

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

#### Amendment of Rule 219 of the Pennsylvania Rules of Disciplinary Enforcement; No. 411; Doc. No. 3

##### Order

*Per Curiam:*

And Now, this 9th day of April, 1998, it is ordered, pursuant to Article V, Section 10, of the Constitution of Pennsylvania, that:

1. Rule 219 of the Pennsylvania Rules of Disciplinary Enforcement is amended to read as set forth in Annex A.

2. This Order shall be processed in accordance with Pa.R.J.A. 103(b). To the extent that publication of a notice of proposed rulemaking would otherwise be required with respect to the amendment adopted by this Order, such publication is hereby found to be unnecessary because the immediate adoption of this Order is required in the interests of justice.

3. The amendment to Pa.R.D.E. 219 shall take effect upon publication of this Order in the *Pennsylvania Bulletin* and shall be applicable beginning with the 1998—1999 assessment year.

##### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart B. DISCIPLINARY ENFORCEMENT

#### CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

##### Subchapter B. MISCONDUCT

#### Rule 219. Periodic assessment of attorneys; voluntary inactive status.

\* \* \* \* \*

(d) On or before July 1 of each year all persons required by this rule to pay an annual fee shall file with the Administrative Office a signed statement on the form prescribed by the Administrative Office in accordance with the following procedures:

(1) The statement shall set forth:

\* \* \* \* \*

(v) A statement that any action brought against the attorney by the Pennsylvania Lawyers Fund for Client Security for the recovery of monies paid by the Fund as a result of claims against the attorney may be brought in the Court of Common Pleas of Allegheny, Dauphin or Philadelphia County.

(vi) Such other information as the Administrative Office may from time to time direct.

\* \* \* \* \*

[Pa.B. Doc. No. 98-658. Filed for public inspection May 1, 1998, 9:00 a.m.]

### PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

#### Amendment of Rule 301 of the Pennsylvania Rules of Disciplinary Enforcement; No. 412; Doc. No. 3

##### Order

*Per Curiam:*

And Now, this 9th day of April, 1998, it is ordered, pursuant to Article V, Section 10, of the Constitution of Pennsylvania, that:

1. Rule 301 of the Pennsylvania Rules of Disciplinary Enforcement is amended to read as set forth in Annex A.

2. This Order shall be processed in accordance with Pa.R.J.A. 103(b). The amendments to Pa.R.D.E. 301 shall take effect upon publication of this Order in the *Pennsylvania Bulletin* and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending.

##### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart B. DISCIPLINARY ENFORCEMENT

#### CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

##### Subchapter C. DISABILITY AND RELATED MATTERS

Rule 301. Proceedings where an attorney is declared to be [ **incompetent or is alleged to be** ] incapacitated or severely mentally disabled.

(a) The clerk of any court within this Commonwealth [ **in which** ] that declares that an attorney is [ **declared incompetent or is involuntarily committed to an institution** ] incapacitated or that orders involuntary treatment of an attorney on the grounds [ **of incompetency or disability** ] that the attorney is severely mentally disabled or that denies a petition for review of a certification by a mental health review officer subjecting an attorney to involuntary treatment shall within [ **20 days** ] 24 hours of such disposition transmit a certificate thereof to Disciplinary Counsel, who shall file such certificate with the Supreme Court.

**Official Note: It is the responsibility of each local court to adopt any necessary procedures so that mental health officers and individual judges notify the clerk of the court that the respondent in a matter is an attorney and that a certificate must accordingly be sent to Disciplinary Counsel under this rule.**

(b) Upon being advised that an attorney has been declared **[ incompetent ] incapacitated** or involuntarily committed to an institution on the grounds of **[ incompetency ] incapacity** or **severe mental** disability, Disciplinary Counsel shall secure and file a certificate in accordance with the provisions of subdivision (a) of this rule. If the declaration of **[ incompetence ] incapacity** or commitment occurred in another jurisdiction, it shall be the responsibility of Disciplinary Counsel to secure and file a certificate of such declaration or commitment.

