

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 3]

Proposed Amendment to Rule 311

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rule of Appellate Procedure 311(a)(4). The amendment is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

Proposed new material is bold while deleted material is bold and bracketed.

All communications in reference to the proposed amendment should be sent no later than July 1, 2008 to:

Dean R. Phillips, Chief Counsel
D. Alicia Hickok, Deputy Counsel
Scot Withers, Deputy Counsel
Appellate Court Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055

or Fax to
717-795-2116

or E-Mail to
appellaterules@pacourts.us

An Explanatory Comment precedes the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

*By the Appellate Court
Procedural Rules Committee*

HONORABLE JANE CUTLER GREENSPAN,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 3. ORDERS FROM WHICH APPEALS MAY BE TAKEN

INTERLOCUTORY APPEALS

Rule 311. Interlocutory Appeals as of Right.

(a) *General Rule.* An appeal may be taken as of right and without reference to Pa.R.A.P. 341(c) from:

* * * * *

(4) *Injunctions.* An order of a court granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except for [injunctions] an order entered pursuant to:

(i) [Sections] Section 3323(f) [and] or 3505(a) of the Divorce Code, 23 Pa.C.S. §§ 3323(f), [and] 3505(a) [.]; or

[A decree nisi granting or denying an injunction is not appealable as of right under this rule, unless the decree nisi (i) grants an injunction effective upon the entry of a decree nisi or (ii) dissolves a previously granted preliminary injunction effective upon the entry of a decree nisi.]

(ii) Pa.R.C.P. 1038 that is not immediately effective upon its entry.

* * * * *

Official Note: Authority—This rule implements 42 Pa.C.S. § 5105(c) (interlocutory appeals), which provides:

* * * * *

The 1996 amendment to paragraph (a)(4) reconciled two conflicting lines of cases by adopting the position that generally an appeal may not be taken from a decree nisi granting or denying a permanent injunction. [*Humphreys v. Cain*, 84 Pa. Cmwlth. 222, 474 A.2d 353 (1984). To the extent that *Agra Enterprises, Inc. v. Brunozzi*, 302 Pa. Super. 166, 170, 448 A.2d 579, 581 (1982); *Martin Industrial Supply Corp. v. Riffert*, 366 Pa. Super. 89, 91, 530 A.2d 906, 907 (1987); *Bolus v. Ryder Truck Rental, Inc.*, 258 Pa. Super. 387, 388, 517 A.2d 995, 996 (1986); *Commonwealth ex. rel. Lewis v. Allowill Realty Corp.*, 330 Pa. Super. 32, 35, 478 A.2d 1334, 1336 (1984); and *Neshaminy Constructors, Inc. v. Philadelphia, Pennsylvania Building and Construction Trades Council, AFL-CIO*, 303 Pa. Super. 420, 422 n.1, 449 A.2d 1389, 1390 n.1 (1982) permit an immediate appeal from a decree nisi granting or denying prospective injunctive relief, they are overruled.

The 1996 amendment to paragraph (a)(4) simultaneously recognized two exceptions to the non-appealability of a decree nisi; these exceptions, identified as phrases (a)(4)(i) and (ii), permit an appeal from a decree nisi if the order has the immediate effect of changing the status quo. Thus, if the decree nisi grants or denies permanent injunctive relief to become effective when the decree nisi is made final, no appeal is possible. If, however, the decree nisi provides for permanent injunctive relief upon entry of the decree nisi, or strikes a previously granted preliminary injunction upon entry of the decree nisi, the decree nisi is appealable pursuant to phrase (a)(4)(1) or (ii).]

The 2008 amendment to the rule conformed the rule to the 2003 amendments to the Pennsylvania Rules of Civil Procedure abolishing actions in equity and thus eliminating the *decree nisi*. Because *decrees nisi* were in general not appealable to the extent they were not effective immediately upon entry, this principle has been expressly incorporated into the body of the rule as applicable to any injunction.

