THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 3, 5 AND 9]

Order Amending Rules 311, 313, 341, 512, 902, and 904 of the Pennsylvania Rules of Appellate Procedure; No. 306 Appellate Procedural Rules Docket

Order

Per Curiam

And Now, this 18th day of May, 2023, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 311, 313, 341, 512, 902, and 904 of the Pennsylvania Rules of Appellate Procedure are amended in the attached form.

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

Additions to the rule are shown in bold and are underlined.

Deletions from the rule are shown in bold and brackets.

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 the following types of orders:

(1) *Affecting Judgments.* An order refusing to open, vacate, or strike off a judgment. If orders opening, vacating, or striking off a judgment are sought in the alternative, no appeal may be filed until the court has disposed of each claim for relief.

(2) *Attachments, etc.* An order confirming, modifying, dissolving, or refusing to confirm, modify or dissolve an attachment, custodianship, receivership, or similar matter affecting the possession or control of property, except for orders pursuant to 23 Pa.C.S. §§ 3323(f), 3505(a).

(3) *Change of Criminal Venue or Venire.* An order changing venue or venire in a criminal proceeding.

(4) *Injunctions.* An order that grants or denies, modifies or refuses to modify, continues or refuses to continue, or dissolves or refuses to dissolve an injunction unless the order was entered:

(i) Pursuant to 23 Pa.C.S. §§ 3323(f), 3505(a); or

(ii) After a trial but before entry of the final order. Such order is immediately appealable, however, if the order enjoins conduct previously permitted or mandated or permits or mandates conduct not previously mandated or permitted, and is effective before entry of the final order.

(5) *Peremptory Judgment in Mandamus.* An order granting peremptory judgment in mandamus.

(6) *New Trials.* An order in a civil action or proceeding awarding a new trial, or an order in a criminal proceeding awarding a new trial where the defendant claims that the proper disposition of the matter would be an absolute discharge or where the Commonwealth claims that the trial court committed an error of law.

(7) *Partition.* An order directing partition.

(8) *Other Cases.* An order that is made final or appealable by statute or general rule, even though the order does not dispose of all claims and of all parties.

(b) *Order Sustaining Venue or Personal or In Rem Jurisdiction.* An appeal may be taken as of right from an order in a civil action or proceeding sustaining the venue of the matter or jurisdiction over the person or over real or personal property if:

(1) the plaintiff, petitioner, or other party benefiting from the order files of record within ten days after the entry of the order an election that the order shall be deemed final; or

(2) the court states in the order that a substantial issue of venue or jurisdiction is presented.

(c) *Changes of Venue, etc.* An appeal may be taken as of right from an order in a civil action or proceeding changing venue, transferring the matter to another court of coordinate jurisdiction, or declining to proceed in the matter on the basis of *forum non conveniens* or analogous principles.

(d) *Commonwealth Appeals in Criminal Cases.* In a criminal case, under the circumstances provided by law, the Commonwealth may take an appeal as of right from an order that does not end the entire case where the Commonwealth certifies in the notice of appeal that the order will terminate or substantially handicap the prosecution.

(e) *Orders Overruling Preliminary Objections in Eminent Domain Cases.* An appeal may be taken as of right from an order overruling preliminary objections to a declaration of taking and an order overruling preliminary objections to a petition for appointment of a board of viewers.

(f) *Administrative Remand.* An appeal may be taken as of right from:

(1) an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer for execution of the adjudication of the reviewing tribunal in a manner that does not require the exercise of administrative discretion; or

(2) an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer that decides an issue that would ultimately evade appellate review if an immediate appeal is not allowed.

(g) *Waiver of Objections.*

(1) Except as provided in subdivision (g)(1), failure to file an appeal of an interlocutory order does not waive any objections to the interlocutory order:

(i) [Rescinded].

(ii) Failure to file an appeal from an interlocutory order under subdivision (b)(1) or subdivision (c) of this rule shall constitute a waiver of all objections to jurisdiction over the person or over the property involved or to venue, etc., and the question of jurisdiction or venue shall not be considered on any subsequent appeal.

(iii) Failure to file an appeal from an interlocutory order under subdivision (e) of this rule shall constitute a waiver of all objections to such an order.

(iv) Failure to file an appeal from an interlocutory order refusing to compel arbitration, appealable under 42 Pa.C.S. § 7320(a)(1) and subdivision (a)(8) of this rule, shall constitute a waiver of all objections to such an order.

(2) Where no election that an interlocutory order shall be deemed final is filed under subdivision (b)(1) of this rule, the objection may be raised on any subsequent appeal.

(h) *Further Proceedings in the Trial Court.* Pa.R.A.P. 1701(a) shall not be applicable to a matter in which an interlocutory order is appealed under subdivisions (a)(2) or (a)(4) of this rule.

Comment

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

> (c) *Interlocutory appeals.* There shall be a right of appeal from such interlocutory orders of tribunals and other government units as may be specified by law. The governing authority shall be responsible for a continuous review of the operation of section 702(b) (relating to interlocutory appeals by permission) and shall from time to time establish by general rule rights to appeal from such classes of interlocutory orders, if any, from which appeals are regularly permitted pursuant to section 702(b).

The appeal rights under this rule and under Pa.R.A.P. 312, Pa.R.A.P. 313, Pa.R.A.P. 341, and Pa.R.A.P. 342 are cumulative, and no inference shall be drawn from the fact that two or more rules may be applicable to an appeal from a given order. **Pa.R.A.P. 902 addresses whether separate notices of appeal are required to be filed where an order appealable under this rule is entered on more than one docket.**

Subdivision (a)—If an order falls under Pa.R.A.P. 311, an immediate appeal may be taken as of right simply by filing a notice of appeal. The procedures set forth in Pa.R.A.P. 341(c) and 1311 do not apply to an appeal under Pa.R.A.P. 311.

Subdivision (a)(3)—Change of venire is authorized by 42 Pa.C.S. § 8702. Pa.R.Crim.P. 584 treats changes of venue and venire the same. Thus, an order changing venue or venire is appealable by the defendant or the Commonwealth, while an order refusing to change venue or venire is not. *See also* Pa.R.A.P. 903(c)(1) regarding time for appeal.

Subdivision (a)(4)—This subdivision does not apply to an order granting or denying an application filed with a trial court under Pa.R.A.P. 1732(a) (stays or injunctions pending appeal). Any further relief may be sought directly from the appellate court under Pa.R.A.P. 1732(b). *See In re Passarelli Trust*, 231 A.3d 969 (Pa. Super. 2020).

Subdivision (a)(5) authorizes an interlocutory appeal as of right from an order granting a motion for peremptory judgment in mandamus without the condition precedent of a motion to open the peremptory judgment in mandamus. An order denying a motion for peremptory judgment in mandamus remains unappealable.

Subdivision (a)(6)—See Commonwealth v. Wardlaw, 249 A.3d 937 (Pa. 2021) (holding that an order declaring a mistrial only is not "an order in a criminal proceeding awarding a new trial").

Subdivision (a)(8) recognizes that orders that are procedurally interlocutory may be made appealable by statute or general rule. For example, see 27 Pa.C.S. § 8303. The Pennsylvania Rules of Civil Procedure, the Pennsylvania Rules of Criminal Procedure, etc., should also be consulted. See Pa.R.A.P. 341(f) for appeals of Post Conviction Relief Act orders.

Subdivision (b) is based in part on the Act of March 5, 1925, P.L. 23. The term "civil action or proceeding" is broader than the term "proceeding at law or in equity" under the prior practice and is intended to include orders entered by the orphans' court division. *Cf. In the Matter of Phillips*, 370 A.2d 307**, 308** (Pa. 1977).

In subdivision (b)(1), a plaintiff is given a qualified option to gamble that the venue of the matter or personal or *in rem* jurisdiction will be sustained on appeal because it can be overridden by petition for and grant of permission to appeal under Pa.R.A.P. 312. Subdivision (g)(1)(ii) provides that if the plaintiff timely elects final treatment, the failure of the defendant to appeal constitutes a waiver. The appeal period under Pa.R.A.P. 903 ordinarily runs from the entry of the order, and not from the date of filing of the election, which procedure will ordinarily afford at least 20 days within which to appeal. *See* Pa.R.A.P. 903(c)**(2)** as to treatment of special appeal times. If the plaintiff does not file an election to treat the order as final, the case will proceed to trial unless (1) the trial court makes a finding under subdivision (b)(2) of the existence of a substantial question of **venue or** jurisdiction and the defendant elects to appeal, (2) an interlocutory appeal is permitted under Pa.R.A.P. 312, or (3) another basis for appeal appears, for example, under subdivision (a)(1), and an appeal is taken. Presumably, a plaintiff would file such an election where plaintiff desires to force the defendant to decide promptly whether the objection to venue or jurisdiction will be seriously pressed. Subdivision (b) does not cover orders that do not sustain jurisdiction because they are, of course, final orders appealable under Pa.R.A.P. 341.

Subdivision (c) is based in part on the **[act]** **Act** of March 5, 1925**, [( )]**P.L. 23**[, No. 15)]**. The term "civil action or proceeding" is broader than the term "proceeding at law or in equity" under the prior practice and is intended to include orders entered by the orphans' court division. *Cf. In the Matter of Phillips*, 370 A.2d 307, 308 (Pa. 1977). Subdivision (c) covers orders that do not sustain venue, such as orders under **[Pa.R.C.P.] Pa.R.Civ.P.** 1006(d) and (e).

However, the subdivision does not relate to a transfer under 42 Pa.C.S. § 933(c)(1), 42 Pa.C.S. § 5103, or any other similar provision of law, because such a transfer is not to a "court of coordinate jurisdiction" within the meaning of this rule; it is intended that there shall be no right of appeal from a transfer order based on improper subject matter jurisdiction. Such orders may be appealed by permission under Pa.R.A.P. 312, or an appeal as of right may be taken from an order dismissing the matter for lack of jurisdiction. *See Balshy v. Rank*, 490 A.2d 415, 416 (Pa. 1985).

Other orders relating to subject matter jurisdiction (which for this purpose does not include questions as to

the form of action, such as between law and equity, or divisional assignment, *see* 42 Pa.C.S. § 952) will be appealable under Pa.R.A.P. 341 if jurisdiction is not sustained, and otherwise will be subject to Pa.R.A.P. 312.

Pursuant to subdivision (d), the Commonwealth has a right to take an appeal from an interlocutory order provided that the Commonwealth certifies in the notice of appeal that the order terminates or substantially handicaps the prosecution. *See* Pa.R.A.P. 904(e). This rule supersedes *Commonwealth v. Dugger*, 486 A.2d 382, 386 (Pa. 1985). *Commonwealth v. Dixon*, 907 A.2d 468, 471 n.8 (Pa. 2006).

Pursuant to subdivision (f), there is an immediate appeal as of right from an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer for execution of the adjudication of the reviewing tribunal in a manner that does not require the exercise of administrative discretion. Examples of such orders include: a remand by a court of common pleas to the Department of Transportation for removal of points from a driver's license; and an order of the Workers' Compensation Appeal Board reinstating compensation benefits and remanding to a referee for computation of benefits.

Subdivision (f) further permits immediate appeal from an order of a common pleas court or government unit remanding a matter to an administrative agency or hearing officer that decides an issue that would ultimately evade appellate review if an immediate appeal is not allowed. *See Lewis v. Sch. Dist. of Philadelphia*, 690 A.2d 814, 816 (Pa. Cmwlth. 1997).

Subdivision (g)(1)**[(iii)]**__(iv)__ addresses waiver in the context of appeals from various classes of arbitration orders. All six types of arbitration orders identified in 42 Pa.C.S. § 7320(a) are immediately appealable as of right. Differing principles govern these orders, some of which are interlocutory and some of which are final. The differences affect whether an order is appealable under this rule or Pa.R.A.P. 341(b) and whether an immediate appeal is necessary to avoid waiver of objections to the order.

- Section 7320(a)(1)—An interlocutory order refusing to compel arbitration under 42 Pa.C.S. § 7320(a)(1) is immediately appealable pursuant to Pa.R.A.P. 311(a)(8). Failure to appeal the interlocutory order immediately waives all objections to it. *See* Pa.R.A.P. 311(g)(1)(iv). This supersedes the holding in *Cooke v. Equitable Life Assurance Soc'y*, 723 A.2d 723, 726 (Pa. Super. 1999). Pa.R.A.P. 311(a)(8) and former Pa.R.A.P. 311(g)(1)(i) require a finding of waiver based on failure to appeal the denial order when entered).

- Section 7320(a)(2)—Failure to appeal an interlocutory order granting an application to stay arbitration under 42 Pa.C.S. § 7304(b) does not waive the right to contest the stay; an aggrieved party may appeal such an order immediately under Pa.R.A.P. 311(a)(8) or challenge the order on appeal from the final judgment.

- Section 7320(a)(3)—(a)(6)—If an order is appealable under 42 Pa.C.S. § 7320(a)(3), (4), (5), or (6) because it is final, that is, the order disposes of all claims and of all parties, see Pa.R.A.P. 341(b), failure to appeal immediately waives all issues. If the order does not dispose of all claims or of all parties, then the order is interlocutory. An aggrieved party may appeal such an order immediately under Pa.R.A.P. 311(a)(8) or challenge the order on appeal from the final judgment.

Subdivision (h)—See note to Pa.R.A.P. 1701(a).

Rule 313. Collateral Orders.

(a) *General* **[** ***rule.—*** **]** __***Rule.***__ An appeal may be taken as of right from a collateral order of a trial court or other government unit.

(b) *Definition.***[—]** A collateral order is an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost.

