

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

Proposed Recommendation No. 243

**Proposed Amendment of Rule 206.1 Governing Petitions
and Rule 206.5 Governing Rules to Show Cause**

The Civil Procedural Rules Committee proposes that Rules of Civil Procedure 206.1 governing petitions and 206.5 governing rules to show cause 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 **February 19, 2010** 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 206.1. Petition. Definition. Content. Form

- (a) As used in this chapter, “petition” means
- (1) an application to **strike and/or** open a default judgment or a judgment of non pros, and
 - (2) any other application which is designated by local rule, numbered Local Rule 206.1(a), to be governed by Rule 206.1 et seq.

Note: A petition for relief from a judgment by confession is governed by Rule 2959.

Motions are governed by Rule 208.1 et seq.

Rule 206.1(a)(2) authorizes each court of common pleas to designate applications which are to proceed in the manner of a petition under Rule 206.1 et seq. Rule 239.2(a) requires each court which has made that designation to promulgate a local rule, numbered Local Rule 206.1(a), listing the applications to be determined pursuant to Rule 206.1 et seq. Any local rule which has been promulgated must be published on the Pennsylvania Judiciary’s Web Application Portal (<http://ujportal.pacourts.us>).

- (b) A petition shall specify the relief sought and state the material facts which constitute the grounds therefor. **All grounds for relief, whether to strike or open a default judgment, shall be asserted in a single petition.**

- (c) A petition shall be divided into paragraphs numbered consecutively. Each paragraph shall contain as far as practicable only one material allegation.

Note: Petitions are subject to Rule 440 governing service of legal papers other than original process, Rule 1023.1 governing the signing of documents, and Rule 1025 governing the endorsement of legal papers. Any requirements of a court relating to the format of a petition and cover sheet must be set forth in local rules numbered Local Rule 205.2(a) and Local Rule 205.2(b).

Rule 206.5. Rule to Show Cause. Discretionary Issuance. Stay. Form of Order

(a) **[Rescinded.] A judgment shall be stricken without the issuance of a rule to show cause when there is a defect on the face of the record that is grounds for striking a default judgment.**

(b) A petitioner seeking the issuance of a rule to show cause shall attach to the petition a proposed order in the form prescribed by subdivision (d) and give notice to all other parties of the intention to request the court to issue the rule.

(c) If the petition is within the scope of Rule 206.1(a), is properly pleaded, and states prima facie grounds for relief, the court shall enter an order issuing a rule to show cause and may grant a stay of the proceedings.

(d) The form of order required by subdivision (b) shall be substantially in the following form:

* * *

Explanatory Comment

The Civil Procedural Rules Committee is proposing the amendment of Rule 206.1 governing petitions and Rule 206.5 governing rules to show cause. The proposed amendment requires that all grounds for relief from a default judgment, whether to strike off or to open, be raised in a single petition. Under current case law, it appears that a judgment debtor is not required to raise all grounds for relief from a default judgment in a single petition. In *Mother's Restaurant, Inc. v. Krystkiewicz*, 861 A.2d 327, 337 (Pa. Super. 2004) (citation omitted) (footnote omitted), the Superior Court stated "Additionally, an individual may even seek to strike a void judgment after a trial court has previously denied his/her petition to open the same judgment." See also *Bancorp Group, Inc. v. Pirgos, Inc.*, 744 A.2d 791, 793 n.1 (stating that the denial of a petition to strike does not preclude review of a subsequent petition to open a default judgment.)

The proposed amendment is intended to bring the practice involving default judgments in line with other areas of the rules of civil procedure in which all grounds must be raised at the same time, such as striking off or opening confessed judgments pursuant to Rule 2959(a) or raising all preliminary objections at the same time pursuant to Rule 1028(b).

By the Civil Procedural
Rules Committee

Stewart L. Kurtz
Chair