

Rule 237.1. Notice of Praecept for Entry of Judgment of Non Pros for Failure to File Complaint or by Default for Failure to Plead

(a)(1) As used in this rule,

“judgment of non pros” means a judgment entered by praecipe pursuant to Rule 1037(a) and 1659;

Note: When a defendant appeals from a judgment entered in a magisterial district **[judge]** court, Pa. R.C.P.M.D.J. 1004(b) authorizes the appellant to file a praecipe for a rule as of course upon the appellee to file a complaint or suffer entry of a judgment of non pros. The entry of the judgment of non pros is governed by Pa. R.C.P. **No.** 1037(a) and is subject to this rule.

“judgment by default” means a judgment entered by praecipe pursuant to Rules 1037(b), 1511(a), 3031(a), and 3146(a).

(2) No judgment of non pros for failure to file a complaint or by default for failure to plead shall be entered by the prothonotary unless the praecipe for entry includes a certification that a written notice of intention to file the praecipe was mailed or delivered

(i) in the case of a judgment of non pros, after the failure to file a complaint and at least ten days prior to the date of the filing of the praecipe to the party’s attorney of record or to the party if unrepresented, or

(ii) in the case of a judgment by default, after the failure to plead to a complaint and at least ten days prior to the date of the filing of the praecipe to the party against whom judgment is to be entered and to the party’s attorney of record, if any.

The ten-day notice period in subdivision (a)(2)(i) and (ii) shall be calculated forward from the date of the mailing or delivery, in accordance with Rule 106.

Note: The final sentence of Rule 237.1(a)(2) alters the practice described in the decision of *Williams v. Wade*, 704 A.2d 132 (Pa. Super. 1997).

- (3) A copy of the notice shall be attached to the praecipe.
- (4) The notice and certification required by this rule may not be waived.

Note: A certification of notice is a prerequisite in all cases to the entry by praecipe of a judgment of non pros for failure to file a complaint or by default for failure to plead to a complaint. Once the ten-day notice has been given, no further notice is required by the rule even if the time to file the complaint or to plead to the complaint has been extended by agreement.

See Rule 237.4 for the form of the notice of intention to enter a judgment of non pros and Rule 237.5 for the form of the notice of intention to enter a judgment by default.

- (b) This rule does not apply to a judgment entered
 - (1) by an order of court,
 - (2) upon praecipe pursuant to an order of court, or
 - (3) pursuant to a rule to show cause.

Note: See Rule 3284 which requires that in proceedings to fix fair market value of real property sold, notice must be given pursuant to the requirements of Rule 237.1 et seq.

Rule 3281. Parties

- (a) The petition shall name the judgment creditor as petitioner.
- (b) The petition **[shall] may** name as respondent any debtor, obligor, guarantor, mortgagor, and any other person directly or indirectly liable to the judgment creditor for the payment of the debt, and any owner of the property affected thereby.

Note: Section 8103(b) of the Judicial Code, 42 Pa.C.S. § 8103(b), governing deficiency judgments provides that “[a]ny debtor and any owner of the property affected thereby, who is neither named in the petition nor served with a copy thereof or notice of the filing thereof as prescribed by general rule, shall be deemed to be discharged from all personal liability to the judgment creditor on the debt, interest, and costs....”

Rule 3283. Service

[(a) The petition shall be served

(1) upon a respondent who is a defendant in the judgment who has entered an appearance, by the petitioner in the manner provided by Rule 440, and

(2) upon any other respondent]

(a)(1) If there is an attorney of record, service shall be made upon the respondent's attorney of record pursuant to Rule 440(a)(1)(i) or (ii).

(2) If there is no attorney of record, service shall be made

(i) by the sheriff or a competent adult in the manner prescribed by Rule 402(a) for service of original process, or

Note: See Rule 76 for the definition of "competent adult".

(ii) by the petitioner mailing a copy in the manner prescribed by Rule 403, or

(iii) if service cannot be made as provided in subparagraphs (i) or (ii), pursuant to special order of court as prescribed by Rule 430.

(b) The person serving the petition shall file a return of service as provided by Rule 405.

Rule 3284. Order Upon Default or Admission

The **[court] prothonotary, on praecipe of the petitioner,** shall, without further notice or hearing, enter an order determining the fair market value of the real property to be the value alleged in the petition, determining the prior lien amounts to be in the amounts alleged in the petition and making any special allocation requested by the petition if

(1) no answer is filed within the required time to a petition which **was served pursuant to the requirements of Rule 3283 and** contains a notice to defend **required by Rule 3282(b),** and notice has been given as provided by Rule 237.1 et seq., or

(2) an answer is filed which does not deny the allegations in the petition as to the fair market value, the prior lien amounts or any special allocation.