The word “court” has been inserted to clarify that orders or decisions that grant, modify, or deny injunctive relief but are issued by Commonwealth administrative agencies are not immediately appealable under this rule. See *Columbia Gas of Pennsylvania, Inc. v. Pennsylvania Public Utilities Commission*, 104 Pa. Commw. 142, 521 A.2d 105 (1987), petition for allowance of appeal denied, 517 Pa. 628, 538 A.2d 880 (1988); *Pittsburgh Bd. of Pub.*

***Educ. v. Pa. Human Rels. Comm'n*, 820 A.2d 838 (Pa. Commw. 2003); *Green Mt. Energy Co. v. Pennsylvania Public Utilities Commission*, 812 A.2d 740 (Pa. Commw. 2002).** Where such an agency has issued an interlocutory order that is not immediately appealable under Rule 311 or otherwise and there is no adequate remedy at law, a petition for review in the nature of a complaint in equity addressed to the original jurisdiction of the Commonwealth Court is available.

* * * * *

Note on Second Publication, May 2008

Proposed revisions to Rule 311(a)(4) were originally published for comment in the summer of 2006. The primary change in the proposed rule was to remove references to decrees nisi. The proposal also conformed the rule to case law by specifying that only orders of courts could be appealed immediately under Rule 311(a)(4). Based upon comments received from the Bar, the Committee formed a special Subcommittee to examine whether it is possible to interpret Rule 311(a)(4) or to craft an equivalent rule to provide relief during the course of an administrative action. Members of the Subcommittee consulted with Commonwealth administrative agencies as well. Ultimately, the Subcommittee concluded that the Commonwealth Court did not have the same supervisory jurisdiction over agencies that the Superior Court exercises over the courts of common pleas, and that it was a necessarily accurate statement of the law to say that only an order of a court is immediately appealable under Rule 311(a)(4).

If a person is aggrieved by an order of a Commonwealth administrative agency that is not immediately appealable and otherwise qualifies for equitable relief, however, that person can initiate an action in equity in the original jurisdiction of the Commonwealth Court. While this has always been the case, the Subcommittee considered it important to draw the attention of the Bar to that fact, given the response to the proposed rule change as originally published. Accordingly, the new proposed recommendation includes additional material in the Note.

Because the case law has clarified the circumstances under which post-trial motions are required, it was not considered necessary to state that none are needed under Rule 311(a)(4), and that reference was removed. Otherwise, the proposed rule change conforms to the prior recommendation.

[Pa.B. Doc. No. 08-1014. Filed for public inspection May 30, 2008, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Residential Mortgage Foreclosure Diversion Pilot Program June 3, 2008, and July 1, 2008, Sheriff Sales; President Judge General Court Regulation No. 2008-01

Order

And Now, this 15th day of May, 2008, in order to further permit the implementation of the Residential

Mortgage Foreclosure Diversion Pilot Program adopted by President Judge General Court Regulation 2008-01, the sale of all owner occupied residential premises originally scheduled to be exposed to judicial sale on June 3, 2008 to enforce a residential mortgage, as well as the sale of all owner occupied residential premises which were originally scheduled to be exposed to judicial sale to enforce a residential mortgage at the Sheriff Sale on July 1, 2008 are, subject to further order of this court, postponed until the Sheriff Sale scheduled for September 9, 2008 and until the Sheriff Sale scheduled for October 7, 2008, respectively, in order that the Conciliation Conference required by President Judge General Court Regulation No. 2008-01 can be held.

It is further *Ordered, Adjudged* and *Decreed* that:

(a) unless the sales are otherwise individually stayed or postponed, the Sheriff of Philadelphia shall proceed to sell on June 3, 2008, and July 1, 2008, as scheduled and advertised, all premises which are not owner occupied, which are not residential, or which are not exposed to judicial sale to enforce a residential mortgage, (these properties shall hereinafter be collectively referred to as "Non Owner Occupied Non Residential Properties").

