, the Committee majority ultimately were persuaded that the reasons to require that summary case suppression motion be raised and decided in the court of common pleas outweighed the arguments for permitting the district justices to decide these motions.

Having agreed that the summary case suppression issues should be decided in the court of common pleas, the Committee considered providing that the issue be raised at the outset of case and before the time of the summary trial because this would ensure that some sort of notice given to the attorney for the Commonwealth. The Committee agreed, however, that this solution would be unworkable because many times, the defendant is unaware of the suppression issue until the time of the summary trial, and in these cases there would be no prior notice to the attorney for the Commonwealth, and this would result in delay of the case.

The Committee also considered including a provision for keeping the case in common pleas for disposition. However, we rejected this idea because having the summary trial in the court of common pleas would remove the authority of the district justices to decide cases over which he or she has a statutory right to preside, see 42 Pa.C.S. § 1515 (Jurisdiction and venue), and also increase the burden on the court of common pleas.

Ultimately, the Committee settled on providing that suppression issues in summary cases can be raised only when the summary case is appealed for a trial de novo in the court of common pleas. Although the Committee as a whole recognized the inherent unfairness of requiring a defendant, when there is case dispositive issue such as a suppression issue, to pay the fee to appeal and then wait for the suppression issue to be addressed in the court of common pleas at the trial de novo, the Committee members concluded that this option best protects the defendant's rights because the issue would be addressed on the record, and best protects the Commonwealth's right to appeal an adverse ruling on suppression. Accordingly, the Committee is proposing that new Rule 450 provide no district justice shall entertain a defendant's motion to suppress in a summary case and that these motions shall be made in the court of common pleas on an appeal for a trial de novo.

[Pa.B. Doc. No. 04-5. Filed for public inspection January 2, 2004, 9:00 a.m.]

## Title 249—PHILADELPHIA RULES

### PHILADELPHIA COUNTY

#### Termination of Inactive Citations Issued Between January 1, 1993 and December 31, 1997; Admin- istrative Order No. 02 of 2003

##### Order

*And Now*, this 24th day of November, 2003, the Traffic Court having determined that approximately 462,760 citations issued between January 1, 1993 and before December 31, 1997 have not resulted in a plea, adjudication or judgment against the violators, upon compliance with the Procedure for Terminating Inactive Traffic Court Citations pursuant to Pa.R.J.A. No. 1901, and as provided in Administrative Docket No. 1 of 2001, issued by the Traffic Court on March 13, 2001, and having determined that there has been no activity on these citations for a period of five years or more, and that the citations are thus both legally and practically unenforceable, and the City of Philadelphia and the Commonwealth of Pennsylvania having been informed of the intent to terminate these cases, and no objections having been received;

*Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed* that all Traffic Court citations issued between January 1, 1993 and December 31, 1997, for which there has been no plea or adjudication, and for which there has been a lack of activity for a period of five (5) years or more, shall be terminated thirty (30) days after the issuance of this Order.

The full list of citations to be terminated shall be available for public inspection at the Philadelphia Traffic Court, 800 Spring Garden Street, Philadelphia, PA 19130, during the Traffic Court's normal business hours. *It Is Further Provided* that on or before the termination date, any interested party may petition the Court and show cause why any citation on the termination list should not be removed from that list.

This Administrative Order shall be filed with the Prothonotary in a docket maintained for Administrative Orders issued by the President Judge of the Philadelphia Traffic Court, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau, the Criminal Procedural Rules Committee, and the Minor Court Rules Committee. Copies of the Order shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District of Pennsylvania.

*By the Court*

FRANCIS E. KELLY,  
*President Judge*

[Pa.B. Doc. No. 04-6. Filed for public inspection January 2, 2004, 9:00 a.m.]

# Title 255—LOCAL COURT RULES

## SCHUYLKILL COUNTY

Adopted Criminal Rules of Procedure; M03-643

### Order of Court

*And Now*, this 9th day of December, 2003, at 9:00 a.m., Schuylkill County Criminal Rule of Procedure, Rule 545(a) is adopted for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

The Clerk of Courts of Schuylkill County is Ordered and Directed to do the following:

- 1) File seven (7) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts.
- 2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette reflecting the text in the hard copy version.
- 3) File one (1) certified copy of this Order and Rule with the Pennsylvania Criminal Procedural Rules Committee.
- 4) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.
- 5) Keep continuously available for public inspection copies of this Order and Rule.

It is further *Ordered* that said rule as it existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

WILLIAM E. BALDWIN,  
*President Judge*

### Rule 545 Compulsory Process of Incarcerated Witnesses

(a) Whenever the Commonwealth or the defendant require the attendance at a court proceeding of a witness who is known to be incarcerated, the party seeking to compel the witness' appearance shall petition the court for an order directing the transport of that witness from his or her place of incarceration for the purpose of testifying at the court proceeding. The petition for transport shall be submitted to the court not later than three weeks prior to the date of the proceeding for which the witness' appearance is required. If the court provides the parties with less than three weeks notice of the proceeding, the petition for transport shall be submitted to the court immediately upon receiving notice of the date and time when the proceeding will be conducted. Failure to file a timely petition may result in the unavailability of the witness.