(c) Where an attorney has been judicially declared **[ incompetent ] incapacitated** or involuntarily committed on the grounds of **[ incompetency ] incapacity** or **severe mental** disability, the Supreme Court, upon proper proof of the fact, shall enter an order transferring such attorney to inactive status effective immediately and for an indefinite period until the further order of the Court. A copy of such order shall be served upon such formerly admitted attorney, the guardian of such person, and/or the director of the institution to which such person has been committed in such manner as the Court may direct. **Where an attorney has been transferred to inactive status by an order in accordance with the provisions of this subdivision and, thereafter, in proceedings duly taken, the person is judicially declared to be competent, the Court upon application may dispense with further evidence that the disability has been removed and may direct reinstatement to active status upon such terms as are deemed proper and advisable.**

\* \* \* \* \*

(h) **[ No formerly admitted attorney transferred to inactive status under the provisions of this rule may ] Except as provided in subdivision (c), a disabled attorney may not** resume active status until reinstated by order of the Court upon petition for reinstatement pursuant to Rule 218 (relating to reinstatement). **[ Any formerly admitted attorney transferred to inactive status under the provisions of this rule ] A disabled attorney shall be entitled to apply for reinstatement to active status once a year or at such shorter intervals as the Court may direct in the order transferring the respondent to inactive status or any modification thereof. Such application shall be granted by the Court upon a showing by clear and convincing evidence that the formerly admitted attorney's disability has been removed and such person is fit to resume the practice of law. Upon such application, the Court may take or direct such action as it deems necessary or proper to a determination of whether the formerly admitted attorney's disability has been removed including a direction for an examination of the formerly admitted attorney by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination shall be paid by the formerly admitted attorney. [ Where an attorney has been transferred to inactive status by an order in accordance with the provisions of subdivision (c) of this rule and, thereafter, in proceedings duly taken, such person has been judicially declared to be competent, the Court may dispense with further evidence that the disability has been removed and may direct reinstatement to active status upon such terms as are deemed proper and advisable. ]**

\* \* \* \* \*

**(k) As used in this rule, the term "disabled attorney" means an attorney transferred to inactive status under this rule.**

**(l) See Rule 601(a) (relating to statutes and other authorities suspended or abrogated).**

[Pa.B. Doc. No. 98-659. Filed for public inspection May 1, 1998, 9:00 a.m.]

**Title 207—JUDICIAL CONDUCT**

**PART IV. COURT OF JUDICIAL DISCIPLINE  
[207 PA. CODE CH. 7]**

**Amendment to the Rules of Procedure; Doc. No. 1  
JD 94**

**Order**

*Per Curiam*

*And Now*, this 23rd day of March, 1998, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having: (1) Adopted proposed new Rules of Procedure 704 and 705, and (2) Renumbered former Rules of Procedure 704, 705 and 706, as more specifically hereinafter set forth, *It Is Hereby Ordered*:

*That* Court Administrator Wanda W. Sweigart provide for the publication of the Amendment in the *Pennsylvania Bulletin*, and

*That* interested parties shall submit suggestions, comments, or objections no later than thirty days from the publication of this Order in that *Bulletin*.

**Annex A**

**TITLE 207. JUDICIAL CONDUCT  
PART IV. COURT OF JUDICIAL DISCIPLINE  
ARTICLE III. OTHER PROCEEDINGS  
CHAPTER 7. OTHER RELIEF**

**Rule 704. Motion to Dismiss.**

**(A) Any party may file a motion to dismiss the petition on any legal ground within 14 days after the service of the petition unless the Court shortens or lengthens the time for filing such motion.**

**(B) The motion shall state with particularity the grounds for the motion and the facts and legal principles which support each ground. The motion shall be divided into consecutively numbered paragraphs, each containing only one material allegation as far as practicable.**

**Rule 705. Reply to Motion to Dismiss.**

**(A) Any party may file a reply to the motion to dismiss within 10 days of the filing of the motion unless the Court shortens or lengthens the time for filing such reply.**

**(B) The reply shall be divided into consecutively numbered paragraphs corresponding to the numbered paragraphs of the motion. The reply shall meet the allegations of the motion.**

**[ Rule 705. ] Rule 706.** Preliminary Motions.

(A) Preliminary motions in a matter other than one commenced by the filing of formal charges may be decided by a Conference Judge appointed by the President Judge for that purpose. The Conference Judge may schedule a hearing or argument on the motion, as is appropriate, or may defer any ruling to be decided by the Court. No ruling on a preliminary motion shall constitute a final order for the purpose of appeal.

(B) A decision by the Conference Judge which has the effect of terminating a proceeding based on a Petition for Relief shall be reviewed by the full Court. A majority vote shall be required to sustain such a decision.