(b) because of the difficulty involved in determining whether or not a Writ of Execution comes within the scope of this Order, all real estate scheduled for sale by the Sheriff of the City of Philadelphia on June 3, 2008, or on July 1, 2008, shall be postponed to the Sheriff Sale scheduled for September 9, 2008, and October 7, 2008, respectively unless:

(1) counsel for the Plaintiff on the Writ of Execution, on or before May 21, 2008, for the properties scheduled for sale on June 3, 2008, and on or before June 6, 2008, for properties scheduled for sale July 1, 2008, files, with the Prothonotary, and serves on the defendant (as provided in subsection 3) a copy of this Order and a Certificate, substantially in the format attached hereto as Exhibit "A", certifying whether the property on the Sheriff Sale list is or is not an Owner Occupied Residential Premises Exposed to Judicial Sale to Enforce a Residential Mortgage within the meaning of this Order;

(2) if Counsel for the Plaintiff certifies that a specific property is not a residential property within the meaning of this Order, is not owner occupied as of this date, is not exposed to judicial sale to enforce a residential mortgage, or is vacant, counsel shall mail to defendant(s) a copy of the Certificate, and the Important Notice substantially in the format attached hereto as Exhibit "B" and **Defendant's Objection to Plaintiff's Certification And Request For Postponement Of Sale** substantially in the format attached hereto as Exhibit "C" and properly completed by Plaintiff's attorney to reflect the correct dates for the respective sheriff sales;

(3) a copy of the Certificate and other documentation, as appropriate, shall be served on the Defendant by regular mail to the last known address of the Defendant(s) and to the address of the premises scheduled for sale;

(4) an Affidavit of Service, substantially in the format attached hereto as Exhibit "D" shall be filed with the Prothonotary along with a copy of the documents served upon the defendants;

(5) any Defendant who disagrees with the Certification filed by the Plaintiff which stated that the premises are not residential, or are not owner occupied, or are not exposed to judicial sale to enforce a residential mortgage must file an Objection, substantially in the format attached hereto as Exhibit "C," on or before May 29, 2008, for the properties listed for sale on June 3, 2008, and on or before June 23, 2008, for the properties listed for sale July 1, 2008; and

(6) based upon the information requested in item (1), this Court shall issue an order no later than May 30, 2008 identifying which owner occupied residential premises subject to this Order are postponed to the September 9, 2008, Sheriff Sale, with respect to the June sales and shall issue an order before the July 1, 2008, Sheriff Sale identifying which owner occupied residential premises subject to this Order are postponed to the October 7, 2008, Sheriff Sale;

(c) the term "Residential Premises" means real property located within the City and County of Philadelphia containing not more than four residential units and shall include a residential condominium unit or a residential co-op unit;

(d) as authorized by Pa.R.C.P. 3129.3(a), any writ of execution which scheduled premises for judicial sale on June 3, 2008, or July 1, 2008, which is being postponed as required by this Order, shall be permitted to proceed to judicial sale on September 9, 2008, or October 7, 2008, respectively, or thereafter, without further posting, notice, advertisement or affidavit pursuant to Pa.R.Civ.P. 3129.1 to 3129.3. Moreover, the postponement provided in this Order shall not affect the Plaintiffs right to postpone the sale twice further up to 130 days as permitted by Pa.R.C.P. 3129.3(b).

(e) This Order shall be published in the *Pennsylvania Bulletin* and *The Legal Intelligencer*; and shall be posted on the website of the First Judicial District of Pennsylvania at courts.phila.gov.

(f) The Sheriff shall advertise the entry of this Order (without Exhibits) on May 19, 2008, May 26, 2008, June 2, 2008, and June 30, 2008 in the *Philadelphia Inquirer*.

(g) The Sheriff shall announce the Postponements at the time and place scheduled for the June and July sales.

(h) Notwithstanding the foregoing, Sheriff's Sales postponed from April 1, 2008 and May 6, 2008, until July 1, 2008 by Order dated April 16, 2008 shall proceed to sale absent the entry of individual orders addressing and further postponing the same, as warranted by their particular circumstances.

