

Rule 206. Costs; Proceedings In Forma Pauperis.

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C. Taxable costs on appeal **[or certiorari]** shall be paid by the unsuccessful party, and a plaintiff who appeals shall be considered an unsuccessful party if he or she does not obtain on appeal a judgment more favorable than that obtained in the magisterial district court proceeding. A defendant **[who prevails on certiorari proceedings brought by the defendant or]** who obtains a favorable judgment upon appeal by either party shall not be liable for costs incurred by the plaintiff in the preceding magisterial district court proceeding and may recover taxable costs in that proceeding from the plaintiff. A plaintiff who is unsuccessful in the magisterial district court proceeding may recover taxable costs in that proceeding from the defendant if the plaintiff is successful on appeal, and in that event the defendant may not recover costs in the magisterial district court proceeding from the plaintiff.

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Official Note

“Execution” costs include those for executing an order for possession. The items constituting taxable costs in appeal **[or certiorari proceedings]** will be governed by law or general rule applicable in the court of common pleas.

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This rule does not provide for the assessment of filing costs against an unsuccessful plaintiff who has been permitted to proceed in forma pauperis and who remains indigent. See *Brady v. Ford*, **[451 Pa. Super. 363,]** 679 A.2d 837 (**Pa. Super.** 1996).

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Rule 403. Issuance and Reissuance of Order of Execution.

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B. (1) Upon written request filed by the plaintiff within five years from the date of entry of the judgment, an order of execution shall be reissued at any time, and any number of times.

(2) If an order of execution is superseded by an appeal, **[writ of certiorari,]** supersedeas, or a stay pursuant to a bankruptcy proceeding or other federal or state law, and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 plaintiff wishes to proceed with the order of execution,

the plaintiff must file with the magisterial district judge a written request for reissuance of the order of execution in accordance with subparagraph (1).

C. A written request for reissuance of the order of execution filed pursuant to subparagraph B(2) 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

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

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Official Note

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As to the notice to quit requirement, see Section 501 of The Landlord and Tenant Act of 1951, 68 P. S. § 250.501. See also *Patrycia Bros., Inc. v. McKeefrey*, 38 Pa. D. & C.2d 149 (Delaware County C.P. 1966).

The separate entries provided in paragraph A are made necessary as a result of the rental deposit provisions for appeal [**or certiorari**] contained in Rules 1008B [**and 1013B**], 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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B. (1) Except as otherwise provided in subparagraph (2), if the magisterial district judge has rendered a judgment arising out of a residential lease that the real property be delivered up to the plaintiff, the plaintiff may after the 10th day but within 120 days following the date of the entry of the judgment, file with the magisterial district judge a request for an order for possession. The request shall include a statement of the judgment amount, return and all other matters required by these rules.

(2) In a case arising out of a residential lease, if before the plaintiff requests an order for possession,

(a) an appeal **[or writ of certiorari]** operates as a supersedeas; or

(b) proceedings in the matter are stayed pursuant to a bankruptcy proceeding; and

(c) the supersedeas or bankruptcy stay is subsequently stricken, dismissed, lifted, or otherwise terminated so as to allow the plaintiff to proceed to request an order for possession, the plaintiff may request an order for possession only within 120 days of the date the supersedeas or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated.

Official Note

The fifteen days in subdivision A of this rule, when added to the 16 day period provided for in Rule 519A, will give the defendant time to obtain a supersedeas within the appeal period. See Rules 1002[,], **and** 1008[,], **1009 and 1013**].

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Subparagraph B(2) provides that in a case arising out of a residential lease, if a supersedeas **[([]resulting from an appeal, [or writ of certiorari]) or a** bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated, thus allowing the plaintiff to proceed with requesting an order for possession, the request may be filed only within 120 days of the date the supersedeas or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated.

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At the time the plaintiff files the request for an order for possession, the magisterial district court should collect server fees for all actions through delivery of possession.

Thereafter, if the order for possession is satisfied 48 hours or more prior to a scheduled delivery of possession, a portion of the server costs may be refundable. See Rules 516 through 520 and **[Section 2950(d) of the Judicial Code, 42 Pa.C.S. § 2950(d)]** **44 Pa.C.S. § 7161(d)**.

