

**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE**

Proposed Recommendation No. 232

**Rescission of Rule 2951(a) Governing
Confession of Judgment**

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 2951(a) governing confession of judgment be amended as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent no later than **August 15, 2008** to:

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**or E-Mail to
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The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

Rule 236. Notice by Prothonotary of Entry of Order or Judgment

(a) The prothonotary shall immediately give written notice of the entry of

(1) a judgment entered by confession to the defendant by ordinary mail at the address stated in the certificate of residence filed by the plaintiff together with a copy of all documents filed with the prothonotary in support of the confession of judgment. The plaintiff shall provide the prothonotary with the required notice and documents for mailing and a properly stamped and addressed envelope; and

[Note: See Rule 2951(a) as to the requirement of filing a certificate of the residence of the plaintiff and of the defendant.]

(2) any other order or judgment to each party's attorney of record or, if unrepresented, to each party. The notice shall include a copy of the order or judgment.

Note: See Rules 1012 and 1025 as to the requirement of an address on an appearance and a pleading.

(b) The prothonotary shall note in the docket the giving of the notice and, when a judgment by confession is entered, the mailing of the required notice and documents.

(c) Failure to give the notice or when a judgment by confession is entered to mail the required documents, or both, shall not affect the lien of the judgment.

(d) The prothonotary may give the notice required by subdivision (a) or notice of other matters by facsimile transmission or other electronic means if the party to whom the notice is to be given or the party's attorney has filed a written request for such method of notification or has included a facsimile or other electronic address on a prior legal paper filed in the action.

Note: Except as provided by subdivision (a)(1) relating to the entry of a judgment by confession, Rule 236 does not prescribe a particular method of giving notice. Methods of notice properly used by the prothonotary include, but are not limited to, service via United States mail and courthouse mail. Subdivision (d) governs facsimile

transmission and other electronic means if the prothonotary chooses to use such a method.

A facsimile or other electronic address set forth on letterhead is not a sufficient basis under this rule to authorize the prothonotary to give notice electronically.

Notice by facsimile transmission or other electronic means is applicable not only to orders and judgments under subdivision (a) but also to “other matters” such as the scheduling of a conference, hearing or trial or other administrative matters. Where the technology involved provides an acknowledgment for the mailing or the receipt of the notice, the prothonotary should retain that acknowledgment as part of his or her file.

See Rule 205.4 governing filing and service of legal papers by electronic means other than facsimile transmission.

See Rule 440(d) governing service of legal papers other than original process by facsimile transmission.

Rule 2951. Method[s] of Proceeding

[(a)(1) Upon filing of the documents required by subparagraph (2), the prothonotary shall enter judgment by confession on a note, bond or other instrument confessing judgment or authorizing confession by an attorney at law or other person against the person who executed it in favor of the original holder or, unless expressly forbidden in the instrument, in favor of the assignee or other transferee without the agency of an attorney and without the filing of a complaint, for the amount which may appear to be due from instrument. The judgment may include interest computable from the instrument.

- (2) The documents to be filed in support of the entry of judgment are
- (i) the instrument,
 - (ii) an affidavit that the judgment is not being entered by confession against a natural person in connection with a consumer credit transaction, and
 - (iii) a certificate of residence of the plaintiff and of the defendant.

Note: Section 2737(3) of the Judicial Code provides that the prothonotary shall have the power and the duty to “enter all civil judgments, including judgments by confession.”

A judgment by confession may be entered only in the name of a holder, assignee or other transferee. See Rule 2954.

For collection of attorneys’ fees under such a judgment see Rule 2957. If an instrument authorizes confession for a penal sum, judgment may be entered in that amount.

If a judgment by confession on an instrument is to be entered in a judicial district which has implemented electronic filing, an electronic copy of the instrument should be filed in support thereof. Should an issue arise concerning the instrument, any party at any time may request the production of the original instrument for inspection pursuant to Pa.R.C.P. No. 205.4(b)(5).]