By the Court,

HONORABLE C. DARNELL JONES, II,
President Judge, Court of Common Pleas

HONORABLE D. WEBSTER KEOGH,
*Administrative Judge, Trial Division
Court of Common Pleas*

EXHIBIT A

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

_____ : _____ TERM, 200 _____
Plaintiff, :
: NO. _____
v. :
: **Book No.** _____
Defendant : **Writ No.** _____
: **Sale Date:** _____

Certification Regarding Status of Foreclosed Premises as Residential and Owner Occupied

Pursuant to the Order dated _____ issued by President Judge C. Darnell Jones II and entered in connection with the President Judge General Court Regulation No. 2008-01, I hereby certify that the premises at issue in this action known and numbered as:

Premises Address: _____
Philadelphia, PA _____ Ward: _____
BRT Number: _____

(CHECK APPLICABLE BOX OR BOXES)

PROTHY CODE

- CEROC** is an owner occupied Residential Premises exposed to judicial sale to enforce a residential mortgage;
- CERNO** is not a Residential Premises within the meaning of the aforementioned order;
- CERNO** is not owner occupied as of this date;
- CERNO** is not exposed to judicial sale to enforce a residential mortgage;
- CERNO** is vacant.

The undersigned verifies that the statements made herein are true and correct. I understand that false statements are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____
Signature of Plaintiff
or Counsel for Plaintiff

EXHIBIT B

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

_____ : _____ TERM, 200 _____
Plaintiff, :
: NO. _____
v. :
: **Book No.** _____
Defendant : **Writ No.** _____
: **Sale Date:** _____

IMPORTANT NOTICE

YOUR PROPERTY HAS BEEN LISTED FOR SHERIFF SALE ON (JUNE 3, 2008) or (July 1, 2008) (select one) (A SALE WHICH MAY HAVE BEEN POSTPONED FROM AN EARLIER DATE). IF YOU OWN AND LIVE IN THE PROPERTY LISTED FOR SALE AND IT HAS FOUR OR FEWER RESIDENTIAL UNITS, YOU CAN HAVE THE

SHERIFF SALE OF YOUR PROPERTY POSTPONED FROM (June 3, 2008 to September 9, 2008) (July 1, 2008 to October 7, 2008), SO YOU CAN PARTICIPATE IN A CONFERENCE THAT MAY ENABLE YOU TO SAVE YOUR HOME. YOU CAN INSURE YOUR ABILITY TO PARTICIPATE IN THE CONFERENCE BY FILING THE OBJECTION TO PLAINTIFF'S CERTIFICATION, ATTACHED TO THIS NOTICE, IN ROOM 278 CITY HALL, PHILADELPHIA, PA 19107 ON OR BEFORE 2:00 PM, (May 29, 3008) (June 23, 2008). YOU MUST MAIL A COPY TO THE PLAINTIFF'S ATTORNEY AT THE FOLLOWING ADDRESS:

[Attorney name and address]

UNLESS THE OBJECTION TO PLAINTIFF'S CERTIFICATION IS RECEIVED BY THE PROTHONOTARY, IN ROOM 278 CITY HALL, PHILADELPHIA, PA 19107 ON OR BEFORE 2:00 PM, (May 29, 2008) (June 23, 2008) THE PREMISES MAY BE SOLD ON (June 3, 2008) (July 1, 2008).

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO THE LAWYER. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL ASSISTANCE.

Philadelphia Bar Association
Lawyer Referral and Information Service
One Reading Center
Philadelphia, PA 19107
Telephone: 215-238-1701

SAVE YOUR HOME PHILLY HOTLINE
(215) 334-HOME

EXHIBIT C

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA
COUNTY CIVIL TRIAL DIVISION

Plaintiff, : _____ TERM, 200 ____
:
: NO. _____
v. :
: Book No. _____
Defendant : Writ No. _____
: Sale Date: _____

DEFENDANT'S OBJECTION TO PLAINTIFF'S CERTIFICATION AND REQUEST FOR POSTPONEMENT OF SALE

I, the undersigned, object to Plaintiff's Certification and in support thereof I certify that:

- 1. I am the owner or an owner or an heir to a deceased owner of the property identified above;
2. That I live in the property described above;
3. That the property is my principal residential property;
4. That the judgment entered against me in the case described above was entered against me to collect a mortgage debt on my home; and

I request that the Sheriff Sale of the above premises be postponed so that I can take part in the conciliatory conference required for owner occupied residential premises.