Rule 516. Issuance and Reissuance of Order for Possession.

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B. (1) Except as otherwise provided in subdivision C, upon written request of the plaintiff the magisterial district judge shall reissue an order for possession for one additional 60 day period.

(2) 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, and

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

(b) the bankruptcy stay is lifted; and

(c) the plaintiff wishes to proceed with the order for possession,

the plaintiff must file with the magisterial district judge a written request for reissuance of the order for possession in accordance with subparagraph (1).

C. In a case arising out of a residential lease a request for reissuance of an order for possession may be filed only 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, only within 120 days of the date the appeal[, **writ of certiorari,]** or supersedeas is stricken, dismissed, or otherwise terminated or the bankruptcy stay is lifted.

D. A written request for reissuance of the order for possession filed after an appeal[, **writ of certiorari,]** or supersedeas is stricken, dismissed, or otherwise terminated, or a bankruptcy 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 stay.

Official Note

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Subdivision B provides for reissuance of the order for possession for one additional 60 day period. However, pursuant to subdivision C, in cases arising out of 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, only within 120 days of the date the appeal**[, writ of certiorari,]** or supersedeas is stricken, dismissed, or otherwise terminated, or the bankruptcy stay is lifted. The additional 60 day period need not necessarily immediately follow the original 60 day period of issuance. The written request for reissuance may be in any form and may consist of a notation on the permanent copy of the request for order for possession form, "Reissuance of order for possession requested," subscribed by the plaintiff. The magisterial district judge shall mark all copies of the reissued order for possession, "Reissued. Request for reissuance filed

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(time and date)." A new form may be used 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. However, there may be additional server costs for service of the reissued order for possession.

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## Rule 820. Appellate Proceedings.

A guardian of a party who is a minor or an incompetent may initiate in an appropriate court of common pleas an appeal[, **certiorari proceedings**] or a statement of objection to Rule 420 and Rule 519.1 orders and determinations.

### Official Note

It was thought advisable to include a provision giving guardians of minors and incompetents, as defined in Rule 801(3), the right to initiate appeals[, **certiorari proceedings**] and statements of objection to Rule 420 and Rule 519.1 orders and determinations. In doing so, of course, they will have to comply with applicable provisions of the rules governing appellate proceedings. Once the case is in the court of common pleas, however, provisions of the Rules of Civil Procedure relating to guardians ad litem and other procedures will apply.



Rule 1001. Definitions.

As used in this chapter:

(1) Judgment—A judgment rendered by a magisterial district judge under Rule 319, 322 or 514.

(2) Appeal—An appeal from a judgment to the court of common pleas.

**[(3)](3) Certiorari—An examination by the court of common pleas of the record of proceedings before a magisterial district judge to determine questions raised under Rule 1009A.]**

**[(4)](3) Supersedeas—A prohibition against any further execution processes on the judgment affected thereby.**

**[(5)](4) Court of common pleas—The court of common pleas of the judicial district in which is located the magisterial district wherein the questioned action of the magisterial district judge took place.**

**[(6)](5) Claimant—Includes a defendant with respect to a defendant's cross-complaint or supplementary action filed pursuant to Rule 342 in the action before the magisterial district judge.**

**[(7)](6) Defendant—Includes a plaintiff with respect to the defendant's cross-complaint or supplementary action filed pursuant to Rule 342 in the action before the magisterial district judge.**

**[(8)](7) Service by certified or registered mail—The mailing of properly addressed certified or registered mail.**

**[(9)](8) Proof of service—A verified written statement that service was made by personal service or by certified or registered mail, with the sender's receipt for certified or registered mail attached thereto if service was made by mail.**

Official Note

Although one of the purposes of the definitions in this rule is to avoid needless repetition throughout these appellate rules, some of the definitions are intended to state or clarify the law as well.