[***Official Note*** **]** __Comment__:

If an order meets the definition of a collateral order, it is appealed by filing a notice of appeal or petition for review.

Pa.R.A.P. 313 is a codification of existing case law with respect to collateral orders. *See Pugar v. Greco*, 394 A.2d 542, 545 (Pa. 1978) (quoting *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949)).

Pennsylvania appellate courts have found a number of classes of orders to fit the collateral order definition. Collateral order cases are collected and discussed in Darlington, McKeon, Schuckers and Brown, Pennsylvania Appellate Practice 2015-2016 Edition, §§ 313:1—313:201. Examples include an order denying a petition to permit the payment of death taxes, *Hankin v. Hankin*, 487 A.2d 1363 (Pa. Super. 1985), and an order denying a petition for removal of an executor, *Re: Estate of Georgiana*, 458 A.2d 989 (Pa. Super. 1983), *aff'd*, 475 A.2d 744 (Pa. 1984), and an order denying a pre-trial motion to dismiss on double jeopardy grounds if the trial court does not also make a finding that the motion to dismiss is frivolous. *See Commonwealth v. Brady*, 508 A.2d 286, 289—91 (Pa. 1986) (allowing an immediate appeal from denial of double jeopardy claim under collateral order doctrine where trial court does not make a finding of frivolousness); *Commonwealth v. Orie*, 22 A.3d 1021 (Pa. 2011). An order denying a pre-trial motion to dismiss on double jeopardy grounds that also finds that the motion to dismiss is frivolous is not appealable as of right as a collateral order, but may be appealable by permission under Pa.R.A.P. 1311(a)(3).

Pa.R.A.P. 902 addresses whether separate notices of appeal are required to be filed where an order appealable under this rule is entered on more than one docket.

FINAL ORDERS

Rule 341. Final Orders; Generally.

(a) *General* **[** ***rule.—*** **]** __***Rule.***__ Except as prescribed in **[paragraphs]** __subdivisions__ (d) and (e) of this rule, an appeal may be taken as of right from any final order of a government unit or trial court.

(b) *Definition of* **[** ***final order.—*** **]** __***Final Order.***__ A final order:

(1) disposes of all claims and of all parties;

(2) [Rescinded];

(3) is entered as a final order pursuant to **[paragraph]** __subdivision__ (c) of this rule; or

(4) is an order pursuant to **[paragraph]** **subdivision** (f) of this rule.

(c) *Determination of* **[*finality.*—]** ***Finality.*** When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the trial court or other government unit may enter a final order as to one or more but fewer than all of the claims and parties only upon an express determination that an immediate appeal would facilitate resolution of the entire case. Such an order becomes appealable when entered. In the absence of such a determination and entry of a final order, any order or other form of decision that adjudicates fewer than all the claims and parties shall not constitute a final order. In addition, the following conditions shall apply:

(1) An application for a determination of finality under **[paragraph]** **subdivision** (c) must be filed within 30 days of entry of the order. During the time an application for a determination of finality is pending, the action is stayed.

(2) Unless the trial court or other government unit acts on the application within 30 days after it is filed, the trial court or other government unit shall no longer consider the application and it shall be deemed denied.

(3) A notice of appeal may be filed within 30 days after entry of an order as amended unless a shorter time period is provided in Pa.R.A.P. 903(c). Any denial of such an application is reviewable only through a petition for permission to appeal under Pa.R.A.P. 1311.

(d) *Superior Court and Commonwealth Court* **[*orders.*—]** ***Orders.*** Except as prescribed by Pa.R.A.P. 1101 no appeal may be taken as of right from any final order of the Superior Court or of the Commonwealth Court.

(e) *Criminal* **[*orders.*—]** ***Orders.*** An appeal may be taken by the Commonwealth from any final order in a criminal matter only in the circumstances provided by law.

(f) *Post Conviction Relief Act* **[*orders*]** ***Orders***.

(1) An order granting, denying, dismissing, or otherwise finally disposing of a petition for post-conviction collateral relief shall constitute a final order for purposes of appeal.

(2) An order granting sentencing relief, but denying, dismissing, or otherwise disposing of all other claims within a petition for post-conviction collateral relief, shall constitute a final order for purposes of appeal.

[*Official Note*] **Comment**:

Related Constitutional and statutory provisions—Section 9 of Article V of the Constitution of Pennsylvania provides that "there shall be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court." The constitutional provision is implemented by 2 Pa.C.S. § 702, 2 Pa.C.S. § 752, and 42 Pa.C.S. § 5105.

Criminal law proceedings—Commonwealth appeals—Orders that do not dispose of the entire case that were formerly appealable by the Commonwealth in criminal cases under Pa.R.A.P. 341 are appealable as interlocutory appeals as of right under **[paragraph (d) of]** Pa.R.A.P. 311**(d)**.

Final orders—pre- and post-1992 practice—The 1992 amendment generally eliminated appeals as of right under Pa.R.A.P. 341 from orders that do not end the litigation as to all claims and as to all parties. Prior to 1992, there were cases that deemed an order final if it had the practical effect of putting a party out of court, even if the order did not end the litigation as to all claims and all parties.

A party needs to file only a single notice of appeal to secure review of prior non-final orders that are made final by the entry of a final order**[, see]**. ***See, e.g.,*** *K.H. v. J.R.*, 826 A.2d 863, 870-71 (Pa. 2003) (**notice of appeal** following trial); *Betz v. Pneumo Abex LLC*, 44 A.3d 27, 54 (Pa. 2012) (**notice of appeal of** summary judgment)**; *Laster v. Unemployment Comp. Bd. of Rev.*, 80 A.3d 831, 832 n.2 (Pa.Cmwlth. 2013) (petition for review of agency decision)**. Where, however, one or more orders resolves issues arising on more than one docket or relating to more than one judgment, separate notices of appeal must be filed. *Malanchuk v. Tsimura*, 137 A.3d 1283, 1288 (Pa. 2016) ("[C]omplete consolidation (or merger or fusion of actions) does not occur absent a complete identity of parties and claims; separate actions lacking such overlap retain their separate identities and require distinct judgments"); *Commonwealth v. C.M.K.*, 932 A.2d 111, 113 & n.3 (Pa. Super. 2007) (quashing appeal taken by single notice of appeal from order on remand for consideration under Pa.R.Crim.P. 607 of two persons' judgments of sentence).

The 1997 amendments to **[paragraphs]** **subdivisions** (a) and (c), substituting the conjunction "and" for "or," are not substantive. The amendments merely clarify that by definition any order that disposes of all claims will dispose of all parties and any order that disposes of all parties will dispose of all claims.

Rescission of **[*subparagraph*]** ***subdivision*** *(b)(2)*—Former **[subparagraph]** **subdivision** (b)(2) provided for appeals of orders defined as final by statute. The 2015 rescission of **[subparagraph]** **subdivision** (b)(2) eliminated a potential waiver trap created by legislative use of the adjective "final" to describe orders that were procedurally interlocutory but nonetheless designated as appealable as of right. Failure to appeal immediately an interlocutory order deemed final by statute waived the right to challenge the order on appeal from the final judgment. Rescinding **[subparagraph]** **subdivision** (b)(2) eliminated this potential waiver of the right to appeal. If an order designated as appealable by a statute disposes of all claims and of all parties, it is appealable as a final order pursuant to Pa.R.A.P. 341. If the order does not meet that standard, then it is interlocutory regardless of the statutory description. Pa.R.A.P. 311(a)(8) provides for appeal as of right from an order that is made final or appealable by statute or general rule, even though the order does not dispose of all claims or of all parties and, thus, is interlocutory. Pa.R.A.P. 311(g) addresses waiver if no appeal is taken immediately from such interlocutory order.

One of the further effects of the rescission of **[subparagraph]** **subdivision** (b)(2) is to change the basis for appealability of orders that do not end the case but grant or deny a declaratory judgment. *See Nationwide Mut. Ins. Co. v. Wickett*, 763 A.2d 813, 818 (Pa. 2000); *Pa. Bankers Ass'n v. Pa. Dep't of Banking*, 948 A.2d 790, 798 (Pa. 2008). The effect of the rescission is to eliminate waiver for failure to take an immediate appeal from such an order. A party aggrieved by an interlocutory order granting or denying a declaratory judgment, where the order satisfies the criteria for "finality" under *Pennsylva-*

nia Bankers Association, may elect to proceed under Pa.R.A.P. 311(a)(8) or wait until the end of the case and proceed under **[subparagraph]** **subdivision** (b)(1) of this rule.

An arbitration order appealable under 42 Pa.C.S. § 7320(a) may be interlocutory or final. If it disposes of all claims and all parties, it is final, and, thus, appealable pursuant to Pa.R.A.P. 341. If the order does not dispose of all claims and all parties, that is, the order is not final, but rather interlocutory, it is appealable pursuant to Pa.R.A.P. 311. Failure to appeal an interlocutory order appealable as of right may result in waiver of objections to the order. *See* Pa.R.A.P. 311(g).

[Paragraph] ***Subdivision*** *(c)—Determination of finality*—**[Paragraph]** **Subdivision** (c) permits an immediate appeal from an order dismissing less than all claims or parties from a case only upon an express determination that an immediate appeal would facilitate resolution of the entire case. Factors to be considered under **[paragraph]** **subdivision** (c) include, but are not limited to:

(1) whether there is a significant relationship between adjudicated and unadjudicated claims;

(2) whether there is a possibility that an appeal would be mooted by further developments;

(3) whether there is a possibility that the court or government unit will consider issues a second time; and

(4) whether an immediate appeal will enhance prospects of settlement.

The failure of a party to apply to the government unit or trial court for a determination of finality pursuant to **[paragraph]** **subdivision** (c) shall not constitute a waiver and the matter may be raised in a subsequent appeal following the entry of a final order disposing of all claims and all parties.

Where the government unit or trial court refuses to amend its order to include the express determination that an immediate appeal would facilitate resolution of the entire case and refuses to enter a final order, a petition for permission to appeal under Pa.R.A.P. 1311 of the unappealable order of denial is the exclusive mode of review. The filing of such a petition does not prevent the trial court or other government unit from proceeding further with the matter pursuant to Pa.R.A.P. 1701(b)(6). Of course, as in any case, the appellant may apply for a discretionary stay of the proceeding below.

[Subparagraph] **Subdivision** (c)(2) provides for a stay of the action pending determination of an application for a determination of finality. If the application is denied, and a petition for permission to appeal is filed challenging the denial, a stay or *supersedeas* will issue only as provided under Chapter 17 of these rules.

In the event that a trial court or other government unit enters a final order pursuant to **[paragraph]** **subdivision** (c) of this rule, the trial court or other government unit may no longer proceed further in the matter, except as provided in Pa.R.A.P. 1701(b)(1)—(5).

[*Paragraph*] ***Subdivision*** *(f)—Post Conviction Relief Act Orders*—A failure to timely file an appeal pursuant to **[paragraph]** **subdivision** (f)(2) shall constitute a waiver of all objections to such an order.

Pa.R.A.P. 902 addresses whether separate notices of appeal are required to be filed where an order appealable under this rule is entered on more than one docket.

CHAPTER 5. PERSONS WHO MAY TAKE OR PARTICIPATE IN APPEALS

MULTIPLE APPEALS

Rule 512. Joint Appeals.

Parties interested jointly, severally or otherwise in any order in the same matter or in joint matters or in matters consolidated for the purposes of trial or argument, may join as appellants or be joined as appellees in a single appeal where the grounds for appeal are similar, or any one or more of them may appeal separately or any two or more may join in an appeal.

[*Official Note*] **Comment**:

This describes who may join in a single notice of appeal. The rule does not address whether a single notice of appeal is adequate under the circumstances presented. Under **[Rule]** **Pa.R.A.P.** 341, a single notice of appeal will not be adequate to take an appeal from orders entered on more than one trial court docket. *See* **[Rule]** **Pa.R.A.P.** 341, Note ("Where, however, one or more orders resolves issues arising on more than one docket or relating to more than one judgment, separate notices of appeal must be filed."). **Pa.R.A.P. 902 addresses whether separate notices of appeal are required to be filed where an order appealable under this rule is entered on more than one docket.**

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 902. Manner of Taking Appeal.

(a) ***Requirements.*** An appeal permitted by law as of right from a **[lower]** **trial** court to an appellate court shall be taken by filing a notice of appeal with the clerk of the **[lower]** **trial** court within the time allowed by **[Rule]** **Pa.R.A.P.** 903 (time for appeal). **[Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but it is subject to such action as the appellate court deems appropriate, which may include, but is not limited to, remand of the matter to the lower court so that the omitted procedural step may be taken] A notice of appeal must be filed in each docket in which the order has been entered**.

(b) ***Failure to Comply with Requirements.***

(1) ***Generally.*** **Except as provided in subdivision (b)(2), the failure of a party to comply with the requirements stated in subdivision (a) does not affect the validity of the appeal, but the appeal is subject to such action as the appellate court deems appropriate. Such action may include, but is not limited to, remand of the matter to the trial court so that the omitted procedural step may be taken.**

(2) ***Exception.*** **The failure to file a notice of appeal within the time allowed by Pa.R.A.P. 903 (time for appeal) renders an appeal invalid.**

[*Official Note*: 42 Pa.C.S. § 703 (place and form of filing appeals) provides that appeals, petitions for review, petitions for permission to appeal and peti-

tions for allowance of appeal shall be filed in such office and in such form as may be prescribed by general rule.

