

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

Proposed Recommendation No. 238

**Amendment of Rule 3111, 3137, 3145, and 3253 Governing
The Effect of Service of the Writ on the Garnishee**

The Civil Procedural Rules Committee proposes that Rules of Civil Procedure 3111, 3137, 3145, and 3253 governing the effect of service of the writ on the garnishee 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 **May 22, 2009** 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 3111. Service of the Writ on Garnishee. Effect

(a) The writ shall be served by the sheriff upon the garnishee in the manner prescribed by Rule 402(a) except as otherwise provided by Rules 3112 and 3113. The sheriff shall furnish the garnishee with an additional copy of the writ for each defendant. If the garnishee served was not named in the writ he shall be added as a garnishee and return made accordingly.

(b) Service of the writ upon the garnishee shall attach all property of the defendant which may be attached under these rules which is in the possession of the garnishee on or before midnight on the service date of the writ. [It shall also attach all property of the defendant which may be attached under these rules and which comes into the garnishee's possession thereafter until judgment against the garnishee even though no such property of the defendant was in the garnishee's possession at the time of service.]

Note: For limitations on the power to attach tangible personal property see Rule 3108(a).

See Rule 3111.1 providing that service of the writ does not attach the defendant's funds on deposit in a bank or other financial institution in an account in which funds are deposited electronically on a recurring basis and are identified as funds which upon deposit are exempt from attachment.

(c) Service of the writ upon the garnishee shall also subject the garnishee to the mandate and injunctive orders of the writ restraining the garnishee from paying any debt to or for the account of the defendant and from delivering any property of the defendant which may be attached under these rules to anyone except the sheriff or otherwise disposing thereof until further order of the court or discontinuance or termination of the attachment.

(d) Violation of the mandate and injunctive orders of the writ may be punished as a contempt.

Rule 3137. Priority of Distribution as Between Competing Plaintiffs

(a) When levies are made against the same personal property under two or more writs of separate plaintiffs, priority of distribution between them of the proceeds of a sheriff's sale thereof shall be determined by the time of delivery of their respective writs to the sheriff for execution.

(b) When property is attached by service upon the garnishee of two or more writs of separate plaintiffs, priority of distribution between them shall be determined by the [date] time of service of their respective writs upon the garnishee [as to all property then in the hands of the garnishee or coming into the garnishee's possession up to the time of judgment against the garnishee].

(c) When tangible personal property is both levied upon and attached under two or more writs of separate plaintiffs, priority of distribution as between the levying and attaching plaintiffs shall be determined by the time of delivery of the writ to the sheriff in the case of levy, and from the date of service of the writ upon the garnishee in the case of attachment.

Note: Under Rule 3115(a), a levy under any valid writ constitutes a levy by endorsement under every other valid writ then in the sheriff's hands. For limitations on attachment of tangible personal property see Rule 3108(a).

Rule 3145. Interrogatories[;]. [p]Procedure

(a) The procedure between the plaintiff and the garnishee shall, as far as practicable, be the same as though the interrogatories were a complaint and the answer of the garnishee were an answer in a civil action.

(b) The garnishee in the answer under “new matter” may include

(1) the defenses of the immunity or exemption of property;

(2) any defense or counterclaim which the garnishee could assert against the defendant if sued by the defendant but the garnishee may not assert any defense on behalf of the defendant against the plaintiff or otherwise attack the validity of the attachment;

Note: Objections to the attachment, other than the defenses of immunity or exemption, must be raised preliminarily. See Rule 3142.

(3) any claim which the garnishee could assert against the plaintiff if sued by the plaintiff.

(c)(1) Except as provided in subdivision (c)(2), the answer of a garnishee, which is a bank or other financial institution, shall be signed by

(i) an attorney at law,

(ii) an officer of the bank or other financial institution, or

(iii) an employee or authorized agent of the bank or other financial institution with personal knowledge of the subject matter and written authorization from an officer or attorney at law for the bank or other financial institution to sign as its representative.

(2) If the answer of a garnishee, which is a bank or other financial institution, includes new matter pursuant to Rule 3145(b)(2) or (3), the answer shall be signed by an attorney at law.

Rule 3253. Interrogatories in Attachment

Interrogatories of the plaintiff to the garnishee shall be substantially in the following form:

(Caption)

Interrogatories to Garnishee

To _____(Garnishee)

You are required to file answers to the following interrogatories within twenty (20) days after service upon you. Failure to do so may result in judgment against you:

1. [At the time you were served or at any subsequent time] On the date you were served, did you owe the defendant any money or were you liable to the defendant on any negotiable or other written instrument, or did the defendant claim that you owed the defendant any money or were liable to the defendant for any reason?

2. [At the time you were served or at any subsequent time] On the date you were served, was there in your possession, custody or control or in the joint possession, custody or control of yourself and one or more other persons any property of any nature owned solely or in part by the defendant?

3. [At the time you were served or at any subsequent time] On the date you were served, did you hold legal title to any property of any nature owned solely or in part by the defendant or in which defendant held or claimed any interest?

4. [At the time you were served or at any subsequent time] On the date you were served, did you hold as fiduciary any property in which the defendant had an interest?

5. At any time before or [after] on the date you were served, did the defendant transfer or deliver any property to you or to any person or place pursuant to your direction or consent and if so what was the consideration therefor?

6. At any time after you were served did you pay, transfer or deliver any money or property to the defendant or to any person or place pursuant to the defendant's direction or otherwise discharge any claim of the defendant against you?

7. If you are a bank or other financial institution, [at the time you were served or at any subsequent time] on the date you were served, did the defendant have funds on deposit in an account in which funds are deposited electronically on a recurring basis and which are identified as being funds that upon deposit are exempt from execution, levy or attachment under Pennsylvania or federal law? If so, identify each account and state the amount of funds in each account, the reason for the exemption, [the amount being withheld under each exemption] and the entity electronically depositing those funds on a recurring basis.

8. If you are a bank or other financial institution, [at the time you were served or at any subsequent time] on the date you were served, did the defendant have funds on deposit in an account in which the funds on deposit, not including any otherwise exempt funds, did not exceed the amount of the general monetary exemption under 42 Pa.C.S. § 8123? If so, identify each account.

(The plaintiff may set forth additional appropriate interrogatories.)

Explanatory Comment

The Civil Procedural Rules Committee is proposing the amendment of Rule 3111 governing the effect of service of the writ on the garnishee. Currently, Rule 3111 provides that once served, a writ attaches all property in the possession of the garnishee at the time of service and all property that subsequently comes into the possession of the garnishee until judgment against the garnishee. The proposed amendment would limit the time period of the effectiveness of the attachment to all property in the possession of the garnishee on or before midnight on the service date of the writ.

The Committee is also proposing an amendment to Rule 3145 that designates the persons who may sign an answer to plaintiff's interrogatories directed to a garnishee that is a bank or other financial institution.

Rules 3137 and 3253 have been amended to conform to the new requirements of Rule 3111.