In connection with the definition of “appeal” in subdivision (2), see also Rule 1007 and the note thereto. **Writs of certiorari are not permitted on judgments of magisterial district courts. The Supreme Court of Pennsylvania was specifically empowered to abolish such writs by rule. See Pa. Const. Art. V, Schedule, § 26; 42 Pa.C.S. § 934; Pa.R.Crim.P. No. 460, Comment. Any claim that would have previously been made on a praecipe for a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002-1008.**

[Under subdivision (3), certiorari is restricted to an examination of the record of the proceedings before the magisterial district judge, which will appear on the complaint forms prescribed by the State Court Administrator. See *Flaherty v. Atkins*, 189 Pa. Super. 550, 152 A.2d 280 (1959). This is a narrow form of certiorari, both with respect to procedure and the matters which can be considered under Rule 1009A. Since an aggrieved party will be entitled to a broad form of appeal de novo under these rules, there seems to be no justification for providing also for a broad form of certiorari. These restrictions on the writ of certiorari are authorized by § 26 of the Schedule to Article V of the 1968 Constitution. The writ of error, which at common law was probably available only to review the proceedings of a court of record (see *Beale v. Dougherty*, 3 Binn. 432 (1811)), is not a form of appellate process permitted by these rules. See also *County of Carbon v. Leibensperger*, 439 Pa. 138, 266 A.2d 632 (1970) (court of common pleas cannot issue writ of prohibition).]

The definition of supersedeas in subdivision **[(4)](3)** points out the proper office and limited nature of a supersedeas. See *also* Rules 1008 **[and 1013]** and the notes thereto.

Under subdivision **[(9)](8)**, there is no requirement that the sender’s receipt for certified mail be postmarked. There is no return receipt requirement for certified or registered mail. It is no longer necessary that the proof of service be under oath or affirmation; however, the statement is now made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Rule 1002. Time and Method of Appeal.

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**C. This rule shall provide the exclusive means of appealing a judgment. Courts of common pleas shall not issue writs of certiorari in such cases.**

Official Note

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**Writs of certiorari are not permitted on judgments of magisterial district courts. The Supreme Court of Pennsylvania was specifically empowered to abolish such writs by rule. See Pa. Const. Art. V, Schedule, § 26; 42 Pa.C.S. § 934; Pa.R.Crim.P. No. 460, Comment. Any claim that would have previously been made on a praecipe for a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002-1008.**

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

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### Official Note

Subdivision A requires service of a copy of the notice of appeal upon the magisterial district judge as well as upon the appellee, or his attorney of record. This copy, when received by the magisterial district judge, may operate as a supersedeas under Rule 1008. As to 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 the sender's receipt must be attached to the proof of service. See Rule 1001~~[(9)]~~(8) and the last paragraph of the note to Rule 1001. The notice of appeal and the proof of service may be filed simultaneously. See *also* Rule 1006 and its note. Subdivision C prescribes a pleading type service of the complaint, which may be made by ordinary mail, upon the opposite party in the appeal or his attorney of record.

Rule 1009. [Praeceptum for Writ of Certiorari] Rescinded.

**[A. Unless he was the plaintiff in the action before the magisterial district judge, a party aggrieved by a judgment may file with the prothonotary of the court of common pleas a praecipe for a writ of certiorari claiming that the judgment should be set aside because of lack of jurisdiction over the parties or subject matter, improper venue or such gross irregularity of procedure as to make the judgment void. If the party aggrieved by the judgment was the plaintiff in the action before the magisterial district judge, he may file a praecipe for a writ of certiorari only on the last mentioned ground.**

**B. If lack of jurisdiction over the parties or the subject matter is claimed, the praecipe may be filed at any time after judgment. Otherwise it shall be filed within thirty (30) days from the date of the judgment.**

**C. The praecipe shall identify the judgment complained of and the magisterial district judge in whose office the record of the proceedings containing the judgment is filed.**

**D. The praecipe and the writ shall be on a form which shall be prescribed by the State Court Administrator.]**

Official Note

**[Subdivision A sets forth the grounds for certiorari. See the comments concerning the limited nature of certiorari in the note to Rule 1001. The plaintiff in the action before the magisterial district judge, and the word “plaintiff” as used in this rule does not include a defendant who has sued on a cross-complaint, may file a praecipe for a writ of certiorari only on the ground of gross irregularity. Having instituted the proceedings before the magisterial district judge, the plaintiff should not be permitted to challenge jurisdiction or venue.**