This chapter represents a significant simplification of practice. In all appeals the appellant prepares two documents: (1) a simple notice of appeal, and (2) a proof of service. The notice of appeal is filed in the lower court and copies thereof, together with copies of the proof of service, are mailed and delivered to all who need to know of the appeal: other parties, lower court judge, official court reporter. The clerk of the trial court transmits one set of the filed papers to the appellate prothonotary (with the requisite filing fee). The appellate prothonotary notes the appellate docket number on the notice of appeal and may utilize photocopies of the marked-up notice of appeal to notify the parties, the lower court and Administrative Office of the fact of docketing. In an appeal to the Supreme Court, the appellant must also prepare, file and serve and the clerk of the trial court must transmit a jurisdictional statement as required by Rule 909.

The new procedure has a number of advantages: (1) the taking of the appeal is more certain in counties other than Dauphin, Philadelphia and Pittsburgh, because the appellant may toll the time for appeal by filing the notice of appeal in his local court house thereby eliminating the time lost in transmission of the appeal by mail; (2) the initial filing in the lower court raises an immediate caveat on the record before irreversible or undesirable action is taken on the faith of the judgment appealed from; (3) the immediate recording of the appeal below will simplify criminal appeal matters, e.g. by avoiding in certain cases the unnecessary holding and transfer of defendants between sentencing and perfecting an appeal; (4) the new procedure necessarily eliminates the "trap" of failure to perfect an appeal, since the notice of appeal is self-perfecting; and (5) the paper work of all parties and the appellate prothonotary is significantly reduced, since the preparation of the writ of certiorari and certain other papers is eliminated.

The 1986 revision to the last sentence of the rule indicates a change in approach to formal defects. The reference to dismissal of the appeal has been deleted in favor of a preference toward, remanding the matter to the lower court so that the omitted procedural step may be taken, thereby enabling the appellate court to reach the merits of the appeal. Nevertheless, dismissal of the appeal ultimately remains a possible alternative where counsel fails to take the necessary steps to correct the defect. See Note to Rule 301 for examples of when an appeal may be remanded because an order has not been reduced to judgment or final decree and docketed.]

Comment:

Discretionary aspects of sentencing. Section 9781 of the Sentencing Code (42 Pa.C.S. § 9781) provides that the defendant or the Commonwealth may file a "petition for allowance of appeal" of the discretionary aspects of a sentence for a felony or a misdemeanor. The notice of appeal under this chapter (*see* **[Rule] Pa.R.A.P.** 904 (content of the notice of appeal)), in conjunction with the requirements set forth in Pa.R.A.P. 2116(b) and 2119(f), operates as the "petition for allowance of appeal" under the Sentencing Code. No additional wording is required or appropriate in the notice of appeal.

In effect, the filing of the "petition for allowance of appeal" contemplated by the statute is deferred by these rules until the briefing stage, where the question of the appropriateness of the discretionary aspects of the sentence may be briefed and argued in the usual manner. *See* Pa.R.A.P. 2116(b) and **[the]** note **[thereto]**; Pa.R.A.P. 2119(f) and **[the]** note **[thereto]**.

Subdivision (a). **Where cases are consolidated or related, applicable practice in the trial court may result in the order listing multiple dockets and being entered in one or more dockets. Under those circumstances, an appellant who intends to appeal the order in one docket should file a notice of appeal in the appropriate docket listing that docket number. An appellant who intends to appeal the order in more than one docket is required to file a separate notice of appeal in each docket, listing the appropriate docket number. *See Commonwealth v. Walker*, 185 A.3d 969 (Pa. 2018).**

The appellant who intends to appeal the order in more than one docket is cautioned that "no order of a court shall be appealable until it has been entered upon the appropriate docket in the trial court." Pa.R.A.P. 301(a)(1). The burden is on the appellant to cause entry of the order on the appropriate docket in anticipation of taking the appeal. Under these circumstances, the appellant is also cautioned to consider Pa.R.A.P. 301 when calculating the time allowed for filing the notice of appeal pursuant to Pa.R.A.P. 903. Pa.R.A.P. 301 provides that "[w]here under the applicable practice below an order is entered in two or more dockets, the order has been entered for the purposes of appeal when it has been entered in the first appropriate docket." Pa.R.A.P. 301(a)(1).

One exception has been recognized to the requirement of filing separate notices of appeal. An appellant may file a single notice of appeal from an order entered in the lead docket for consolidated civil cases "where all record information necessary to adjudication of the appeal exists, and which involves identical parties, claims and issues." *See Always Busy Consulting, LLC v. Babford & Co., Inc.*, 247 A.3d 1033, 1043 (Pa. 2021).

Subdivision (b). **When it is not apparent from the notice of appeal that the requirements of Pa.R.A.P. 902 have been satisfied, an appellate court may remand, issue a rule, or take other steps that may require the appellant to respond with additional information or to correct a defect. See *Commonwealth v. Young*, 265 A.3d 462 (Pa. 2021), and the Note to Pa.R.A.P. 301 for examples of when an appeal may be remanded because an order has not been reduced to judgment or final decree and docketed.**

If the appellant fails to respond or take the necessary steps to correct a defect, the appellate court may quash the appeal.

The failure to file a timely notice of appeal implicates the jurisdiction of the appellate court and requires quashal of the appeal. *See* 42 Pa.C.S. § 704(b)(1); *Commonwealth v. Williams*, 106 A.3d 583, 587 (Pa. 2014).

Rule 904. Content of the Notice of Appeal.

(a) *Form.***[—]** Except as otherwise prescribed by this rule, the notice of appeal shall be in substantially the following form:

* * * * *

(b) *Caption*.

(1) *General* **[*rule.*—]** ***Rule.*** The parties shall be stated in the caption as they appeared on the record of the trial court at the time the appeal was taken.

(2) *Appeal of* **[*custody action.*—]** ***Custody Action.*** In an appeal of a custody action where the trial court has used the full name of the parties in the caption, upon application of a party and for cause shown, an appellate court may exercise its discretion to use the initials of the parties in the caption based upon the sensitive nature of the facts included in the case record and the best interest of the child.

(c) *Request for* **[*transcript.*—]** ***Transcript.*** The request for transcript contemplated by Pa.R.A.P. 1911 or a statement signed by counsel that either there is no verbatim record of the proceedings or the complete transcript has been lodged of record shall accompany the notice of appeal, but the absence of or defect in the request for transcript shall not affect the validity of the appeal.

(d) *Docket* **[*entry.*—]** ***Entry.*** The notice of appeal shall include a statement that the order appealed from has been entered on the docket. A copy of the docket entry showing the entry of the order appealed from shall be attached to the notice of appeal.

(e) *Content in* **[*criminal cases.*—]** ***Criminal Cases.*** When the Commonwealth takes an appeal pursuant to Pa.R.A.P. 311(d), the notice of appeal shall include a certification by counsel that the order will terminate or substantially handicap the prosecution.

(f) *Content in* **[*children's fast track appeals.*—]** ***Children's Fast Track Appeals.*** In a children's fast track appeal, the notice of appeal shall include a statement advising the appellate court that the appeal is a children's fast track appeal.

(g) *Completely Consolidated Civil Cases.* In an appeal of completely consolidated civil cases where only one notice of appeal is filed, a copy of the consolidation order shall be attached to the notice of appeal.

[*Official Note*] Comment:

The Offense Tracking Number (OTN) is required only in an appeal in a criminal proceeding. It enables the Administrative Office of the Pennsylvania Courts to collect and forward to the Pennsylvania State Police information pertaining to the disposition of all criminal cases as provided by the Criminal History Record Information Act, 18 Pa.C.S. §§ 9101 *et seq*.

The notice of appeal must include a statement that the order appealed from has been entered on the docket. **Because generally a separate notice of appeal must be filed on each docket on which an appealable order is entered so as to appeal from that order, *see* Pa.R.A.P. 902(a), the appellant is required to attach to the notice of appeal a copy of the docket entry showing the entry of the order appealed from on that docket.** The appellant does not need to certify that the order has been reduced to judgment. This omission does not eliminate the requirement of reducing an order to judgment before there is a final appealable order where required by applicable practice or case law.

[Paragraph] Subdivision (b)(2) provides the authority for an appellate court to initialize captions in custody appeals. *See also* Pa.R.C.P. 1915.10.

With respect to **[paragraph] subdivision** (e), in *Commonwealth v. Dugger*, 486 A.2d 382, 386 (Pa. 1985), the Supreme Court held that the Commonwealth's certification that an order will terminate or substantially handicap the prosecution is not subject to review as a prerequisite to the Superior Court's review of the merits of the appeal. The principle in *Dugger* has been incorporated in and superseded by Pa.R.A.P. 311(d). *Commonwealth v. Dixon*, 907 A.2d 468, 471 n.8 (Pa. 2006). Thus, the need for a detailed analysis of the effect of the order, formerly necessarily a part of the Commonwealth's appellate brief, has been eliminated.

A party filing a cross-appeal should identify it as a cross-appeal in the notice of appeal to assure that the prothonotary will process the cross-appeal with the initial appeal. *See also* Pa.R.A.P. 2113, 2136, and 2185 regarding briefs in cross-appeals and Pa.R.A.P. 2322 regarding oral argument in multiple appeals.

A party appealing completely consolidated civil cases using one notice of appeal must attach a copy of the consolidation order to the notice of appeal to assure the applicability of Pa.R.A.P. 902.

APPELLATE COURT PROCEDURAL RULES COMMITTEE ADOPTION REPORT

Amendment of Pa.R.A.P. 311, 313, 341, 512, 902, and 904

On May 18, 2023, the Supreme Court of Pennsylvania adopted amendments to Rules of Appellate Procedure 311, 313, 341, 512, 902, and 904. The Appellate Court Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. *See* Pa.R.J.A. 103, cmt. The statements contained herein are those of the Committee, not the Court.

The Committee undertook rulemaking to address the requirements that a separate notice of appeal be filed on each docket on which an appealable order is entered to appeal from that order in light of *Commonwealth v. Walker*, 185 A.3d 969 (Pa. 2018), *Always Busy Consulting, LLC v Babford & Co., Inc.*, 247 A.3d 1033 (Pa. 2021), and *Commonwealth v. Young*, 265 A.3d 462 (Pa. 2021).

In *Commonwealth v. Walker*, 185 A.3d 969 (Pa. 2018), the Supreme Court considered whether Pa.R.A.P. 341(a) ("an appeal may be taken from any final order of. . .a trial court") was satisfied when a single notice of appeal had been filed from an order deciding four motions to suppress evidence against four defendants docketed at four different docket numbers. Concluding that the rule text did not specifically address the matter, the Court considered the commentary to Pa.R.A.P. 341, which provided "a bright-line mandatory instruction to practitioners to file a separate notice of appeal." *Id.* at 976-77. Thereafter, the Court held that Pa.R.A.P. 341(a) requires "that when a single order resolves issues arising on more than one lower court docket, separate notices of appeal must be filed." *Id.* at 977.

Next, in *Always Busy Consulting, LLC v Babford & Co., Inc.*, 247 A.3d 1033 (Pa. 2021), the Supreme Court held

that the filing of a single notice of appeal from a single order entered at the lead docket number for consolidated civil matters was permissible and does not violate the holding in *Commonwealth v. Walker*. As such, *Always Busy Consulting* carved out an exception where *Walker* does not apply.

Finally, in *Commonwealth v. Young*, 265 A.3d 462 (Pa. 2021), the Supreme Court mitigated the result in *Walker* by clarifying that, under Pa.R.A.P. 902, an appellate court, in its discretion, has the authority to allow correction when an appellant does not file separate notices of appeal from a single order resolving issues on more than one docket:

> Rule 341 requires that when a single order resolves issues arising on more than one docket, separate notices of appeal must be filed from that order at each docket; but, where a timely appeal is filed at only one docket, Rule 902 permits the appellate court, in its discretion, to allow correction of the error, where appropriate.

Id. at 477.

Following extensive review and consideration, the Committee recommended amendment of Pa.R.A.P. 902 as the appropriate repository for the requirements and guidance to comply with *Walker*, *Always Busy Consulting*, and *Young*. As a result, Pa.R.A.P 902 has been subdivided into subdivision (a) and subdivision (b). Subdivision (a) sets forth the general requirements for taking an appeal, including the timely filing of a notice of appeal in the trial court at each docket in which the order has been entered. Subdivision (b) indicates the validity of a timely filed notice of appeal is not affected, but it may be subject to any action the appellate court deems appropriate to cure a procedural defect. However, an untimely notice of appeal cannot be cured in such a manner. *See also* Pa.R.A.P. 105(b) (appellate court may not enlarge the time for filing a notice of appeal).

The Comment accompanying Pa.R.A.P. 902 has also been revised. The commentary concerning subdivision (a) discusses *Walker* and *Always Busy Consulting* in terms of the need to file separate notices of appeal. *Young* is referenced in the commentary as a basis for subdivision (b). The Comment also includes statements that an appellant's failure to respond to an appellate court's directive to cure a defect may result in quashal and that an untimely notice of appeal will result in quashal. The Comments to Pa.R.A.P. 311, 313, 341, and 512 have also been revised to advise readers to consult Pa.R.A.P. 902.

Finally, amendments have been made to Pa.R.A.P. 904 regarding consolidated orders. Currently, subdivision (d) requires the attachment of docket entries to the notice of appeal. The Committee observed it would be helpful for the consolidation order from the trial court to be attached to the notice of appeal to make clear whether multiple notices of appeal are required in completely consolidated cases. New subdivision (g) has been added for this requirement.

Stylistic revisions to the text of each rule were also made.

The amendments become effective immediately.