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

Date: _____
Signature of Defendant
Address:
Philadelphia, PA _____
Phone Number:
Fax Number:
Email Address:

EXHIBIT D

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

Plaintiff, : _____ TERM, 200 ____
:
: NO. _____
v. :
: Book No. _____
Defendant : Writ No. _____
: Sale Date: _____

CERTIFICATE OF SERVICE

The undersigned verifies, subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, that the attached [Certification was] or [Certification, Important Notice, and Defendant's Objection To Plaintiff's Certification And Request For Postponement of Sale form were] mailed to the defendant(s) at their last known address and, if different, to the address of the premises subject to sale and to counsel of record, if any, and to the owners of the noted premises via first class mail, as noted below.

NAME(S) ADDRESS(ES)
Date: _____
Counsel for Plaintiff
[Pa.B. Doc. No. 08-1015. Filed for public inspection May 30, 2008, 9:00 a.m.]

Title 255—LOCAL COURT RULES

COLUMBIA AND MONTOUR COUNTIES
Amendment to Local Court Rule 117; No. AD-4-2008

Rule 117—Magisterial District Judge Coverage for Issuing Warrants; Preliminary Arraignments and Setting and Accepting Bail

Order

And Now, this 13th, day of May 2008, Local Rule 117(2)(a), 26th Judicial District, Columbia County Branch, is hereby amended as follows:

Accepting Bail:

Between the hours of 5 p.m. and 8 a.m., Monday through Friday, and on weekends and county legal holidays, the Warden of the Columbia County Prison, or his designee, shall be authorized to accept bail pursuant to, and subject to the limitations of the Pennsylvania Rules of Criminal Procedure. The Warden's authority is limited to accepting the bail deposit, delivering the bail to the issuing authority or the Columbia County Clerk of Courts and, under the Pennsylvania Rules of Criminal Procedure 525, releasing the defendant upon execution of the bail bond.

It is further Ordered that the Columbia County Court Administrator shall:

- (a) File seven (7) certified copies of this Order with the Administrative Office of Pennsylvania Courts;
- (b) Distribute two (2) certified copies of this Order and a computer diskette to the Legislative Reference Bureau for Publication in the *Pennsylvania Bulletin*;
- (c) File one (1) certified copy with the Criminal Rules Committee.

This Order (Amended Local Rule) shall become effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

By the Court

SCOTT W. NAUS,
President Judge

[Pa.B. Doc. No. 08-1016. Filed for public inspection May 30, 2008, 9:00 a.m.]

DAUPHIN COUNTY**Promulgation of Local Rule; No. 1793 S 1989****Order**

And Now, this 15th day of May, 2008, Dauphin County Local Rule 215.3(3) is amended as follows:

- (3) The Administrative Application for Status Conference shall be in paragraph form and shall set forth the complete [**and**] factual **and** procedural history of the case and the reasons necessitating the conference. A copy of the Application shall be served on all opposing counsel and pro se parties and no response shall be required. An original and one copy of the Application shall be filed with the Prothonotary. The Prothonotary shall forward the original to the Court Administrator's Office for assignment to a judge and shall retain the copy in the file. The Court Administrator's Office, under the direction and supervision of the Civil Calendar Judge, shall promptly assign the Application for Status Conference to a judge who has had prior significant involvement with the case or if no judge has had prior significant involvement, to a judge on a rotating basis.

This amendment shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

NOTE: This change is made to correct a syntax error overlooked during proofreading.

By The Court

RICHARD A. LEWIS,
President Judge

[Pa.B. Doc. No. 08-1017. Filed for public inspection May 30, 2008, 9:00 a.m.]