**Under subdivision B, the praecipe for the writ of certiorari must be filed within thirty days after the date of the judgment, except when a question of jurisdiction is raised. There is no time limit on raising a question of jurisdiction by certiorari. *Flaherty v. Atkins*, 189 Pa. Super. 550, 152 A.2d 280 (1959). A party who files his praecipe after the thirty day period has run can be heard only on the question of jurisdiction (if permitted to raise that question under subdivision A) even though he claims improper venue or gross irregularity along with his claim of lack of jurisdiction.]**

**All rules pertaining to writs of certiorari are rescinded. Any claim that would have previously been made on a praecipe for a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002-1008.**

Rule 1010. **[Bond for Writ of Certiorari] Rescinded.**

**[No bond or other security shall be required for issuance of the writ of certiorari.]**

Official Note

**[As in the case of appeals (see Rule 1003), no bond or other security is required for certiorari, but see Rule 1013 with respect to supersedeas on certiorari.]**

**All rules pertaining to writs of certiorari are rescinded. Any claim that would have previously been made on a praecipe for a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002-1008.**

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

**[A. Upon receipt of the praecipe for a writ of certiorari, the prothonotary shall issue 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.**

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

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

Official Note

**[The provisions as to service of the writ parallel those for service of notices of appeal. 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.]**

**All rules pertaining to writs of certiorari are rescinded. Any claim that would have previously been made on a praecipe for a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002-1008.**



Rule 1012. [Return by Magisterial District Judge] Rescinded.

[The magisterial district judge to whom the writ of certiorari is directed shall, within ten (10) days after its receipt by him, make return to the writ by transmitting to the prothonotary a certified true copy of the record of the proceedings containing the judgment.]

Official Note

[The certified true copy of the record of the proceedings containing the judgment will be a certified true copy of the filled out complaint form prescribed by the State Court Administrator.]

All rules pertaining to writs of certiorari are rescinded. Any claim that would have previously been made on a praecipe for a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002-1008.

**Rule 1013. [Writ of Certiorari as Supersedeas] Rescinded.**

**[A. Receipt of the 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 of this rule.**

**B. When the writ of certiorari involves 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 party obtaining the writ at the time of filing the writ, deposits with the prothonotary a sum of money (or a bond, with surety approved by the prothonotary) equal to the lesser of three (3) 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 magisterial district judge, and, thereafter, deposits cash or bond with the prothonotary in a sum equal to the monthly rent which becomes due during the period of time the proceedings upon writ are pending in the court of common pleas, such additional deposits to be made within thirty (30) days following the date of the filing of the praecipe, and each successive thirty (30) day period thereafter.**

**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).**

**In the event that the party filing the praecipe fails to deposit the sums of money, or bond, required by this rule when such deposits are due, the prothonotary, upon praecipe filed by the party that did not file the praecipe for writ of certiorari, shall terminate the supersedeas. Notice of the termination of the supersedeas shall be forwarded by first class mail to attorneys of record, or, if a party is unrepresented to the party's last known address of record.**

**Where 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. Indigent Tenants**

**(1) 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 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 (2).

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

[Caption]

**TENANT'S SUPERSEDEAS AFFIDAVIT (NON-SECTION 8)**

I,

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(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 the lesser of three (3) 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.

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Date      SIGNATURE OF TENANT

OR

[Caption]

**SECTION 8 TENANT'S SUPERSEDEAS AFFIDAVIT**

I,

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(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 the lesser of three (3) 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 \$

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. I hereby certify that I am a participant in the Section 8 program and I am not subject to a final (i.e., non-appealable) decision of a court or government agency which terminates my right to receive Section 8 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.

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Date      SIGNATURE OF TENANT

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

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

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

(ii) an additional deposit of two thirds (2/3) of the monthly rent within twenty (20) days of filing the praecipe; and

(iii) additional deposits of one month's rent in full each thirty 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. However, when the tenant is a participant in the Section 8 program, the tenant shall pay the tenant share of the rent as set forth in the “Section 8 Tenant’s Supersedeas Affidavit” filed by the tenant.

(4) 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 website of the Minor Court Rules Committee.]

**Official Note:** The website of the Minor Court Rules Committee is part of the home page of the Administrative Office of Pennsylvania Courts at [www.pacourts.us](http://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) When the requirements of paragraphs (2) and (3) have been met, the prothonotary shall issue a supersedeas.