The following commentary from Pa.R.A.P. 902 has been removed by this rulemaking:

Official Note: 42 Pa.C.S. § 703 (place and form of filing appeals) provides that appeals, petitions for review, petitions for permission to appeal and petitions for allowance of appeal shall be filed in such office and in such form as may be prescribed by general rule.

This chapter represents a significant simplification of practice. In all appeals the appellant prepares two documents: (1) a simple notice of appeal, and (2) a proof of service. The notice of appeal is filed in the lower court and copies thereof, together with copies of the proof of service, are mailed and delivered to all who need to know of the appeal: other parties, lower court judge, official court reporter. The clerk of the trial court transmits one set of the filed papers to the appellate prothonotary (with the requisite filing fee). The appellate prothonotary notes the appellate docket number on the notice of appeal and may utilize photocopies of the marked-up notice of appeal to notify the parties, the lower court and Administrative Office of the fact of docketing. In an appeal to the Supreme Court, the appellant must also prepare, file and serve and the clerk of the trial court must transmit a jurisdictional statement as required by Rule 909.

The new procedure has a number of advantages: (1) the taking of the appeal is more certain in counties other than Dauphin, Philadelphia and Pittsburgh, because the appellant may toll the time for appeal by filing the notice of appeal in his local court house thereby eliminating the time lost in transmission of the appeal by mail; (2) the initial filing in the lower court raises an immediate caveat on the record before irreversible or undesirable action is taken on the faith of the judgment appealed from; (3) the immediate recording of the appeal below will simplify criminal appeal matters, e.g. by avoiding in certain cases the unnecessary holding and transfer of defendants between sentencing and perfecting an appeal; (4) the new procedure necessarily eliminates the "trap" of failure to perfect an appeal, since the notice of appeal is self-perfecting; and (5) the paper work of all parties and the appellate prothonotary is significantly reduced, since the preparation of the writ of certiorari and certain other papers is eliminated.

The 1986 revision to the last sentence of the rule indicates a change in approach to formal defects. The reference to dismissal of the appeal has been deleted in favor of a preference toward, remanding the matter to the lower court so that the omitted procedural step may be taken, thereby enabling the appellate court to reach the merits of the appeal. Nevertheless, dismissal of the appeal ultimately remains a possible alternative where counsel fails to take the necessary steps to correct the defect. See Note to Rule 301 for examples of when an appeal may be remanded because an order has not been reduced to judgment or final decree and docketed.

[Pa.B. Doc. No. 23-724. Filed for public inspection June 2, 2023, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CHS. 500 AND 1000]

Proposed Amendment of Pa.R.Civ.P.M.D.J. 514, 515, 516, 521, 1005, 1006, 1007, 1008, 1011, 1013, and 1014

The Minor Court Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amend-

ment of Pa.R.Civ.P.M.D.J. 514, 515, 516, 521, 1005, 1006, 1007, 1008, 1011, 1013, and 1014. The proposal provides for the service of a reissued order for possession and notice, in certain instances, ten days prior to (1) the striking of an appeal or writ of *certiorari* or (2) the termination of a *supersedeas*, for the reasons set forth in the accompanying Publication Report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to include the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Pamela S. Walker, Counsel
Minor Court Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9546
minorrules@pacourts.us

All communications in reference to the proposal should be received by August 12, 2023. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Minor Court Rules Committee

HONORABLE DANIEL E. BUTLER,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 500. ACTIONS FOR THE RECOVERY OF POSSESSION OF REAL PROPERTY

Rule 514. Judgment; Notice of Judgment or Dismissal and the Right to Appeal.

* * * * *

[*Official Note*] **Comment**:

* * * * *

The separate entries provided in subdivision A are made necessary as a result of the rental deposit provisions for appeal or *certiorari* contained in **[Rules 1008B and 1013B]** **Pa.R.Civ.P.M.D.J. 1008(b)-(c) and 1013(b)-(c)**, as well as the wage attachment provisions contained in **[Section 8127 of the Judicial Code,]** 42 Pa.C.S. § 8127.

* * * * *

Rule 515. Request for Order for Possession.

* * * * *

[*Official Note*] **Comment**:

The 15 days in subdivision A of this rule, when added to the 16-day period provided for in Rule 519A **(Forcible Entry and Delivery of Possession)**, will give the tenant time to obtain a *supersedeas* within the appeal period. *See* **[Rules 1002, 1008, 1009, and 1013]** **Pa.R.Civ.P.M.D.J. 1002, 1008, 1009, and 1013 (pertaining to appeals and writs of *certiorari*)**.

* * * * *

In many judicial districts, appeals of magisterial district court judgments are submitted to compulsory arbitration pursuant to **[Pa.R.C.P. Nos. 1301—1314]** **Pa.R.Civ.P. 1301—1314**. If, after the arbitration, the prothonotary enters an award for possession on the docket in favor of the landlord and the tenant fails to maintain the *supersedeas* required by Rule 1008 prior to the prothonotary entering judgment on the award, then the landlord may terminate the *supersedeas* pursuant to **[Rule 1008B]** **Rule 1008(b)** and request an order of possession from the magisterial district judge pursuant to **[Rule 515]** **subdivision A or B**. If the prothonotary enters an award on the docket in favor of the tenant and the tenant fails to maintain the *supersedeas* prior to the prothonotary entering judgment on the award, the landlord may not obtain an order of possession between the time that the prothonotary enters the arbitration award on the docket and the time that the landlord files a notice of appeal.

The time limits in which the landlord must request an order for possession imposed in subdivision B apply only in cases arising out of residential leases and **[in no way]** **do not** affect the landlord's ability to execute on the money judgment. *See* **[Rule 516, Note]** **Pa.R.Civ.P.M.D.J. 516, cmt.**, and **[Rule 521A]** **Pa.R.Civ.P.M.D.J. 521A (pertaining to issuance of an order for possession and execution by levy)**.

* * * * *

Rule 516. Issuance and Reissuance of Order for Possession**; Service; Stay**.

[A.] **(a) *Issuance of Order for Possession.***

(1) *General Rule.* Upon the timely filing of the request **for an order for possession** form, the magisterial district judge shall issue the order for possession **[and]**. **The order shall direct the officer executing it to deliver actual possession of the real property to the landlord. The magisterial district judge shall attach a copy of the request to the order for possession.**

(2) *Service.* **The magisterial district judge** shall deliver **[it]** **the order for possession** for service and execution to the sheriff of, or any certified constable in, the county in which the office of the magisterial district judge is situated. If this service is not available to the magisterial district judge, service may be made by any certified constable of the Commonwealth. **[The order shall direct the officer executing it to deliver actual possession of the real property to the landlord. The magisterial district judge shall attach a copy of the request form to the order for possession.]** **The officer shall serve the order pursuant to Pa.R.Civ.P.M.D.J. 517.**

(3) *Expiration.* **An order for possession shall not be executed more than 60 days after the date of issuance.**

(4) *Stay.* **An order for possession may be stayed pursuant to federal or state law, state court rule, or agreement of the parties.**

[B.] **(b) *Reissuance of Order for Possession.***

(1) ***General Rule.*** Except as otherwise provided in **[subdivision C, upon written request of the landlord]** **subdivision (b)(4),** the magisterial district judge shall reissue an order for possession for one additional 60-day period **upon written request of the landlord**.

(2) ***Service.*** **A reissued order for possession shall be served on the tenant in accordance with subdivision (a)(2) and Pa.R.Civ.P.M.D.J. 517.**

(3) *Reissuance Following Stay.*

(i) If an order for possession is **[issued and subsequently superseded by an appeal, writ of *certiorari*, *supersedeas*, or a stay pursuant to a bankruptcy proceeding or other federal or state law or Rule 514.1C] stayed pursuant to federal or state law, state court rule, or agreement of the parties**, and

[(a) the appeal, writ of *certiorari*, or *supersedeas* is stricken, dismissed, or otherwise terminated; or

(b) the bankruptcy or other stay is lifted; and

(c) the landlord wishes to proceed with the order for possession,] the stay is subsequently lifted, then the landlord **[must] shall** file with the magisterial district judge a written request for reissuance of the order for possession **[in accordance with subdivision B(1)] pursuant to subdivision (b)(1). The landlord shall attach a copy of the court order or other documentation lifting the stay to the written request for reissuance of the order for possession**.

(4) *Reissuance; Residential Lease.* [C. In a case arising out of] If the order for possession involves a residential lease, a **written** request for reissuance of an order for possession **[may] shall** be filed **[within]:**

(i) within 120 days of the date of the entry of the judgment; or**[,]**

(ii) [in a case in which the order for possession is issued and subsequently superseded by an appeal, writ of *certiorari*, *supersedeas*, or a stay pursuant to a bankruptcy proceeding or other federal or state law or Rule 514.1C] if the order for possession was stayed pursuant to federal or state law, state court rule, or agreement of the parties, then [only] within 120 days of the date **[the appeal, writ of *certiorari*, or *supersedeas* is stricken, dismissed, or otherwise terminated or the bankruptcy or other] the** stay is lifted.

[D. A written request for reissuance of the order for possession, filed after an appeal, writ of *certiorari*, or *supersedeas* is stricken, dismissed, or otherwise terminated, or a bankruptcy or other stay is lifted, must be accompanied by a copy of the court order or other documentation striking, dismissing, or terminating the appeal, writ of *certiorari*, or *supersedeas*, or lifting the bankruptcy or other stay.]

[*Official Note*] Comment:

The order for possession deals only with delivery of possession of real property and not with a levy for money damages. A landlord who seeks execution of the money judgment part of the judgment must proceed under Rule 521A, **pertaining to execution by levy,** using the forms and procedure there prescribed. The reason for making this distinction is that the printed notice requirements **[on the two forms,]** and the procedures involved in the two matters, differ widely.

As used in this rule, a stay includes the suspension of an action by an appeal, writ of *certiorari*, or *supersedeas*, a stay pursuant to a bankruptcy proceeding or other federal or state law, *e.g.*, the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*, or Rule 514.1C, pertaining to a domestic violence affidavit.

[Subdivision B] Subdivision (b)(1) provides for reissuance of the order for possession for one additional 60-day period. **The additional 60-day period does not have to immediately follow the original 60-day period of issuance.** However, pursuant to **[subdivision C, in cases arising out of] subdivision (b)(3)(ii), if the order for possession involves** a residential lease, the request for reissuance of the order for possession must be filed within 120 days of the date of the entry of the judgment or, in a case in which the order for possession is **[issued and]** subsequently **[superseded by an appeal, writ of *certiorari*, *supersedeas* or a stay pursuant to a bankruptcy proceeding or other federal or state law or Rule 514.1C] stayed pursuant to federal or state law, state court rule, or agreement of the parties**, **[only]** within 120 days of the date **[the appeal, writ of *certiorari*, or *supersedeas* is stricken, dismissed, or otherwise terminated, or the bankruptcy or other] the** stay is lifted. **[The additional 60-day period need not necessarily immediately follow the original 60-day period of issuance.] Subdivision (b)(3)(ii), establishing time limits to request reissuance of an order for possession in a case involving a residential lease, does not affect the landlord's ability to execute on the money judgment. *See* Pa.R.Civ.P.M.D.J. 521A.**

The written request for reissuance may be in any form and may consist of a notation on the **[permanent] file** copy of the request for order for possession form **retained in the records of the magisterial district court**, "Reissuance of order for possession requested," subscribed by the landlord. The magisterial district judge shall mark all copies of the reissued order for possession, "Reissued. Request for reissuance filed _____ (time and date)." A **[new form may] reissued order for possession shall** be **[used] produced by the magisterial district court** upon reissuance, those portions retained from the original being exact copies although signatures may be typed or printed with the mark "/s/." There are no filing costs for reissuing an order for possession, for the reissuance is merely a continuation of the original proceeding. **A reissued order for possession shall be served on the tenant pursuant to Rule 517 (Notation of Time of Receipt; Service of Order for Possession). *See* Pa.R.Civ.P.M.D.J. 516(b)(2). [However, there] There** may be additional server costs for service of the reissued order for possession.

The magisterial district court shall enter stays in compliance with federal or state law, such as the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*.

In many judicial districts, appeals of magisterial district court judgments are submitted to compulsory arbitration pursuant to **[Pa.R.C.P. Nos. 1301—1314]**

Pa.R.Civ.P. 1301—1314. If, after the arbitration, the prothonotary enters an award for possession on the docket in favor of the landlord and the tenant fails to maintain the *supersedeas* required by Rule 1008 **(Appeal as *Supersedeas*)** prior to the prothonotary entering judgment on the award, then the landlord may terminate the *supersedeas* pursuant to **[Rule 1008B]** **Rule 1008(b)** and request an order of possession from the magisterial district judge pursuant to Rule 515**, pertaining to a request for order of possession**. If the prothonotary enters an award on the docket in favor of the tenant and the tenant fails to maintain the *supersedeas* prior to the prothonotary entering judgment on the award, the landlord may not obtain an order of possession between the time that the prothonotary enters the arbitration award on the docket and the time that the landlord files a notice of appeal.

[The time limits in which the landlord must request reissuance of an order for possession imposed in subdivision C apply only in cases arising out of residential leases and in no way affect the landlord's ability to execute on the money judgment. *See* Rule 521A.]

Rule 521. Execution by Levy.

* * * * *

[*Official Note*: *See* Rule 516, Note.] **Comment:**

***See* Pa.R.Civ.P.M.D.J. 516, cmt.**

CHAPTER 1000. APPEALS

APPEAL

Rule 1005. Service of Notice of Appeal and Other Papers.

