

**SUPREME COURT OF PENNSYLVANIA
Minor Court Rules Committee**

NOTICE OF PROPOSED RULEMAKING

**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 amendment 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:

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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

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

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[Official Note] Comment:

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The separate entries provided in subdivision A are made necessary as a result of the rental deposit provisions for appeal or **[certiorari] *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.**

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Rule 515. Request for Order for Possession.

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[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)**.

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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: [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.

[C. 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 **[Rule 521A] 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.

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[Official Note: See Rule 516, Note.] Comment: See Pa.R.Civ.P.M.D.J. 516, cmt.

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.

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.

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[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.

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.]

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 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.

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] 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, 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 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 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.¹

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

¹ This requirement is the result of a 1985 consent agreement entered in *Smith v. Lamb*, C.A. 85-1935 (W.D. Pa. 1985).

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.