**[ Rule 704. ] Rule 707.** Verification.

A petition [ or ], answer, **motion or reply** which sets forth facts which do not already appear of record, shall be verified by [ **some person having knowledge of the facts** ] the party filing it or by counsel for the Board, subject to penalties for unsworn falsification to authorities under the Crimes Code, 18 Pa.C.S. § 4904.

**[ Rule 706. ] Rule 708.** Hearing or Argument.

The Court may schedule argument or an evidentiary hearing on the petition.

[Pa.B. Doc. No. 98-660. Filed for public inspection May 1, 1998, 9:00 a.m.]

**Title 231—RULES OF CIVIL PROCEDURE**

**PART I. GENERAL  
[231 PA. CODE CH. 2950]**

**Amendment of Rule 2958.3(a); No. 290; Doc. No. 5**

**Order**

*Per Curiam:*

And Now, this 17th day of April, 1998, Pennsylvania Rule of Civil Procedure 2958.3(a) is amended to read as follows.

Whereas prior distribution and publication of the amendment would otherwise be required, it has been determined that the amendment is of a perfunctory nature and that immediate promulgation is required in the interest of efficient administration.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 1998.

**Annex A**

**TITLE 231. RULES OF CIVIL PROCEDURE**

**PART I. GENERAL**

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

**Rule 2958.3. Notice of Execution Served with Writ of Execution. Request for Prompt Hearing Limited to Issue of Waiver of Due Process Rights.**

(a) Written notice in the form prescribed by Rule 2966 and a form of petition to strike the judgment and request

for prompt hearing in the form prescribed by Rule 2967 shall be served upon the defendant with the writ of execution if the property to be levied upon **or attached** consists of

(1) personal property or

(2) personal property and real property, not within the scope of Rule 2958.2(a)(2).

\* \* \* \* \*

**Explanatory Comment**

The amendment to Rule 2958.3(a) supplies an omission with the addition of the words "or attached". The amendment conforms the language of subdivision (a) to that of subdivision (b) which begins with the clause "If the writ has been served and property has been levied upon or attached, . . ."

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chairperson*

[Pa.B. Doc. No. 98-661. Filed for public inspection May 1, 1998, 9:00 a.m.]

**PART I. GENERAL**

**[231 PA. CODE CHS. 3000 AND 4000]**

**Technical Amendment of Rule 3101 et seq.; No. 291; Doc. No. 5**

**Order**

*Per Curiam:*

And Now, this 20th day of April, 1998, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. Rules 3231 and 3241 are rescinded.

2. New Rule 3159 is promulgated.

3. Rules 3103, 3108, 3117, 3131, 3134, 3135 are amended.

4. The notes to Rules 3115 and 3121(b) are rescinded.

5. The note to Rule 3101(b)(5) is rescinded and a new note is substituted.

6. The notes to Rules 3102, 3112, 3121(c), 3122, 3123.1, 3143(c), 3251, 4009.22(a) are amended.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 1998.

**Annex A**

**TITLE 231. RULES OF CIVIL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 3000. JUDGMENTS**

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

**Rule 3101. Definitions; garnishee.**

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

**Rule 3102. Writ of execution.**

\* \* \* \* \*

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

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

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

**Rule 3103. Commencement; issuance.**

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

\* \* \* \* \*

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

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

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

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

Rule 3108. Service of [ **writ** ] **Writ** [ ; ], [ **notice** ] **No-**  
**tice of [ execution ] Execution.**

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

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

**Official Note:** The following Acts of Assembly remain unsuspended:

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

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

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

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

**Rule 3117. Discovery in aid of execution.**

\* \* \* \* \*

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

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

**Rule 3121. Stay of execution; setting aside execution.**

\* \* \* \* \*

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

\* \* \* \* \*

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

plaintiff. The court may in granting stay provide for payment to the plaintiff or may order sequestration of the rents or income.

\* \* \* \* \*

**Rule 3122. Venue of stay and other proceedings.**

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

Exemptions under Pennsylvania Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**8. Certain veteran benefits.**

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

**Sums payable under:**

**the Veterans' Compensation Act, 51 P.S. § 20012.**

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

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

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

Exemptions under Federal Law

1. Certain wages and compensation:

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

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

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

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

3. Certain retirement funds and accounts:

Civil Service, 5 U.S.C. § 8346(a).