[A.] **(a) *Service of the Notice of Appeal.*** The appellant shall**,** by personal service or by certified or registered mail**,** serve a copy of the notice of appeal upon the appellee and upon the magisterial district judge in whose office the judgment was rendered. If required by Rule 1004B to request a rule upon the appellee to file a complaint, the appellant shall also serve the rule by personal service or by certified or registered mail upon the appellee. The address of the appellee for the purpose of service shall be the address as listed on the complaint form filed in the office of the magisterial district judge or as otherwise appearing in the records of that office. If the appellee has an attorney of record named in the complaint form filed in the office of the magisterial district judge, the service upon the appellee may be made upon the attorney of record instead of upon the appellee personally.

[B.] **(b) *Filing Copies of Proof of Service.* Except as provided by Rule 1006(b)(4), [The]** **the** appellant shall file with the prothonotary proof of service of copies of the notice of appeal, and proof of service of a rule upon the appellee to file a complaint if required to request such a rule by Rule 1004B, within **[10]** **ten** days after filing the notice of appeal.

[C.] **(c) *Local Rule.*** In lieu of service and proof of service pursuant to **[subdivisions A and B of this Rule]** **subdivisions (a) and (b)**, the court of common pleas may, by local rule, permit or require that the appellant file with the notice of appeal a stamped envelope pre-addressed to the appellee at the address as listed on the complaint form filed in the office of the magisterial district judge or as otherwise appearing in the records of that office, or the attorney of record, if any, of the appellee, and a stamped envelope pre-addressed to the magisterial district judge in whose office the judgment was rendered. Copies of the notice of appeal, and Rule pursuant to 1004B, if applicable, shall thereupon be mailed by the prothonotary or court by first class mail, with such service and any return being noted on the court's docket.

[D.] **(d) *Service of Complaint.*** The party filing a complaint under Rule 1004 shall **[forthwith]** **promptly** serve it upon the opposite party in the appeal by leaving a copy **[for]** **at** or mailing a copy to the address **[as shown in the magisterial district court records mentioned in subdivision A of this rule]** **in subdivision (a)**. If the opposite party has an attorney of record either in the magisterial district court or court of common pleas proceeding, service upon the opposite party may be made upon the attorney of record instead of upon the opposite party personally.

[E.] **(e)** Service and proof of service may be made by attorney or other agent.

[*Official Note*: Subdivision A] **Comment:**

Subdivision (a) requires service of a copy of the notice of appeal upon the magisterial district judge as well as upon the appellee**[,]** or the appellee's attorney of record. The notice of appeal includes all documents filed with the prothonotary, including a domestic violence affidavit, if applicable. This copy, when received by the magisterial district judge, may operate as a *supersedeas* under Rule 1008.

[As to subdivision B] **In subdivision (b)**, there is no return receipt requirement for service by certified or registered mail and consequently no such receipt need be filed with the prothonotary, although if service is by certified or registered mail**, then** the sender's receipt must be attached to the proof of service. *See* **[Rule 1001(7) and the fourth paragraph of the Note to Rule 1001]** **Pa.R.Civ.P.M.D.J. 1001(7), note**. The notice of appeal and the proof of service may be filed simultaneously. **[*See also* Rule 1006 and its Note]** ***See* Pa.R.Civ.P.M.D.J. 1006**. **If the appellant fails to file the proof of service required by subdivision (b), the appellee may file a *praecipe* to mark the appeal stricken from the record. *See* Pa.R.Civ.P.M.D.J. 1006(b). If the appellee files a *praecipe* to mark the appeal stricken from the record, the appellant may file the proof of service at any time prior to the appeal being marked stricken by the prothonotary. *See* Pa.R.Civ.P.M.D.J. 1006(b)(4).**

[Subdivision C] **Subdivision (c)** prescribes a pleading type of service**, not original process**, of the complaint, which may be made by ordinary mail, upon the opposite party in the appeal or the party's attorney of record.

(*Editor's Note*: Rule 1006 as printed in 246 Pa. Code reads "Official Note" rather than "Note.")

Rule 1006. Striking Appeal**; Notice**.

[Upon failure of the appellant to comply with Rule 1004A or Rule 1005B, the prothonotary shall, upon praecipe of the appellee, mark the appeal stricken from the record. The court of common pleas may reinstate the appeal upon good cause shown.]

(a) *Failure to Comply with Rule 1004A.* If the appellant fails to file a complaint as required by Rule 1004A, the appellee may file a *praecipe* with the prothonotary to mark the appeal stricken from the record.

(b) *Failure to Comply with Rule 1005(b).*

(1) *Praecipe to Strike.* If the appellant fails to file the proof of service with the prothonotary as required by Rule 1005(b), the appellee may file a *praecipe* with the prothonotary to mark the appeal stricken from the record subject to the notice requirement in subdivision (b)(2).

(2) *Certification of Notice.* The prothonotary shall not mark an appeal stricken pursuant to subdivision (b)(1) unless the *praecipe* includes a certification that a written notice of intention to file the *praecipe* was mailed or delivered to the appellant and the appellant's attorney of record, if any, at least ten days prior to the date of filing of the *praecipe.* The appellee shall attach a copy of the notice to the *praecipe.*

(3) *Mailing Addresses.*

(A) *Appellant.* The address of the appellant for the purpose of mailing shall be the address as listed on the notice of appeal filed with the prothonotary.

(B) *Attorney of Record.* The address of the attorney of record for the appellant, if represented, for the purpose of mailing shall be the address listed on the notice of appeal or, if unknown, in the records of the magisterial district court.

(4) *Relief.* The appellant may file the proof of service required by Rule 1005(b) at any time prior to the appeal being marked stricken by the prothonotary.

(5) The notice and certification required by this subdivision shall not be waived.

(c) *Reinstatement of Appeal.* The court of common pleas may reinstate an appeal terminated pursuant to subdivision (a) or (b) upon good cause shown.

[*Note*:] Comment:

This rule is intended to provide sanctions for failing to act within the time limits prescribed. ***See*** **Pa.R.Civ.P.M.D.J. 1004A and 1005(b). A *praecipe* to mark the appeal stricken filed with the prothonotary before the expiration of the prescribed time limits is premature. *See* Pa.R.Civ.P.M.D.J. 203 (pertaining to computation of time).**

While the appellant may file the proof of service with the prothonotary at any time prior to the appeal being stricken by the prothonotary, subdivision (b)(4) does not extend the time for service of the documents set forth in Rule 1005(b).

The notice required by subdivision (b)(2) may be mailed or hand delivered. Registered or certified mail is not required.

Rule 1007. Procedure on Appeal.

* * * * *

[*Official Note*: As under earlier law, the proceeding on appeal is conducted *de novo*, but the former rule that the proceeding would be limited both as to jurisdiction and subject matter to the action before the magisterial district judge (*see Crowell Office Equipment v. Krug*, 247 A.2d 657 (Pa. Super. 1968)) has not been retained.] Comment:

Under subdivision B, the court of common pleas on appeal can exercise its full jurisdiction and all parties will be free to treat the case as though it had never been before the magisterial district judge, subject of course to the Rules of Civil Procedure. The only limitation on this is contained in subdivision C, which makes clear that an appeal from a supplementary action filed pursuant to Rule 342**, pertaining to the failure of a judgment creditor to enter satisfaction,** is not intended to reopen other issues from the underlying action that were not properly preserved for appeal.

In many judicial districts, appeals of magisterial district court judgments are submitted to compulsory arbitration pursuant to **[Pa.R.C.P. Nos. 1301—1314] Pa.R.Civ.P. 1301—1314**. If, after the arbitration, the prothonotary enters an award for possession on the docket in favor of the landlord and the tenant fails to maintain the *supersedeas* required by Rule 1008 **(Appeal as *Supersedeas*)** prior to the prothonotary entering judgment on the award, then the landlord may terminate the *supersedeas* pursuant to **[Rule 1008B] Rule 1008(b) and (c)** and request an order of possession from the magisterial district judge pursuant to Rule 515. If the prothonotary enters an award on the docket in favor of the tenant and the tenant fails to maintain the *supersedeas* prior to the prothonotary entering judgment on the award, the landlord may not obtain an order of possession between the time that the prothonotary enters the arbitration award on the docket and the time that the landlord files a notice of appeal.

(*Editor's Note*: Rule 1008 as printed in 246 Pa. Code reads "Official Note" rather than "Note.")

Rule 1008. Appeal as *Supersedeas*.

[A.] (a) Receipt by the magisterial district judge of the copy of **[the] a** notice of appeal from the judgment shall operate as a *supersedeas*, except as provided in **[subdivisions B and C of this rule] subdivisions (b) and (c)**.

[B.] (b) *Appeal from Judgment for Possession of Real Property.*

(1) *Tenant Escrow.* When a tenant appeals from a judgment for the possession of real property, receipt by the magisterial district judge of the copy of the notice of appeal shall operate as a *supersedeas* only if the tenant**:**

(i) at the time of filing the notice of appeal, deposits with the prothonotary **either** a sum of money **[( ]**or a bond, with surety approved by the prothonotary**[ )],** equal to the lesser of three months' rent or the rent actually in arrears on the date of the filing of the notice of appeal, based upon the **[magisterial district judge's order of judgment,] judgment entered by the magisterial district judge;** and**[,]**

(ii) thereafter, deposits **[cash] either a sum of money** or bond with the prothonotary **[in a sum]** equal to the monthly rent that becomes due during the period of time the proceedings upon appeal are pending in the court of common pleas**[,]. [such additional] Subsequent** deposits **[to] shall** be made within 30 days following the date of the appeal**[,]** and each successive 30-day period thereafter.

(2) ***Release of Escrow to Landlord.*** Upon **the landlord's** application **[by the landlord]**, the court shall release appropriate sums from the escrow account on a continuing basis while the appeal is pending to compensate the landlord for the tenant's actual possession and use of the premises during the pendency of the appeal.

(3) ***Notation.*** **When the deposit of money or bond is made pursuant to subdivision (b)(1)(i), the prothonotary shall make a notation upon the notice of appeal and its copies that it shall operate as a *supersedeas* when received by the magisterial district judge.**

(4) ***Failure to Deposit Sums of Money or Bond.***

(i) [In the event] ***Notice of Default.*** **If** the tenant fails to deposit the **required** sums of money**[,]** or bond**[, required by this rule]** when such deposits are due, **[the prothonotary, upon *praecipe* filed by the landlord, shall terminate the *supersedeas*. Notice of the termination of the *supersedeas* shall be forwarded by first class mail to the attorneys of record, or, if a party is unrepresented, to the party's last known address of record] the landlord shall mail or hand-deliver notice to the attorney of record, or if a tenant is unrepresented, to the tenant's last known address of record, the following notice together with a certificate of service in the form set forth in subdivision (e)**.

(ii) ***Waiver.*** **The notice required by subdivision (b)(4)(i) shall not be waived.**

(iii) ***Relief.*** **The tenant may comply with subdivision (b)(1) at any time before the prothonotary terminates the *supersedeas*.**

(iv) ***Praecipe to Strike Supersedeas.*** **If the tenant fails to make the deposit required by subdivision (b) or (c) after ten days from the date of the notice or following any subsequent failure to make a deposit when due, the prothonotary shall terminate the *supersedeas* upon receipt of a *praecipe* by the landlord filed with the prothonotary together with a copy of the notice and certificate of service. Notice of the termination of the *supersedeas* shall be forwarded by the prothonotary by first class mail to the attorney of record, or, if a party is unrepresented, to the party's last known address of record.**

[When the deposit of money or bond is made pursuant to the rule at the time of filing the appeal, the prothonotary shall make upon the notice of appeal and its copies a notation that it will operate as a *supersedeas* when received by the magisterial district judge.]

[C.] (c) *Indigent Tenants***.**

(1) ***Inability to Deposit Escrow.*** Residential tenants who seek to appeal from a magisterial district court judgment for possession and who do not have the ability to **[pay] deposit** the lesser of three months' rent or the full amount of the magisterial district court judgment for rent shall file with the office of the prothonotary a tenant's affidavit, as set forth in **[subdivision C(2)] subdivision (c)(2)**.

(2) The tenant's affidavit shall be substantially in one of the following two forms:

[Caption]

TENANT'S *SUPERSEDEAS* AFFIDAVIT

[(NON-SECTION 8)]

NON-HOUSING CHOICE VOUCHER PROGRAM PARTICIPATION

I, _____ (print name and address here), have filed a notice of appeal from a magisterial district court judgment awarding to my landlord possession of real property that I occupy**[, and].** I do not have the financial ability to **[pay] deposit** the lesser of three times my monthly rent or the judgment for rent awarded by the magisterial district court. My total household income does not exceed the income limits set forth in the supplemental instructions for obtaining a stay pending appeal and I have completed an *in forma pauperis* (IFP) affidavit to verify this. I have/have not (cross out the one that does not apply) paid the rent this month.

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

_____ _____

Date SIGNATURE OF TENANT

OR

[Caption]

[SECTION 8] TENANT'S *SUPERSEDEAS* AFFIDAVIT

HOUSING CHOICE VOUCHER PROGRAM PARTICIPATION

I, _____ (print name and address here), have filed a notice of appeal from a magisterial district court judgment awarding my landlord possession of real property that I occupy**[, and].** I do not have the financial ability to **[pay] deposit** the lesser of three times my monthly rent or the actual rent in arrears. My total household income does not exceed the income limits set forth in the supplemental instructions for obtaining a stay pending appeal and I have completed an *in forma pauperis* (IFP) affidavit to verify this. I have/have not (cross out the one that does not apply) paid the rent this month.

The total amount of monthly rent that I personally pay to the landlord is $ _____ . I hereby certify that I am a participant in the **[Section 8 program] Housing Choice Voucher Program, also known as Section 8,** and I am not subject to a final (*i.e.*, non-appealable) decision of a court or government agency that terminates my right to receive **[Section 8] Housing Choice Voucher Program** assistance based on my failure to comply with program rules.