[Pa.B. Doc. No. 04-7. Filed for public inspection January 2, 2004, 9:00 a.m.]

# SUPREME COURT

Designation of Administrative Judges of the Civil and Criminal Divisions of the Court of Common Pleas of Allegheny County, Fifth Judicial District; No. 250 Judicial Classification; Doc. No. 2

### Order

*Per Curiam:*

*And Now*, this 19th day of December, 2003, pursuant to Pa.R.J.A. No. 706(d), the following Judges are hereby designated as Administrative Judges of the indicated divisions of the Court of Common Pleas of Allegheny County, Fifth Judicial District, for a term of three years or at the pleasure of the Court, effective December 23, 2003:

The Honorable R. Stanton Wettick, Jr.  
Civil Division

The Honorable Donna Jo McDaniel  
Criminal Division

[Pa.B. Doc. No. 04-8. Filed for public inspection January 2, 2004, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Transfer of Attorneys to Inactive Status

Notice is hereby given that the following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated November 14, 2003, pursuant to Rule 111(b) Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective December 14, 2003 for Compliance Group 1 due April 30, 2003.

Notice with respect to attorneys having Pennsylvania registration addresses, who have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

Khadijah R. Ali  
Washington, DC

Carm Regan Almonor  
Edison, NJ

Ralph J. Argen III  
Tampa, FL

Linda M. Babecki  
Trenton, NJ

Jon D. Batastini  
Linwood, NJ

Charles Lyman Becker  
Raleigh, NC

Mark E. Belland  
Waterford Works, NJ

Geoffrey Neff Blue  
Lakewood, CO

William R. Bostic  
Camden, NJ

Kevin M. Bothwell  
Bellmawr, NJ

Gerald J. Boudreaux  
Wilmington, DE

Shawn C. Carver  
Newark, DE

Milton Cerny  
Washington, DC

Nina Wisznat Chase  
Boca Raton, FL

Erik Benjamin Cherdak  
North Potomac, MD

Gary Carl Chiumento  
Cherry Hill, NJ

Kevin Walker Cyr  
Minneapolis, MN

William T. DiCiurcio II  
Cherry Hill, NJ

Robert John Ellis Jr.  
New York, NY

Howard Alan Enders  
Westampton, NJ

Michael B. Evans  
Danbury, CT

Jaimie Beth Finberg  
Cherry Hill, NJ

Irwin Jay Fredman  
Washington, DC

Robert Andrew Greitz  
Toms River, NJ

George William Gunner  
Wellsville, NY

Curtis A. Hehn  
Wilmington, DE

Carla Brown Horn  
Wilmington, DE

Robert F. Housman  
Washington, DC

Albert J. Jones  
Monroe, LA

Francis P. Karam  
New York, NY

Joseph Patrick Kazielski  
Burr Ridge, IL

Christopher L. Klabonski  
West Orange, NJ

David Alan Laughlin  
Neptune, NJ

Gary Peter Levin  
Northfield, NJ

Leonard Charles Lintner  
Duxbury, MA

Ronald Jay Maas  
Somerville, NJ

Steven J. Maher  
Naples, FL

Stephen Males Jr.  
Dover, NH

Stephen Michael Matarazzo  
Northfield, NJ

Bruce Jeffrey Meltzer  
Livingston, NJ

Michael Henry Nieschmidt  
East Windsor, NJ

William D. Pastorick  
Chicago, IL

Wayne Powell  
Cherry Hill, NJ

Margarita M. Prieto  
Washington, DC

James Earl Rollins Jr.  
Washington, DC

Howard M. Rossen  
Cleveland, OH

Stephen A. Saville  
Voorhees, NJ

Mary A. Scheuing  
Key West, FL

Frances Asokwu Sea  
East Orange, NJ

E. Douglas Sederholm  
Chilmark, MA

Daniel Adam Shabel  
Mt. Laurel, NJ

Erik Shanni  
Fanwood, NJ

Steven James Sheldon  
Florham Park, NJ

Donald E. Souders Jr.  
Phillipsburg, NJ

Michael Allan Stankan  
Cumberland, MD

Christopher R. Stockton  
Moorestown, NJ

Matthew Louis Stolper  
Briarcliff Manor, NY

Gregory J. Sullivan  
Hamilton, NJ

F. James Tennes  
Baltimore, MD

Cara R. Weinrich  
Morristown, NJ

Robert F. Whalen  
Endicott, NY

Kevin Theodore Williams  
Southfield, MI

ELAINE M. BIXLER,  
*Executive Director and Secretary  
The Disciplinary Board of the  
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 04-9. Filed for public inspection January 2, 2004, 9:00 a.m.]