

IN THE
SUPREME COURT OF PENNSYLVANIA

IN RE: Technical Amendment : No. 291
of Rule of Civil Procedure : Civil Procedural Rules
3101 et seq. : Docket No. 5

O R D E R

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 Rules 3231 and 3241 are rescinded.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 The notes to Rules 3115 and 3121(b) are rescinded.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 The note to Rule 3101(b)(5) is rescinded and a new note is substituted.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.

NOTE:

Underscored material is added.

Bracketed material is deleted.
New rules are not underscored.

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The note following Rule 3101(b)(5) is rescinded and a new note is substituted to read as follows:

Rule 3101. Definitions. Garnishee

...

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 unsuspending.

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The following Acts of Assembly were repealed by the Judiciary Act Repealer Act (JARA).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

...

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:

Rule 3103. Commencement. Issuance

(a) ...

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.

(b) ...

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 [w]rit[; n]. Notice of [e]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;

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 cover-

ing 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.

(2) ...

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**

...

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

...

[**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

(a) ...

(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.

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

(a) ...

(b) ...

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

(c) ...

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

...

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 judgment[s] 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

...

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

State Employees' 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 [Employees] Retirement Fund, [53 P.S. ' 881.101 et seq.] 42 Pa.C.S. ' 8124(b)(1)(vi)

Private employees' 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 [C]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:

Longshoremen's 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.

[**NOTE:** Section 12 of the Act of June 13, 1840, P.L. 689, 12 P.S. ' 2491, remains unsuspended 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__]."

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 unsuspended 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.

[**NOTE:** The Acts of Assembly providing for correction of defective execution of the deed, defective return or errors or misdescriptions remain unsuspending 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

...

(c) ...

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.

Rule 3159. Acts of Assembly Not Suspended (New)

(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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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).

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).

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.

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).

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).

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.

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

Rule 3231. Acts of Assembly Not Suspended

Rescinded.

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

Rule 3241. Acts of Assembly Suspended

Rescinded.

NOTE: The statutes formerly suspended by
this rule have been repealed.

FORMS

Rule 3251. Praecipe for [w]Writ of [e]Execution.[--]

[m]Money [j]Judgments

...

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).

...

Rule 4009.22. Service of Subpoena

(a) ...

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 Repealer 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
Chairman

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 venditioni exponas, 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.