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

_____ _____

Date SIGNATURE OF TENANT

(3) ***Deposit of Rent into Escrow.***

[(a)] (i) If the rent has already been paid to the landlord in the month in which the notice of appeal is filed, the tenant shall **[pay] deposit** into an escrow account with the prothonotary the monthly rent in 30-day intervals from the date the notice of appeal was filed; or

[(b)] **(ii)** If the rent has not been paid at the time of filing the notice of appeal, the tenant shall **[pay]** **deposit**:

[(i)] **(A)** at the time of filing the notice of appeal, a sum of money equal to **[one third (1/3)]** **one-third** of the monthly rent;

[ii] **(B)** an additional deposit of **[two thirds (2/3)]** **two-thirds** of the monthly rent within 20 days of filing the notice of appeal; and

[iii] **(C)** additional deposits of one month's rent in full each 30 days after filing the notice of appeal. The amount of the monthly rent is the sum of money found by the magisterial district judge to constitute the monthly rental for the leasehold premises pursuant to Rule 514A**, pertaining to the contents of the magisterial district judge's judgment**. However, when the tenant is a participant in the **[Section 8 program]** **Housing Choice Voucher Program**, the tenant shall **[pay]** **deposit** the tenant share of the rent as set forth in the **["Section 8 Tenant's *Supersedeas* Affidavit"]** **"Tenant's *Supersedeas* Affidavit, Housing Choice Voucher Program Participation"** filed by the tenant.

(4) ***Instructions.*** The prothonotary's office of the court of common pleas in which the appeal is taken shall provide residential tenants who have suffered a judgment for possession with a "Supplemental Instructions for Obtaining a Stay of Eviction" as it appears on the Forms page of the website of the Unified Judicial System of Pennsylvania at **[www.pacourts.us]** **https://www.pacourts.us**.

[*Note*: The Forms page is found on the home page of the Unified Judicial System of Pennsylvania at www.pacourts.us. The Supplemental Instructions include both instructions and income limits.

The income limits are stated in monthly amounts and are based upon the most recent poverty income guidelines issued by the Federal Department of Health and Human Services.]

(5) ***Issuance.*** When the requirements of **[subdivisions C(2)-(3)]** **subdivisions (c)(2)-(3)** have been met, the prothonotary shall issue a *supersedeas*.

(6) ***Release of Escrow Deposits to Landlord.*** Upon application by the landlord, the court shall release appropriate sums from the escrow account on a continuing basis while the appeal is pending to compensate the landlord for the tenant's actual possession and use of the premises during the pendency of the appeal.

(7) ***Failure to Make Monthly Deposits.*** If the tenant fails to make monthly rent **[payments]** **deposits** to the prothonotary as described in **[subdivision C(3)]** **(c)(3)**, **[the *supersedeas* may be terminated by the prothonotary upon *praecipe* by the landlord or other party to the action. Notice of the termination of the *supersedeas* shall be forwarded by first class mail to the attorneys of record, or, if a party is unrepresented, to the party's last known address of record]** **the landlord may initiate termination of the *supersedeas* in the manner set forth in subdivision (b)(4)**.

(8) ***Failure to Satisfy Conditions.*** If the court of common pleas determines, upon written motion or its own motion, that the averments within any of the tenant's affidavits do not establish that the tenant meets the terms and conditions of **[subdivision C(1)]** **subdivision (c)(1)** **[, *supra*]**, the court may terminate the *supersedeas*. Notice of the termination of the *supersedeas* shall be forwarded by first class mail to the attorneys of record, or, if a party is unrepresented, to the party's last known address of record.

[D.] **(d) *Striking or Termination of Appeal.*** If an appeal is stricken or voluntarily terminated, any *supersedeas* based on it shall terminate. The prothonotary shall **[pay]** **release** the deposits of **[rental]** **rent** to the landlord.

(e) *Form of Notice.* The notice required by subdivision (b)(4)(i) shall be in the following form:

(Caption)

IMPORTANT NOTICE

If you do not deposit with the prothonotary the sum of money or bond due pursuant to Pa.R.Civ.P.M.D.J. 1008(b) or (c) to maintain the *supersedeas* within ten days from the date of this Notice, a *praecipe* to strike the *supersedeas* will be filed with the prothonotary. If the *supersedeas* is stricken, the landlord may request reissuance of an order for possession from the magisterial district court and you may be ejected from the property.

No further notices will be provided related to this or any future failure to make the deposit when due.

If you have questions about hiring a lawyer or obtaining information about agencies that may offer legal services to eligible persons at a reduced fee or no fee, please contact your county bar association or legal services agency.

[*Note*: Subdivision A] **Comment:**

Subdivision (a) provides for an automatic *supersedeas* in appeals from civil actions upon receipt by the magisterial district judge of a copy of the notice of appeal. **The money judgment portion of a landlord and tenant judgment is governed by subdivision (a). *See* Pa.R.Civ.P.M.D.J. 514 and 521 (pertaining to the judgment and execution by levy).**

[Subdivision B] **Subdivisions (b) and (c)**, however, **[does]** require the deposit of money or approved bond as a condition for *supersedeas* when the appeal is from a judgment for the possession of real property. **If the tenant fails to make the deposit required by subdivision (b) or (c), the landlord may file a *praecipe* with the prothonotary to terminate the *supersedeas* after providing notice to the tenant as required by subdivision (b)(4). The *praecipe* for termination of the *supersedeas* filed with the prothonotary may state: "Please terminate the *supersedeas* in the within action for failure of the tenant to deposit monthly rent as required by Pa.R.Civ.P.M.D.J. 1008 when it became due and following notice of default dated _____" and shall be signed by the landlord. The prothonotary shall then note upon the *praecipe*: "Upon confirmation of failure of the tenant to deposit the monthly rent when it became due and certification of notice to the tenant, the *supersedeas* is terminated," and the prothonotary shall sign and docket the *praecipe*. The landlord may present a copy of the *praecipe* to the magisterial district judge who rendered the judgment and file a request for issuance of an order for possession pursuant to Rule 515.**

Subdivisions (b)(4) and (c)(7) require the landlord to include a certification in the *praecipe* that written notice of the landlord's intention to file the *praecipe* was given to the tenant at least ten days prior to filing the *praecipe*. The notice and certification of notice are not required if the landlord files a subsequent *praecipe* for a later failure to deposit money or an approved bond with the prothonotary as it becomes due. The notice required by subdivision (b)(4)(ii) and (c)(7) may be mailed or hand delivered. Registered or certified mail is not required.

[A new subdivision C was created in 2008 to provide for] **Subdivision (c) governs** appeals by indigent residential tenants who are unable to meet the bond requirements of **[subdivision B]** **subdivision (b). The federal Housing Choice Voucher Program may also be known as "Section 8."**

The supplemental instructions referenced in subdivision (c)(4) contain income limits. The income limits are stated in monthly amounts and are based upon the most recent poverty income guidelines issued by the United States Department of Health and Human Services.

[The request for termination of the *supersedeas*, upon the *praecipe* filed with the prothonotary, may simply state: "Please terminate the *supersedeas* in the within action for failure of the tenant to pay monthly rental as required by Pa.R.C.P.M.D.J. No. 1008 when it became due" and will be signed by the landlord. The prothonotary will then note upon the *praecipe*: "Upon confirmation of failure of the tenant to deposit the monthly rent when it became due, the *supersedeas* is terminated," and the prothonotary will sign and clock the *praecipe*. A copy of the *praecipe* may thereupon be displayed to the magisterial district judge who rendered the judgment, and a request for issuance of an order for possession under Pa.R.C.P.M.D.J. No. 515 may be made.]

The deposit of rent **[required hereunder]** is intended to apply in all cases, **[irrespective]** **regardless** of the reasons that caused the filing of the complaint before the magisterial district judge in the first instance. **Unless previously released to the landlord pursuant to subdivision (b)(2) or (c)(6),** **[Disposition]** **disposition** of the monthly rental deposits will be made by the court of common pleas following its *de novo* hearing of the matter on appeal.

In many judicial districts, appeals of magisterial district court judgments are submitted to compulsory arbitration pursuant to **[Pa.R.C.P. Nos. 1301—1314]** **Pa.R.Civ.P. 1301—1314**. If, after the arbitration, the prothonotary enters an award for possession on the docket in favor of the landlord and the tenant fails to maintain the *supersedeas* required by **[Rule 1008]** **subdivision (b) or (c)** prior to the prothonotary entering judgment on the award, then the landlord may terminate the *supersedeas* pursuant to **[Rule 1008B]** **subdivision (b)(4)** and request an order of possession from the magisterial district judge pursuant to Rule 515. If the prothonotary enters an award on the docket in favor of the tenant and the tenant fails to maintain the *supersedeas* prior to the prothonotary entering judgment on the award, the landlord may not obtain an order of possession between the time that the prothonotary enters the arbitration award on the docket and the time that the landlord files a notice of appeal.

[The money judgment portion of a landlord and tenant judgment (*see* Pa.R.C.P.M.D.J. Nos. 514 and 521) would be governed by subdivision A.]

(*Editor's Note*: Rule 1011 as printed in 246 Pa. Code reads "Official Note" rather than "Note.")

Rule 1011. Issuance and Service of Writ of **[Certiorari]** ***Certiorari***.

[A.] **(a) *Issuance by Prothonotary.*** Upon receipt of **[the praecipe]** **a *praecipe*** for a writ of **[certiorari]** ***certiorari***, the prothonotary shall issue **and direct** the writ **[and direct it]** to the magisterial district judge in whose office the record of the proceedings containing the judgment is filed. The writ shall be delivered for service to the party who filed the **[praecipe]** ***praecipe***.

[B.] **(b) *Service.*** The party obtaining the writ shall serve it, by personal service or by certified or registered mail, upon the magisterial district judge to whom it was directed. In like manner, **[he]** **the party obtaining the writ** shall also serve a copy of the writ upon the opposite party. The address of the opposite party for the purpose of service shall be **[his]** **the** address as listed on the complaint form filed in the office of the magisterial district judge or as otherwise appearing in the records of that office. If the opposite party has an attorney of record named in the complaint form filed in the office of the magisterial district judge, the service upon the opposite party may be made upon the attorney of record instead of upon the opposite party personally.

[C.] **(c) *Filing Copies of Proof of Service.***

(1) **[If proof of service of the writ upon the magisterial district judge and the opposite party is not filed with the prothonotary within five (5) days after delivery of the writ for service, the prothonotary shall, upon praecipe of the opposite party, mark the writ stricken from the record and the writ shall not be reinstated nor shall any new writ issue.]** ***Proof of Service.*** **The party obtaining the writ shall file with the prothonotary proof of service of the writ upon the magisterial district judge and the opposite party within ten days after delivery of the writ for service.**

(2) *Praecipe to Strike.* If the party obtaining the writ fails to file the proof of service with the prothonotary as required by subdivision (c)(1), the opposite party may file a *praecipe* with the prothonotary to mark the writ stricken from the record.

(3) *Certification of Notice.* The prothonotary shall not mark a writ stricken under this subdivision unless the *praecipe* includes a certification that a written notice of intention to file the *praecipe* was mailed or delivered to the party obtaining the writ and the party's attorney of record, if any, at least ten days prior to the date of filing of the *praecipe*. The opposite party shall attach a copy of the notice to the *praecipe*.

(4) *Mailing Addresses.*

(i) *Party Obtaining the Writ.* The address of the party obtaining the writ for the purpose of mailing the notice shall be the address as listed on the *praecipe* for a writ of *certiorari* filed with the prothonotary.

(ii) *Attorney of Record.* The address of the attorney of record for the party obtaining the writ, if represented, for the purpose of mailing the notice shall be the address listed on the *praecipe* for a writ of *certiorari* or, if unknown, in the records of the magisterial district court.

(5) *Relief.* The party obtaining the writ may file the proof of service required by subdivision (c)(1) at any time prior to the writ being marked stricken by the prothonotary.

(6) *Waiver.* The notice and certification required by this subdivision shall not be waived.

[D.] **(d)** Service and proof of service may be made by attorney or other agent.

(e) *Reinstatement of Writ.* The court of common pleas may reinstate a writ terminated pursuant to subdivision (c) upon good cause shown.

[*Note*:] Comment:

The provisions as to service of the writ parallel those for service of **[notices] a notice** of appeal. **[Subdivision C] Subdivision (c)** contains sanctions for failing to comply with the prescribed time limits**[, and reinstatement of the writ or the issuance of a new one is not allowed]**. **A *praecipe* to mark the writ stricken filed with the prothonotary before the expiration of the prescribed time limits is premature. *See* Pa.R.Civ.P.M.D.J. 203 (pertaining to computation of time).**

A writ of *certiorari* shall not be stricken for failing to file the required proof of service with the prothonotary unless the party obtaining the writ has received at least ten days notice of the opposite party's intention to strike the writ. *See* Pa.R.Civ.P.M.D.J. 1011(c)(3) (pertaining to certification of notice). While the party obtaining the writ may file the proof of service with the prothonotary at any time prior to the writ being stricken by the prothonotary, subdivision (e) does not extend the time for service of the writ set forth in subdivision (c)(1).

The notice required by subdivision (c)(3) may be served by mail or hand delivered. Registered or certified mail is not required.

(*Editor's Note*: Rule 1013 as printed in 246 Pa. Code reads "Official Note" rather than "Note.")