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

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

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

4. Certain veteran and armed forces benefits:

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

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

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

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

5. Miscellaneous:

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

[ **Homestead Land, 43 U.S.C. § 175.** ] Rail Fund, 45 U.S.C. § 822(e).

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

\* \* \* \* \*

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

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

\* \* \* \* \*

**Rule 3134. Transfer of personal property to purchaser.**

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

"Defendant \_\_\_\_\_ by \_\_\_\_\_,  
(Name of Defendant)

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

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

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

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

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

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

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

\* \* \* \* \*

**Official Note:** For further remedies available to a third person claiming attached property, see Rules on Intervention, 2326 et seq.; Rules on Interpleader, 2301 et seq. and Rules on Sheriff's Interpleader [ Act of June 22, 1931, P. L. 883, 12 P. S. § 2368. ], 3201 et seq.

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

**Rule 3159. Acts of Assembly not suspended.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Official Note:** This Section is intended to preserve the numerous Acts of Assembly providing for immunity or exemption of particular types or classes of property from execution. The practice and procedure as to claiming or waiving exemption or immunity is governed by these rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ACTS OF ASSEMBLY NOT SUSPENDED**

**Rule 3231. Acts of Assembly not suspended.**

**Rescinded.**

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

**ACTS OF ASSEMBLY SUSPENDED**

**Rule 3241. Acts of Assembly suspended.**

**Rescinded.**

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

**FORMS**

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

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

Paragraph (4)(a) should be completed only if indexing of the execution in the county of issuance is desired as authorized by Rule 3104(a)(1). When the writ issues to another county indexing is required as of course in that county by the prothonotary. See Rule 3104(b).

\* \* \* \* \*

**CHAPTER 4000. DEPOSITIONS AND DISCOVERY**

**SUBPOENA UPON A PERSON NOT A PARTY**

**Rule 4009.22. Service of Subpoena.**

\* \* \* \* \*

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

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

\* \* \* \* \*

**Explanatory Comment**

*I. Execution Rule 3101 et seq.*

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

Several revisions merit further mention.

*Rule 3101*

A new note to Rule 3101 replaces the current note. It incorporates the substance of the current note, deletes references to repealed statutes and includes references to successor statutes. In addition, the note continues to advise that the enforcement of judgments against the Commonwealth, political subdivisions and public authorities must be in accord with the appropriate Act of Assembly. The note mentions two such statutes which, although repealed by JARA, contain practice and procedure which remain part of the common law of the Commonwealth pursuant to Section (3)(b) of that Act, 42 Pa.C.S. § 20003(b).

*Rule 3131*

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

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

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

*Rule 3135*

JARA repealed the following Acts: the Act of June 16, 1836, P. L. 755, § 104, 12 P. S. § 2543, providing for correction of a defective execution of a sheriff's deed, the Act of April 21, 1846, P. L. 430, 12 P. S. § 2544, providing for amendment of a defective sheriff's return, and the Act



of June 24, 1895, P. L. 246, 12 P. S. § 2545, providing for correction of an error in the description of real estate in a sheriff's deed. Rule 3135 has been revised to incorporate these correction practices. The text of these statutes is set forth in Endnote No. 1 following this comment.

*Rules 3159 and 3231*

Former Rule 3231 governed the preservation of Acts of Assembly relating to the enforcement of judgments for the payment of money. Many of the statutes preserved by Rule 3231 had been repealed by JARA. Rule 3231 has been rescinded and the provisions of Rule 3231 preserving statutes which have not been repealed have been transferred to new Rule 3159. Subdivision (a) of the new rule preserves Acts which are part of the Unconsolidated Statutes (\_\_\_ P. S. § \_\_\_\_ ) while subdivision (b) preserves Acts which form part of the Pennsylvania Consolidated Statutes (\_\_\_ Pa.C.S. § \_\_\_\_ ).

II. *Discovery Rule 4009.22*

Members of the bar had expressed concern that Rule 4009.21 et seq. governing the subpoena for the production of documents or things from a person not a party does not contain any reference to a waiver of the required twenty-day notice period. It was suggested that, if the parties agreed, they might dispense with the twenty-day period and thus expedite the production of the materials sought. Consequently, a second paragraph has been added to the note to Rule 4009.22(a) advising of the ability to waive the notice period and modify the certificate required by that rule as a prerequisite to service of the subpoena.