[(b)](a) [If judgment by confession is authorized by the instrument but may not be entered by the prothonotary under subdivision (a), a] An action shall be commenced by filing with the prothonotary a complaint substantially in the form provided by Rule 2952. [Even though the instrument is one on which judgment could be entered by the prothonotary under subdivision (a), the plaintiff may proceed under this subdivision.]

[(c) The action must be brought under subdivision (b) if

- (1) the instrument is more than ten years old or
- (2) the original cannot be produced for filing or
- (3) it requires the occurrence of a default or condition precedent before judgment may be entered, the occurrence of which cannot be ascertained from the instrument itself, or
- (4) the computation of the amount due requires consideration of matters outside the instrument.]

[(d)](b) If the instrument is more than twenty years old, judgment may be entered only by leave of court after notice and the filing of a complaint [under Subdivision (b)].

[(e)](c) When **[the plaintiff proceeds under Subdivision (b) and]** the original or a photostatic copy or like reproduction of the instrument showing the defendant's signature is not attached to the complaint, judgment may be entered only by leave of court after notice.

Note: The procedure for notice and hearing shall be in accordance with local practice.

See Sections 401(h) and 1205 of the Goods and Services installment Sales Act, 1966, Special Sess. No. 1, October 28, P.L. 7, effective April 1, 1967, 69 P.S. §1401(h) and 2205 which may limit the venue for commencement of an action in certain cases.

Rule 2955. Confession of Judgment

(a) **[In an action commenced by a complaint under Rule 2951(b), t]** The plaintiff shall file with the complaint a confession of judgment substantially in the form provided by Rule 2962.

(b) The attorney for the plaintiff may sign the confession as attorney for the defendant unless an Act of Assembly or the instrument provides otherwise.

Note: There are local rules in some counties requiring the filing of an affidavit of non-military service. See also the **[Soldiers' and Sailors'] Servicemembers** Civil Relief Act, 50 U.S.C.A. Appendix § **[520] 521**.

Rule 2956. Entry of Judgment

The prothonotary shall enter judgment in conformity with the confession.

Note: As to instruments more than 20 years old see Rules 2951**[(d)](b)** and 2952(a)(9).

See Rule 236 for the notice required to be given and the documents required to be mailed to the defendant by the prothonotary.

Rule 2957. Praeceptum for Writ of Execution. Amount. Items Claimed. Certification

(a) Plaintiff may include the amount due, interest, attorneys' fees and costs in the praecipe for a writ of execution under Rule 2963(5). [Where judgment has been entered under Rule 2951(a) and there has been a record appearance of counsel at any stage of the proceedings and attorneys' fees are authorized in the instrument, these fees may be included in the praecipe for a writ of execution.]

(b) The praecipe for the writ of execution shall contain the words "Confessed Judgment" immediately below the title of the praecipe and a certification that

- (1) the praecipe is based upon a confessed judgment and
- (2) the prothonotary is authorized to issue the writ of execution because
 - (i) the notice has been served pursuant to Rule 2958.1 as evidenced by a return of service filed of record, or
 - (ii) notice will be served pursuant to Rule 2958.2 because the property to be levied upon consists solely of real property or real property and personal property to be sold with the real property pursuant to Section 9604(a) of the Uniform Commercial Code, or
 - (iii) notice will be served pursuant Rule 2958.3 because the property to be levied upon consists of personal property or personal property and real property, not within the scope of Rule 2958.2(a)(2), or
 - (iv) notice was served in connection with a prior execution on this judgment and not further notice is required under Rule 2958.4(b), or
 - (v) a petition to open or strike the judgment has been previously filed and notice is not required under Rule 2956.1(c).

Note: See Rule 2963 for the form of the praecipe for writ of execution upon a confessed judgment.

**Rule 2962. Confession of Judgment Where Action Commenced by Complaint.
Form**

The confession of judgment required by Rule 2955 shall be substantially in the following form:

(CAPTION)

Pursuant to the authority contained in the warrant of attorney, the original or a copy of which is attached to the complaint filed in this action, I appear for the defendant(s) and confess judgment in favor of the plaintiff(s) and against defendant(s) as follows:

*(Principal) *(Penal) Sum \$ _____

Other authorized items: \$ _____

(Specify)

**Interest \$ _____

**Attorney fees \$ _____

*Strike out inapplicable item.