Rule 1013. Writ of *Certiorari* as *Supersedeas.*

[A.] **(a)** Receipt of **[the] a** writ of *certiorari* by the magisterial district judge to whom it was directed shall operate as a *supersedeas*, except as provided in **[subdivisions B and C] subdivisions (b) and (c)** of this rule.

[B.] (b) *Writ of Certiorari; Possession of Real Property.*

(1) *Tenant Escrow.* When a tenant obtains a writ of *certiorari* involving a judgment for the possession of real property, receipt of the writ by the magisterial district judge shall operate as a *supersedeas* only if the tenant **[obtaining the writ]:**

(i) at the time of filing the writ, deposits with the prothonotary **either** a sum of money **[( ]**or a bond, with surety approved by the prothonotary**[ )],** equal to the lesser of three months' rent or the rent actually in arrears on the date of the filing of the *praecipe* for writ of *certiorari* ("*praecipe*"), **[as determined by the] based upon the judgment entered by the** magisterial district judge**;** and**[,]**

(ii) thereafter, deposits **[cash] either a sum of money** or bond with the prothonotary in a sum equal to the monthly rent that becomes due during the period of time the proceedings upon writ are pending in the court of common pleas**[,]. [such additional] Subsequent** deposits **[to] shall** be made within 30 days following the date of the filing of the *praecipe***[,]** and each successive 30-day period thereafter.

(2) *Release of Escrow to Landlord.* Upon **the landlord's** application **[by the landlord]**, the court shall release appropriate sums from the escrow account on a continuing basis while the writ is pending and**, if the writ is granted,** while the ensuing proceeding is pending **[(in the event the writ is granted) to compensate the landlord for the tenant's actual possession and use of the premises during the pendency of the writ and during the pendency of the ensuing proceeding (in the event the writ is granted)] to compensate the landlord for the tenant's actual possession and use of the premises**.

(3) *Notation.* When the deposit of money or bond is made pursuant to subdivision (b)(1)(i) at the time of the filing of the *praecipe*, the prothonotary shall make a notation upon the writ and its copies that it shall operate as a *supersedeas* when received by the magisterial district judge.

(4) *Failure to Deposit Sums of Money or Bond.*

(i) [In the event that] *Notice of Default.* If the tenant filing the *praecipe* fails to deposit the **required** sums of money**[,]** or bond**[, required by this rule]** when such deposits are due, **[the prothonotary, upon *praecipe* filed by the landlord, shall terminate the *supersedeas*. Notice of the termination of the *supersedeas* shall be forwarded by first class mail to the attorneys of record, or, if a party is unrepresented, to the party's last known address of record] the landlord shall mail or hand-deliver notice to the attorney of record, or if a tenant is unrepresented, to the tenant's last known address of record, the following notice together with a certificate of service in the form set forth in subdivision (e)**.

(ii) *Waiver.* The notice required by subdivision (b)(4)(i) shall not be waived.

(iii) *Relief.* The tenant may comply with subdivision (b)(1) at any time before the prothonotary terminates the *supersedeas*.

(iv) *Praecipe to Strike Supersedeas.* If the tenant fails to make the deposit required by subdivision (b) or (c) after ten days from the date of the notice or following any subsequent failure to make a deposit when due, upon *praecipe* by the landlord filed with the prothonotary together with a copy of the notice and certificate of service, the prothonotary shall terminate the *supersedeas.* Notice of the termination of the *supersedeas* shall be forwarded by the prothonotary by first class mail to the attorney of record, or, if a party is unrepresented, to the party's last known address of record.

[When the deposit of money or bond is made pursuant to this Rule at the time of the filing of the

***praecipe*, the prothonotary shall make upon the writ and its copies a notation that the writ will operate as a *supersedeas* when received by the magisterial district judge.]**

[C.] **(c)** *Indigent Tenants*.

(1) ***Inability to Deposit Escrow.*** Residential tenants who seek to file a *praecipe* involving a magisterial district court judgment for possession and who do not have the ability to **[pay]** **deposit** the lesser of three months' rent or the full amount of the magisterial district court judgment for rent shall file with the office of the prothonotary a tenant's affidavit, as set forth in **[subdivision B(2)]** **subdivision (c)(2)**.

(2) The tenant's affidavit shall be substantially in one of the following two forms:

[Caption]

TENANT'S *SUPERSEDEAS* AFFIDAVIT

[(NON-SECTION 8)]

NON-HOUSING CHOICE VOUCHER PROGRAM PARTICIPATION

I, _____, (print name and address here), have filed a *praecipe* for a writ of *certiorari* to review a magisterial district court judgment awarding to my landlord possession of real property that I occupy**[, and]**. I do not have the financial ability to **[pay]** **deposit** the lesser of three times my monthly rent or the judgment for rent awarded by the magisterial district court. My total household income does not exceed the income limits set forth in the instructions for obtaining a stay pending issuance of a writ of *certiorari* and I have completed an *in forma pauperis* (IFP) affidavit to verify this. I have/have not (cross out the one that does not apply) paid the rent this month.

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

_____ _____

Date SIGNATURE OF TENANT

OR

[Caption]

[SECTION 8] TENANT'S *SUPERSEDEAS* AFFIDAVIT

HOUSING CHOICE VOUCHER PROGRAM PARTICIPATION

I, _____, (print name and address here), have filed a *praecipe* for a writ of *certiorari* to review a magisterial district court judgment awarding my landlord possession of real property that I occupy**[, and]**. I do not have the financial ability to **[pay]** **deposit** the lesser of three times my monthly rent or the actual rent in arrears. My total household income does not exceed the income limits set forth in the Instructions for obtaining a stay pending issuance of writ of *certiorari* and I have completed an *in forma pauperis* (IFP) affidavit to verify this. I have/have not (cross out the one that does not apply) paid the rent this month.

The total amount of monthly rent that I personally pay to the landlord is $ _____ . I hereby certify that I am a participant in the **[Section 8 program]** **Housing Choice Voucher Program, also known as Section 8,** and I am not subject to a final (*i.e.*, non-appealable) decision of a court or government agency that terminates my right to receive **[Section 8]** **Housing Choice Voucher Program** assistance based on my failure to comply with program rules.

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

_____ _____

Date SIGNATURE OF TENANT

(3) ***Deposit of Rent into Escrow.***

[(a)] **(i)** If the rent has already been paid to the landlord in the month in which the *praecipe* is filed, the tenant shall **[pay]** **deposit** into an escrow account with the prothonotary the monthly rent in 30-day intervals from the date the *praecipe* was filed; or

[(b)] **(ii)** If the rent has not been paid at the time of filing the *praecipe*, the tenant shall **[pay]** **deposit**:

[(i)] **(A)** at the time of filing the *praecipe*, a sum of money equal to **[one third (1/3)]** **one-third** of the monthly rent;

[(ii)] **(B)** an additional deposit of **[two thirds (2/3)]** **two-thirds** of the monthly rent within 20 days of filing the *praecipe*; and

[(iii)] **(C)** additional deposits of one month's rent in full each 30 days after filing the *praecipe*. The amount of the monthly rent is the sum of money found by the magisterial district judge to constitute the monthly rental for the leasehold premises pursuant to Rule 514A**, pertaining to the contents of the magisterial district judge's judgment**. However, when the tenant is a participant in the **[Section 8 program]** **Housing Choice Voucher Program**, the tenant shall **[pay]** **deposit** the tenant share of the rent as set forth in the **["Section 8 Tenant's *Supersedeas* Affidavit"]** **Tenant's *Supersedeas* Affidavit Housing Choice Voucher Program Participant** filed by the tenant.

(4) ***Instructions.*** The prothonotary's office of the court of common pleas in which the *praecipe* is filed shall provide residential tenants who have suffered a judgment for possession with a "Supplemental Instructions for Obtaining a Stay of Eviction" as it appears on the Forms page of the website of the Unified Judicial System of Pennsylvania at **[www.pacourts.us]** **https://www.pacourts.us**.

[*Note*: The Forms page is found on the home page of the Unified Judicial System of Pennsylvania at www.pacourts.us. The Supplemental Instructions include both instructions and income limits.

The income limits are stated in monthly amounts and are based upon the most recent poverty income guidelines issued by the Federal Department of Health and Human Services.]

(5) ***Issuance.*** When the requirements of **[subdivisions C(2)-(3)]** **subdivisions (c)(2)-(3)** have been met, the prothonotary shall issue a *supersedeas*.

(6) ***Release of Escrow Deposits.*** Upon application by the landlord, the court shall release appropriate sums from the escrow account on a continuing basis while the writ is pending and while the ensuing proceeding is pending (in the event the writ is granted) to compensate the landlord for the tenant's actual possession and use of

the premises during the pendency of the writ and during the pendency of the ensuing proceeding (in the event the writ is granted).

(7) ***Failure to Deposit Sums of Money or Bond.*** If the tenant fails to make monthly rent **[payments]** **deposits** to the prothonotary as described in **[subdivision C(3)]** **subdivision (c)(3)**, **[the *supersedeas* may be terminated by the prothonotary upon *praecipe* by the landlord or other party to the action. Notice of the termination of the *supersedeas* shall be forwarded by first class mail to the attorneys of record, or, if a party is unrepresented, to the party's last known address of record]** **the landlord may file a *praecipe* with the prothonotary to terminate the *supersedeas* in the manner set forth in subdivision (b)(4) of this rule**.

(8) ***Failure to Satisfy Conditions.*** If the court of common pleas determines, upon written motion or its own motion, that the averments within any of the tenant's affidavits do not establish that the tenant meets the terms and conditions of **[subdivision C(1), *supra*]** **subdivision (c)(1)**, the court may terminate the *supersedeas*. Notice of the termination of the *supersedeas* shall be forwarded by first class mail to the attorneys of record, or, if a party is unrepresented, to the party's last known address of record.

[D.] **(d) *Striking or Termination of Writ.*** If a writ of *certiorari* is stricken, dismissed, or discontinued, any *supersedeas* based on it shall terminate. The prothonotary shall **[pay]** **release** the deposits of rental to the landlord.

(e) *Form of Notice.* The notice required by subdivision (b)(4)(i) shall be in the following form:

(Caption)

IMPORTANT NOTICE

If you do not deposit with the prothonotary the sum of money or bond due pursuant to Pa.R.Civ.P.M.D.J. 1013(b) or (c) to maintain the *supersedeas* within ten days from the date of this Notice, a *praecipe* to strike the *supersedeas* will be filed with the prothonotary. If the *supersedeas* is stricken, the landlord may request reissuance of an order for possession from the magisterial district court and you may be ejected from the property.

No further notices will be provided related to this or any future failure to a deposit when due.

If you have questions about hiring a lawyer or obtaining information about agencies that may offer legal services to eligible persons at a reduced fee or no fee, please contact your county bar association or legal services agency.

[*Note*:] **Comment:**

As in appeals **[(*see* Pa.R.C.P.M.D.J. No. 1008)]**, *certiorari* operates as an automatic *supersedeas* in civil actions when the writ is received by the magisterial district judge. ***See* Pa.R.Civ.P.M.D.J. 1008(a) (pertaining to the appeal as *supersedeas*). The money judgment portion of a landlord and tenant judgment is governed by subdivision (a). *See* Pa.R.Civ.P.M.D.J. 514 and 521 (Judgement; Notice of Judgment or Dismissal and the Right to Appeal; Execution by Levy).**

If the writ involves a judgment for the possession of real property, however, it will operate as a *supersedeas* upon receipt by the magisterial district judge only if money is paid or a bond is filed conditioned as stated in **[the rule]** **subdivision (b) or (c)**. **[This Rule has been amended to require a payment equal to the lesser of three months' rent or the rent actually in arrears in order for the writ involving a judgment for the possession of real property to act as a *supersedeas* to ensure consistency between this Rule and Pa.R.C.P.M.D.J. No. 1008 (Appeal as *Supersedeas*).]** **If the tenant fails to make the deposit required by subdivision (b) or (c), the landlord may file a *praecipe* with the prothonotary to terminate the *supersedeas* after providing notice to the tenant as required by subdivision (b)(4). The praecipe for termination of the *supersedeas* may state: "Please terminate the *supersedeas* in the within action for failure of the tenant to deposit monthly rent as required by Pa.R.Civ.P.M.D.J. 1013 when it became due and following notice of default dated _____" and shall be signed by the landlord. The prothonotary shall then note upon the *praecipe*: "Upon confirmation of failure of the tenant to deposit the monthly rent when it became due and certification of notice to the tenant, the *supersedeas* is terminated," and the prothonotary shall sign and docket the *praecipe*. The landlord may present a copy of the *praecipe* to the magisterial district judge who rendered the judgment and file a request for issuance of an order for possession pursuant to Rule 515.**

Subdivisions (b)(4) and (c)(7) require the landlord to include a certification in the *praecipe* that written notice of the landlord's intention to file the *praecipe* was given to the tenant at least ten days prior to filing the *praecipe*. The notice and certification of notice are not required if the landlord files a subsequent *praecipe* for a later failure to deposit money or an approved bond with the prothonotary as it becomes due. The notice required by subdivisions (b)(4) and (c)(7) may be mailed or hand delivered. Registered or certified mail is not required.

[A new subdivision C was created in 2008 to provide] **Subdivision (c) provides** a *praecipe* for writ of *certiorari* process for indigent residential tenants who are unable to meet the bond requirements of **[subdivision B]** **subdivision (b)**. **The federal Housing Choice Voucher Program may also be known as "Section 8".**

The "Supplemental Instructions" referenced in subdivision (c)(4) contain income limits. The income limits are stated in monthly amounts and are based upon the most recent poverty income guidelines issued by the United States Department of Health and Human Services.