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chairperson*

**Endnote**

1. The repealed statutes read as follows:

*§ 2543. Correction of defective execution*

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

*§ 2544. Amendments to defective returns*

In all cases where any real estate hath been heretofore sold, or shall hereafter be sold, under any execution issued out of any of the courts of record in this commonwealth, and the sheriff, or other officer making such sale, shall have made, or hereafter may make a defective or informal return of his proceedings upon each execution, it shall be lawful for the purchaser at such sale, or other person or persons interested therein, to apply by bill or petition to the court out of which such execution issued, setting forth the facts of the case; and after due notice, to be given in such manner as the court may direct, to such purchaser or defendant in the execution, as whose property the same may have been sold, or to the executors, or administrators and heirs of such purchaser or defendant, or devisee of such estate, and to all other persons interested therein, to appear in such court, on a day certain, to be fixed by said court, and answer such bill or petition; and thereupon the said court shall have power to examine into the facts of the case, and make such order and decree therein as justice and equity may require, either by dismissing such bill or petition, or by correcting and amending such return to the execution, according to

the truth of the case; and directing the sheriff, for the time being, to execute a deed of such real estate to the purchaser thereof, or to such other person or persons, for the use of such as may be entitled thereto, under such sale, upon such terms and conditions as the said court may determine, and justice and equity require; which deed, so executed and acknowledged, as sheriffs' deeds are usually acknowledged, shall be as effectual in law as if the proper return had been made, and the title had been completed according to law.

*§ 2545. Correction of error in description*

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

[Pa.B. Doc. No. 98-662. Filed for public inspection May 1, 1998, 9:00 a.m.]

**PART I. GENERAL**

**[231 PA. CODE CH. 4000]**

**Proposed Amendment to Discovery Rule 4007.1;  
Proposed Recommendation No. 147**

The Civil Procedural Rules Committee is proposing to amend Rule of Civil Procedure 4007.1 governing the procedure in deposition by oral examination. The proposed recommendation has not been submitted to the Supreme Court of Pennsylvania for review but is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

All communications in reference to the proposed recommendation should be sent not later than June 5, 1998 to: Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, Pennsylvania 17055, or e-mail to civil.rules@court.state.pa.us.

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

**Annex A**

**TITLE 231. RULES OF CIVIL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 4000. DEPOSITIONS AND DISCOVERY**

**Rule 4007.1. Procedure in Deposition by Oral Examination.**

\* \* \* \* \*

**(f) An application for an order pursuant to Section 5326(a) of the Judicial Code may be filed only in the county in which the person who is the subject of the order resides, is employed or regularly transacts business in person.**

**Official Note: Section 5326 of the Judicial Code, 42 Pa.C.S. § 5326, a part of the Uniform Interstate and International Procedure Act, provides for assistance to tribunals and litigants outside the Commonwealth.**

**Explanatory Comment**

Section 5326 of the Judicial Code, 42 Pa. C.S. § 5326, relating to "Assistance to tribunals and litigants outside this Commonwealth with respect to depositions" provides:

(a) General Rule.—A court of record of this Commonwealth may order a person who is domiciled or is found within this Commonwealth to give his testimony or statement or to produce documents or other things for use in a matter pending in a tribunal outside this Commonwealth.

\* \* \* \* \*

The suggestion has been made that there should be a limitation upon the county from which an order may be sought so that the person who is the subject of the order is not put to unreasonable expense or burden. For example, a resident of Erie should not have to travel to Easton to object to an order obtained in connection with litigation outside the Commonwealth. The addition of new subdivision (f) to Rule 4007.1 responds to this concern.

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chairperson*

[Pa.B. Doc. No. 98-663. Filed for public inspection May 1, 1998, 9:00 a.m.]