**Interest and attorney fees may be included only if authorized by the warrant.

Attorney for Defendant(s)

[Note: This form is not to be used when judgment by confession is entered by the prothonotary under Rule 2951(a).]

Rule 2963. Praecept for Writ of Execution. Certification. Form

The praecipe for a writ of execution upon a confessed judgment shall be substantially in the following form:

(Caption)

**PRAECIPE FOR WRIT OF EXECUTION UPON A
CONFESSED JUDGMENT**

To the Prothonotary:

Issue a writ of execution upon a judgment entered by confession in the above matter,

- (1) directed to the sheriff of _____ county;
- (2) against _____, defendant; and
(Name of Defendant)
- (3) against _____, garnishee;
(Name of Garnishee)
- (4) and enter this writ in the judgment index
 - (a) against _____, defendant and
(Name of Defendant)
 - (b) against _____, as garnishee, as a lis
(Name of Garnishee)pendens against real property of the defendant in name of garnishee as follows: _____
(Specifically describe property)

(If space insufficient attach extra sheets)

- (5) Amount due \$ _____
- Interest from _____ \$ _____
- Attorneys' fees** \$ _____
- [[Costs to be added]] (Costs to be added) \$ _____

【**Where judgment has been entered under Rule 2951(a), attorneys' fees may be included if they are authorized in the instrument and there has been a record appearance of counsel at any stage of the proceedings.】

Certification

I certify that

- (a) This praecipe is based upon a judgment entered by confession, and
(Delete four of the following paragraphs which are inapplicable.)
- (b) Notice has been served pursuant to Rule 2958.1 at least thirty days prior to the filing of this praecipe as evidenced by a return of service filed of record.
- (c) Notice will be served at least thirty days prior to the date of the sheriff's sale of real property pursuant to Rule 2958.2.
- (d) Notice will be served with the writ of execution pursuant to Rule 2958.3.
- (e) Notice was served in connection with a prior execution on this judgment and, pursuant to Rule 2958.4(b), no further notice is required.
- (f) Notice is not required under Rule 2956.1(c) because a petition to open or strike the judgment was previously filed.

(Attorney for Plaintiff)

Note: Under paragraph (1) when the writ is directed to the sheriff of another county as authorized by Rule 3103(b), the county should be indicated. Under Rule 3103(c) a writ issued on a transferred judgment may be directed only to the sheriff of the county in which issued. Paragraph (3) above should be completed only if a named garnishee is to be included in the writ.

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

Paragraph (4)(b) should be completed only if real property in the name of a garnishee is attached and entry as a lis pendens is desired. See Rule 3104(c).

Certification as to waiver of exemption may be included in the praecipe. Specific directions to the sheriff as to property to be levied upon may be included in the praecipe or by separate direction at the option of plaintiff.

Explanatory Comment

Current Rule 2951 provides for two methods of confessing judgment. Subdivision (a) allows the prothonotary, upon the filing of certain documents in support of the entry of judgment, to enter judgment by confession without the filing of a complaint or a confession of judgment signed by an attorney. Subdivision (b), on the other hand, requires both the filing of a complaint and a confession of judgment signed by an attorney. It has been reported that the method prescribed in subdivision (a) has been abused by lay persons. Furthermore, it is the practice of counsel representing creditors to enter judgments by confession pursuant to subdivision (b). They seldom confess judgment pursuant to subdivision (a) and subdivision (b) fully protects the creditor who seeks to obtain a judgment by confession. Rule 2951 has been amended by rescinding subdivision (a) so that all actions for confessing judgment must be commenced by filing a complaint. Rules 236, 2955, 2957, 2962 and 2963 have also been amended to conform to the rescission of Rule 2951(a).

By the Civil Procedural
Rules Committee

R. Stanton Wettick, Jr.
Chair