[The request for termination of the *supersedeas*, upon the *praecipe* filed with the prothonotary, may simply state: "Please terminate the *supersedeas* in the within action for failure of the tenant to pay monthly rental as required by Pa.R.C.P.M.D.J. No. 1013 when it became due" and will be signed by landlord. The prothonotary will then note upon the *praecipe*: "Upon confirmation of failure of the tenant to deposit the monthly rent when it became due the *supersedeas* is terminated," and the prothono-

tary will sign and clock the *praecipe*. A copy of the *praecipe* may thereupon be displayed to the magisterial district judge who rendered the judgment, and a request for issuance of an order for possession under Pa.R.C.P.M.D.J. No. 515 may be made.

The money judgment portion of a landlord and tenant judgment (*see* Pa.R.C.P.M.D.J. Nos. 514 and 521) would be governed by subdivision A of this rule.]

* * * * *

Rule 1014. Orders of Court in **[Certiorari]** ***Certiorari*** Proceedings.

[A.] **(a)** If the court of common pleas finds in favor of the party obtaining the writ, it shall enter an order **[that]** **setting aside** the judgment is set aside without prejudice to the cause of action.

[B.] **(b)** If the court of common pleas finds against the party obtaining the writ, it shall enter an order **[that]** **dismissing** the writ **[is dismissed]**.

[*Official Note*: Subdivision A states the rule that if the court finds in favor of the party obtaining the writ, it merely sets the judgment below aside without prejudice to the cause of action.] **Comment:**

The grounds for **[certiorari]** ***certiorari*** do not go to the merits of the case but only to matters that usually can be cured by later selecting a proper tribunal. *See Statler v. Alexander Film Co.*, **[21 D & C 512 (1934)]** **21 D. & C. 512 (Westmoreland 1934)**.

[Subdivision B] **Subdivision (b)** provides for dismissal of the writ if the finding is against the party obtaining it. This leaves the judgment below in full force and effect. *See* **[Rule 1013C]** **Pa.R.Civ.P.M.D.J. 1013(d)**.

SUPREME COURT OF PENNSYLVANIA
Minor Court Rules Committee

PUBLICATION REPORT

Proposed Amendment of Pa.R.Civ.P.M.D.J. 514, 515, 516, 521, 1005, 1006, 1007, 1008, 1011, 1013, and 1014

The Minor Court Rules Committee ("Committee") is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.Civ.P.M.D.J. 514, 515, 516, 521, 1005, 1006, 1007, 1008, 1011, 1013, and 1014 providing for: (1) the service of a reissued order for possession; and (2) the provision of notice ten days prior to certain requests for court actions relating to appeals and writs of *certiorari*. The proposal encompasses both matters due to overlap between some of the rules.

Service of a Reissued Order for Possession

The Committee was asked to examine whether Pa.R.Civ.P.M.D.J. 516, pertaining to issuance and reissuance of orders for possession, should be amended to explicitly require the service of a reissued order for possession upon a tenant. Currently, an order for possession expires after 60 days. *See* Pa.R.Civ.P.M.D.J. 519C (pertaining to forcible entry and delivery of possession to the landlord). The order may be reissued for one additional 60-day period. *See* Pa.R.Civ.P.M.D.J. 516(B). Rule 516 contains additional provisions relating to the reissue of an order for possession following the striking, dismissal, termination, or lifting of an appeal, writ of *certiorari*, *supersedeas*, or bankruptcy or other stay.

While Rule 516 references the reissuance of an order for possession, it does not directly require service of the reissued order. Instead, the comment to Rule 516 alludes to service of a reissued order, noting "there may be additional server costs for service of the reissued order for possession." *See* Pa.R.Civ.P.M.D.J. 516, cmt. It could be argued that Rule 517, pertaining to service of the order for possession, does not distinguish between original and reissued orders for possession, and, therefore, one should not be inferred. However, the Committee was advised that, in some instances, there has been confusion whether a reissued order for possession must be served pursuant to Rule 517, including after the lifting of various pandemic-related eviction moratoria and the subsequent reissuance of orders for possession.

The Committee believes service of a reissued order for possession is critical to advise the tenant that he or she is under time constraints to either vacate the property or pursue other legal remedies. To clarify that service of the reissued order is required in all instances, the Committee is considering proposing an amendment to Rule 516: "A reissued order for possession shall be served on the tenant in accordance with subdivision (a)(2) and Pa.R.Civ.P.M.D.J. 517." *See* proposed Pa.R.Civ.P.M.D.J. 516(b)(2).

The Committee is also considering proposing the reorganization and restyling of Rule 516, including amendments intended to enhance clarity. The proposal also includes corollary amendments to the comment of Rule 521.

Notice to Tenant Prior to Striking an Appeal or Terminating a Supersedeas

The Committee was asked to consider whether there should be a statewide rule requiring the provision of notice to a tenant that the landlord is intending to: (1) file a *praecipe* to strike an appeal or writ of *certiorari* pursuant to Rule 1006 or 1011; or (2) terminate a *supersedeas* for failure to comply with Rule 1008 or 1013, requiring the deposit of sums of money or a bond with the prothonotary.

Currently, an appellee may file a *praecipe* with the prothonotary to mark an appeal or writ of *certiorari* stricken if the appellant fails to timely file a complaint or a certificate of service of the notice of appeal or the writ. *See* Pa.R.Civ.P.M.D.J. 1006(b)(1), 1011(c)(2). A landlord may also file a *praecipe* to terminate a *supersedeas* when the tenant has failed to make a timely escrow deposit. *See* Pa.R.Civ.P.M.D.J. 1008(b)(4), 1013(b)(4). No advance or concurrent notice is given to the appellant or tenant that the landlord is taking such action. Moreover, these terminations are immediate upon action by the prothonotary. *See*, *e.g.*, Pa.R.Civ.P.M.D.J. 1006, 1008(b) (pertaining to striking an appeal or *supersedeas*). The tenant's first notice that the *supersedeas* is terminated could be the service or posting of the order for possession. *See* Pa.R.Civ.P.M.D.J. 517 (Notation of Time of Receipt; Service of Order for Possession).

It was suggested to the Committee that this lack of notice and opportunity to cure has the potential to result in overly harsh consequences to the appellant. The Committee considered whether a procedure akin to the ten-day advance notice required by Pa.R.Civ.P. 237.1, pertaining to advance notice of intention to file a *praecipe* for entry of judgment for failure to file a complaint or by default for failure to plead, might provide an appropriate remedy. Additionally, the Committee notes Allegheny

County has a requirement for a ten-day notice prior to terminating a *supersedeas* for tenant's failure to make a timely escrow deposit.

Pa.R.Civ.P.M.D.J. 1006 and 1011 (Failure to File Complaint or Proof of Service): The rules provide two scenarios when an appeal or writ of *certiorari* can be stricken. First, if the appellant fails to file a complaint as required by Rule 1004A, the appellee may file a *praecipe* with the prothonotary to mark the appeal stricken from the record. *See* Pa.R.Civ.P.M.D.J. 1006(a). However, the Committee does not propose substantively amending subdivision (a) to require advance notice of the intent to strike the appeal for failure to file a complaint. This decision reflects the Committee's determination that the appellant should not be relieved of the responsibility to advance the action after initiating the appeal.

The second basis for marking the appeal or writ stricken relates to failure of a party to file proof of service with the prothonotary within the prescribed time. Rule 1005(b) requires the appellant to file with the prothonotary "proof of service of copies of the notice of appeal, and proof of service of a rule upon the appellee to file a complaint if required to request such a rule by Rule 1004B, within ten days after filing the notice of appeal." Similarly, if the party seeking a writ of *certiorari* fails to file proof of service of the writ upon the opposite party within the prescribed time, the opposite party may file a *praecipe* with the prothonotary to mark the writ stricken. *See* proposed Pa.R.Civ.P.M.D.J. 1011(c)(1).

Currently, if a party files a notice of appeal or *praecipe* for a writ of *certiorari* that is served in a timely manner, but then fails to file the proof of service with the prothonotary as required by Rules 1005B and 1011(1), the opposite party could file a *praecipe* with the prothonotary to mark the appeal or writ stricken from the record. The Committee viewed this consequence as disproportionately punitive if the appellant otherwise filed and served the appeal or *praecipe* for a writ of *certiorari* in a timely manner. Therefore, the Committee is considering recommending an amendment to Rule 1006(b) and 1011(c) requiring the requesting party to give at least ten days advance notice of the intention to strike the appeal or writ for failure to file the proof of service. Proposed Rules 1006 and 1011 would not give the appellant additional time to serve the notice of appeal or a rule upon the appellee to file a complaint. *See* proposed Pa.R.Civ.P.M.D.J. 1006, cmt. and Pa.R.Civ.P.M.D.J. 1011, cmt. However, it would afford the delinquent party the opportunity to cure the failure to timely file the proof of service with the prothonotary up to the point the requesting party files the *praecipe* to strike with the protonotary.

The Committee observes a difference in the allotted time for filing the proof of service for an appeal and a writ. Comparing current Rule 1005B and Rule 1011C, one observes the time prescribed for filing the proof of service for an appeal is ten days, while it is five days for filing the proof of service for a writ. An explanatory comment to Rule 1005 provides: "Rule 1005B extends the time for filing a proof of service of the notice of appeal from [five] days to [ten] days. The extension was qualified on the premise that the [five] day provision presents insurmountable problems to out-of-town counsel who file and serve by mail." Insofar as the "insurmountable problems" would also exist for out-of-town counsel relative to service of a writ of *certiorari*, the Committee is considering proposing the amendment of Rule 1011(c) to achieve consistency in the proof of service filing requirements for an appeal and writ.

Pa.R.Civ.P.M.D.J. 1008 and 1013: Rules 1008 and 1013 requires a tenant appealing or seeking a writ relating a landlord-tenant judgment to deposit a sum of money or a bond for the notice of appeal or writ to operate as a *supersedeas*. *See* Pa.R.Civ.P.M.D.J. 1008(b)(1), 1013(b)(1). Subsequent deposits are required within 30 days following the date of the appeal and each successive 30-day period thereafter. *Id*. If the tenant fails to make a deposit when due, the landlord may file a *praecipe* with the prothonotary to terminate the *supersedeas*. *See* Pa.R.Civ.P.M.D.J. 1008(b)(4), 1013(b)(4). Upon termination of the *supersedeas*, the landlord may present it to the magisterial district judge who entered the judgment and request the issuance of an order for possession under Pa.R.Civ.P.M.D.J. 515. *See* Pa.R.Civ.P.M.D.J. 1008, cmt. and Pa.R.Civ.P.M.D.J. 1013, cmt. Subdivision (c) of Rules 1008 and 1013 provides modified *supersedeas* provisions for tenants who do not have the ability to make the deposit required by subdivision (b).

The Committee discussed reasons why a tenant might not make a *supersedeas* deposit on time, *e.g.*, a lack of funds or confusion over the due date. The Committee also heard anecdotally of instances when a tenant has made a timely *supersedeas* deposit to the prothonotary but it is not properly credited to the tenant. In these scenarios, the tenant would not be advised he or she is in default or that the prothonotary has terminated the *supersedeas*. The tenant's first notice of the deficiency and striking of the *supersedeas* could be receipt of the order for possession by personal service or posting.

Given the serious consequences for failing to make a timely *supersedeas* deposit, *i.e.*, eviction from housing, the Committee considered whether requiring the landlord to give the tenant advance notice of his or her intent to terminate the *supersedeas* would be a constructive change. The Committee did not view the requirement for the landlord to provide advanced notice of intent to terminate the *supersedeas* as disproportionate to the relief sought. The courts of common pleas require a ten-day notice of intention to seek a default judgment for failure to file a complaint or failure to plead. *See* Pa.R.Civ.P. 237.1. Moreover, if the landlord provides a ten-day notice before striking the *supersedeas*, it will give the tenant the opportunity to determine if he or she made an error in calculating the due date or if there was an error in the application of the deposit before the eviction process begins. Even if the *supersedeas* is ultimately stricken, the tenant will have additional time to seek legal relief or make other housing arrangements and transport their property.

The Committee contemplated whether requiring a ten-day notice to the tenant before striking the *supersedeas* for failure to make a timely escrow deposit could be burdensome to the landlord if the tenant continually waited to receive notice before making the overdue deposit. Therefore, the Committee is considering proposing that a ten-day notice is only required upon the first default by the tenant. In the event of a subsequent default, the landlord would not be required to provide the advance notice. After receiving the first notice, the tenant should be vigilant of the need to monitor closely the *supersedeas* deposit due date, as well as application of deposits by the prothonotary to the tenant's account. A proposed form of notice is set forth in proposed Rules Pa.R.Civ.P. 1008(e) and 1013(e).

The Committee is also considering recommending updates to the federal housing assistance program formerly known as "Section 8" to its current name, "Housing Choice Voucher Program." *See* proposed Pa.R.Civ.P.M.D.J. 1008(c), 1013(c). Such a change would warrant corollary changes to the "Supplemental Instructions for Obtaining a Stay of Eviction" set forth on the home page of the Unified Judicial System of Pennsylvania at www.pacourts.us. Any revisions to the income limits contained within the Supplemental Instructions will be the subject of separate Committee review and the Committee does not seek input on the income limits at this time.

The Committee is also considering proposing the reorganization and restyling of Rules 1006, 1008, 1011, and 1013, as well as corollary amendments to the comments to Rules 514, 515, 1005, 1007, and 1014.

* * * * *

The Committee welcomes all comments, concerns, and suggestions regarding this proposal.

[Pa.B. Doc. No. 23-725. Filed for public inspection June 2, 2023, 9:00 a.m.]