(6) 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) If the tenant fails to make monthly rent payments to the prothonotary as described in paragraph (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 attorneys of record, or, if a party is unrepresented, to the party’s last known address of record.

(8) 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 paragraph (1), supra, the Court may terminate the supersedeas. Notice of the termination of the supersedeas shall be forwarded by first class mail to attorneys of record, or, if a party is unrepresented, to the party’s last known address of record.

**D. If a writ of certiorari is stricken, dismissed or discontinued, any supersedeas based on it shall terminate. The prothonotary shall pay the deposits of rental to the party who sought possession of the real property.]**

Official Note

**[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. 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. This Rule has been amended to require a payment equal to the lesser of three month's 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). A new subdivision (C) was created in 2008 to provide a praecipe for writ of certiorari process for indigent residential tenants who are unable to meet the bond requirements of subdivision (B).**

**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 party filing the writ 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 party filing the writ 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.]**

**All rules pertaining to writs of certiorari are rescinded. Any cause of action that would have previously been filed on a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002-1008.**

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

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

**B. If the court of common pleas finds against the party obtaining the writ, it shall enter an order that 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. The grounds for 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).**

**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.]**

**All rules pertaining to writs of certiorari are rescinded. Any claim that would have previously been made on a praecipe for a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002-1008.**

Rule 1015. [Certiorari and Appeal Not Permitted] Rescinded.

[A judgment may not be the subject of both certiorari and appeal. The prothonotary shall mark stricken from the record any writ of certiorari concerning a judgment as to which an appeal is pending if proof of service of copies of the notice of appeal has been filed. If the appeal is stricken or voluntarily terminated, the writ of certiorari shall be reinstated upon praecipe of the party obtaining the writ.]

Official Note

[This rule forbids bringing both certiorari and an appeal. An appeal involves a trial de novo on the merits, although in many cases first in the form of compulsory arbitration, without regard to any defects in the proceedings below, whereas certiorari does attack defects, not going to the merits, in the proceedings below. To attempt to combine these two procedures would cause administrative difficulties hardly worth the effort, considering that a successful certiorari would often merely allow the case to be tried again, either before another magisterial district judge or in the court of common pleas, and that an appeal actually is a second trial although it may have changed aspects (see Rule 1007B). Probably because of these administrative difficulties, the courts of common pleas have rather uniformly prohibited joining the two remedies of appeal and certiorari and have either required an election or forced the prosecution of the first type filed to the exclusion of the other. *See, for example, Ward v. Harligan*, 1 W.N.C. 72 (1874); *Russell v. Shirk*, 3 C.C. 287 (1888). Since under the 1968 Constitution a party is entitled as of right to an appeal (Art. V, § 9) but not to certiorari (Art. V, Schedule, 26), it was decided to provide in this rule that the remedy of appeal would take precedence in all cases and that a writ of certiorari addressed to a judgment under appeal (from the time of filing proof of service) would be stricken. This would apply even in the perhaps rare case when one party appeals and the other files certiorari.]

All rules pertaining to writs of certiorari are rescinded. Any claim that would have previously been made on a praecipe for a writ of certiorari shall be made as an appeal to a court of common pleas pursuant to Rules 1002-1008.



SUPPLEMENTAL INSTRUCTIONS FOR OBTAINING  
A STAY OF EVICTION

\* \* \* \* IMPORTANT \* \* \* \*

PLEASE READ THESE INSTRUCTIONS CAREFULLY!

This document contains important information about your case. Failure to comply with any instructions provided in these materials may cause you to be evicted before your appeal or writ is heard.

1. FOR TENANTS—SUPERSEDEAS: If you are a tenant and you filed the notice of appeal **[or praecipe for writ of certiorari]**, you must pay money into an escrow account to remain in the property until your appeal **[or writ]** is decided. This is called a “supersedeas.” The supersedeas will suspend the magisterial district court judgment and will prevent your eviction until your case is heard by a judge and a final decision is made on the appeal **[or writ]**. **IF YOU FAIL TO PAY YOUR MONTHLY RENT INTO ESCROW IN FULL AND ON TIME, YOU COULD BE EVICTED BEFORE YOUR APPEAL [OR WRIT] IS HEARD.**

Begin by looking at the income limits attached to these instructions.