**Title 255—LOCAL COURT RULES**

**ADAMS COUNTY**

**Commonwealth Approval of Criminal Complaints; No. MC-10-97**

**Local Rule 107. Approval of Certain Police Complaints by Attorney for the Commonwealth**

The District Attorney of Adams County having filed a certification pursuant to Pa.R.Crim.P. 107, criminal complaints and arrest warrant affidavits by police officers charging any of the following felony crimes:

- a. 18 Pa.C.S. Section 3121—Rape (graded as a felony of the first degree)
- b. 18 Pa.C.S. Section 3122.1—Statutory Sexual Assault (graded as a felony of the second degree)
- c. 18 Pa.C.S. Section 3123—Involuntary Deviate Sexual Intercourse (graded as a felony of the first degree)

d. 18 Pa.C.S. Section 3124.1—Sexual Assault (graded as a felony of the second degree)

e. 18 Pa.C.S. Section 3125—Aggravated Indecent Assault (graded as a felony of the second degree) shall not hereafter be accepted by a judicial officer unless the complaint and affidavit has the approval of an attorney for the Commonwealth prior to filing.

The effective date of this rule shall be upon conformity with Pa.R.Crim.P. 6.

*By the Court*

OSCAR F. SPICER,  
*President Judge*

[Pa.B. Doc. No. 98-664. Filed for public inspection May 1, 1998, 9:00 a.m.]

**DELAWARE COUNTY**

**DUI Cases; Doc. No.: 80124-98**

**Order**

*And Now*, this 8th day of April, 1998, it is hereby *Ordered and Decreed* as follows:

1) Each person charged with a Driving Under the Influence Offense in the County of Delaware is required to complete the Court Reporting Network (C. R. N.) Evaluation exclusively in the County of Delaware on each and every DUI Offense.

2) Each defendant charged with a Driving Under the Influence Offense in the County of Delaware is required to complete the required Community Service Hours, and the Track 1 or Track 2 Alcohol Highway Safety Educational Classes exclusively in the County of Delaware. Any exception to this Section must be approved by Walter R. Omlor, Jr., Executive Assistant, Department of Community Corrections.

3) Each defendant who is required to complete DUI outpatient treatment, and who resides within the County of Delaware, is required to complete DUI outpatient treatment exclusively at one of the five (5) Delaware County Approved DUI facilities; namely, Life Guidance Services, Crozer, ChesPenn Health Services, Mirmont, or Focus Counseling Center.

4) Each defendant who is required to complete DUI outpatient treatment, and resides outside of the County of Delaware, is permitted to complete this requirement at a licensed drug and alcohol facility in his/her home County or State, as long as the County of Delaware is provided with admittance and completion requirements prior to registration.

*By the Court*

A. LEO SERENI,  
*President Judge*

[Pa.B. Doc. No. 98-665. Filed for public inspection May 1, 1998, 9:00 a.m.]

# SUPREME COURT

1999 Paid Holidays for Staffs of the Appellate Courts and Administrative Office of Pennsylvania Courts; No. 192; Judicial Administration Doc. No. 1

## Order

*Per Curiam:*

*And Now*, this 17th day of April, 1998 it is hereby ordered that the following paid holidays for calendar year 1999 will be observed by all employees of the appellate courts and the Administrative Office of Pennsylvania Courts:

January 1, 1999	New Year's Day
January 18, 1999	Martin Luther King, Jr. Day (Observed)
February 15, 1999	Presidents' Day
April 2, 1999	Good Friday
May 31, 1999	Memorial Day (Observed)
July 5, 1999	Independence Day (Observed)
September 6, 1999	Labor Day
October 11, 1999	Columbus Day (Observed)
November 2, 1999	Election Day
November 11, 1999	Veterans Day
November 25, 1999	Thanksgiving Day
November 26, 1999	Day After Thanksgiving
December 24, 1999	Christmas Day (Observed)

[Pa.B. Doc. No. 98-666. Filed for public inspection May 1, 1998, 9:00 a.m.]

Sessions of the Supreme Court of Pennsylvania for the Year 1999; No. 110; Appellate Court Rules Doc. No. 1

## Order

*Per Curiam:*

*And Now*, this 17th day of April, 1998, it is ordered that the argument/administrative sessions of the Supreme Court of Pennsylvania shall be held in the year 1999 as follows:

Philadelphia	February 1 through February 5
Pittsburgh	March 8 through March 12
Harrisburg	April 26 through April 30
Philadelphia (Administrative Session)	June 2, 1999
Pittsburgh	September 13 through September 17
Philadelphia	October 18 through October 22
Harrisburg	November 15 through November 19
Pittsburgh (Administrative Session)	December 2, 1999

Additional argument/administrative sessions may be scheduled as the Court deems necessary.

[Pa.B. Doc. No. 98-667. Filed for public inspection May 1, 1998, 9:00 a.m.]