If your income is below the income limits, complete a Tenant’s Affidavit, pursuant to Pa.R.C.P.M.D.J. No. 1008(C)(2) **[or 1013(C)(2)]**. These affidavits are available on the website of the **[Administrative Office of Pennsylvania Courts ([www.aopc.org](http://www.aopc.org))]** **Unified Judicial System of Pennsylvania at <http://www.pacourts.us/forms/for-the-public>**. Then follow the instructions for low-income tenants below. There are several different options available; pick the option (A, B, or C) that best describes your situation.

If your income is higher than the income limits attached to these instructions, follow the instructions for D.

A. If you are a low-income tenant and there was a money judgment entered against you for non-payment of rent, and you HAVE NOT paid rent for the month in which the notice of appeal **[or praecipe for writ of certiorari]** is filed, you must:

1. File an in forma pauperis petition (a petition for low-income parties) pursuant to Pa.R.C.P. No. 240;

2. Pay one-third of your monthly rent into an escrow account with the prothonotary’s office at the time the notice of appeal **[or praecipe for writ of certiorari (“praecipe”)]** is filed;

3. Pay the remaining two-thirds (2/3) of your monthly rent into the escrow account within twenty (20) days of the date the notice of appeal **[or praecipe]** was filed; and

4. Pay your monthly rent on an ongoing basis into the escrow account in thirty (30) day intervals from the date the notice of appeal **[or praecipe]** was filed until the time of your trial.

B. If you are a low-income tenant, and there was a money judgment against you for non-payment of rent, and you HAVE paid rent for the month in which the notice of appeal or **[praecipe for writ of certiorari (“praecipe”)]** is filed, you do not have to pay rent at the time you file your notice of appeal **[or praecipe]**. You must:

1. File an in forma pauperis petition (a petition for low-income parties), pursuant to Pa.R.C.P. No. 240;

2. Pay your monthly rent on an ongoing basis into an escrow account with the prothonotary in thirty (30) day intervals from the date the notice of appeal **[or praecipe]** was filed until the time of trial. It is important to count the thirty (30) days exactly because the date of your payment will change depending on the number of days in a given month.

C. If you are a low-income tenant, and no money judgment was entered against you for non-payment of rent, you do not have to pay rent at the time you file your notice of appeal **[or praecipe for writ of certiorari (“praecipe”)]**. This option is to be used if at the magisterial district court hearing, the judge determined that you owed “zero” or “nothing” in rent. You must:

1. File an in forma pauperis petition (a petition for low-income parties), pursuant to Pa.R.C.P. No. 240;

2. Pay your monthly rent on an ongoing basis into an escrow account with the prothonotary in thirty (30) day intervals from the date the notice of appeal **[or praecipe]** was filed until the time of your trial. It is important to count the thirty (30) days exactly because the date of your payment will change depending on the number of days in a given month.

D. If your income is higher than the income limits on the attached chart, you must:

1. Pay the fee to file a notice of appeal **[ or praecipe for writ of certiorari (“praecipe”)]**;

2. Pay the lesser of three (3) months' rent or the amount of rent awarded to the landlord in magisterial district court into an escrow account with the prothonotary's office at the time the notice of appeal **[or praecipe]** is filed; and

3. Pay your monthly rent into the escrow account in thirty (30) day intervals from the date the notice of appeal **[or praecipe]** was filed until the time of trial. It is important to count the thirty (30) days exactly because the date on your payment will change depending on the number of days in a given month.

INCOME LIMITS  
[2008] \_\_\_\_\_ HHS Poverty Income Guidelines  
Expressed in Monthly Amounts

Size of Family Unit	Poverty Guideline Monthly Amount
1	<b>[\$866.66]</b> _____
2	<b>[1,166.66]</b> _____
3	<b>[1,466.66]</b> _____
4	<b>[1,766.66]</b> _____
5	<b>[2,066.66]</b> _____
6	<b>[2,366.66]</b> _____
7	<b>[2,666.66]</b> _____
8	<b>[2,966.66]</b> _____

For each additional person, add **[300.00]** \_\_\_\_\_