

**SUPREME COURT OF PENNSYLVANIA  
MINOR COURT RULES COMMITTEE**

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.C.P.M.D.J. Nos. 515-516  
and the Official Note to Pa.R.C.P.M.D.J. No. 1007**

The Minor Court Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P.M.D.J. Nos. 515-516 and the Official Note to Pa.R.C.P.M.D.J. No. 1007, adding a cross-reference regarding termination of a supersedeas and making stylistic changes, for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being republished in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will 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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Minor Court Rules Committee  
Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
PO Box 62635  
Harrisburg, PA 17106-2635  
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All communications in reference to the proposal should be received by April 27, 2016. 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,

Donna R. Butler  
Chair

## **REPORT**

### **Proposed Amendment of Pa.R.C.P.M.D.J. Nos. 515-516 and the Official Note to Pa.R.C.P.M.D.J. No. 1007**

#### **REQUEST FOR ORDER OF POSSESSION**

##### **I. Introduction**

The Minor Court Rules Committee (“Committee”) is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P.M.D.J. Nos. 515-516 and the Official Note to Pa.R.C.P.M.D.J. No. 1007. These rules address the timeframe for requesting an order for possession, and the procedure on appeal from a judgment of a magisterial district court, respectively. The Committee is proposing to add cross-references regarding termination of a supersedeas and to make stylistic changes.

##### **II. Discussion**

Currently, Rules 515 and 516 address a request for an order for possession, as well as issuance and reissuance of the order. In a residential landlord tenant case, when a judgment for possession has been rendered by a magisterial district judge, the plaintiff may request an order for possession after the 10<sup>th</sup> day and within 120 days following the date of entry of the judgment. See Rule 515B. In the event an appeal of the judgment operates as a supersedeas or the matter is stayed pursuant to bankruptcy proceedings, 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. See Rule 515B(2). An order of possession is valid for a 60-day period, and may be reissued for one additional 60-day period. See Rules 516B(1), 519C. In residential lease cases, a plaintiff must file a written request for reissuance of an order for possession when the order has been issued, and, subsequently, an appeal operates as a supersedeas or bankruptcy proceedings stay the matter. See Rule 516C. Rule 1007 sets forth the procedures for the appeal in the court of common pleas.

The Committee received correspondence suggesting that it review the rules governing the filing of a request for an order for possession when an appeal has been filed. Specifically, the Committee was asked to review the following hypothetical situation: a magisterial district judge enters judgment in a residential landlord tenant case, the tenant appeals and obtains a supersedeas, the appeal goes before a board of arbitrators pursuant to Pa.R.C.P. Nos. 1301-1314, an arbitration award is entered, and the supersedeas is terminated for nonpayment of rent into escrow prior to expiration of the thirty day period for entry of the award in the court of common pleas. In this scenario, it was suggested that there is ambiguity about where the plaintiff should file a request for an order for possession, in light of the termination of the supersedeas.

The Committee discussed the scenario described above, and agreed that only a judgment entered by the court of common pleas should preclude the plaintiff from requesting an order for possession from the magisterial district court in the absence of a supersedeas or stay. Once the court of common pleas has entered a judgment on an appeal (including entry of judgment of a compulsory arbitration award pursuant to Pa.R.C.P. No. 1307(c)), the judgment of the magisterial district court is extinguished, and may no longer be executed upon in any magisterial district court. However, prior to the entry of judgment by the court of common pleas, the plaintiff may request an order for possession from the magisterial district court, so long as no supersedeas or bankruptcy stay remains in effect. The Committee published a proposal for public comment that attempted to clarify the suggested ambiguity, as well as update a statutory reference to constable fees. See 45 Pa.B. 1111 (Mar. 7, 2015).

After reviewing comments received on the proposal, the Committee decided to modify and republish it for public comment. Rule 1008B, C(7)-(8) and Rule 1013B, C(7)-(8) set forth the procedure for termination of a supersedeas. The notes to Rules 1008 and 1013 provide that upon termination of the supersedeas by a prothonotary for failure to deposit the monthly rent when due, “[a] copy of the praecipe [with the termination notated by the prothonotary] 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.” Cross-references to these notes will clarify the procedure for seeking an order for possession after the termination of a supersedeas.

### **III. Proposed Changes**

The Committee plans to propose the amendment of the Official Notes to Rules 515-516 and 1007 by adding the following language:

See Rule 1008B, C(7)-(8), and Rule 1013B, C(7)-(8) and the notes thereto regarding termination of the supersedeas. After a court of common pleas enters judgment, the judgment of the magisterial district judge is extinguished and may no longer be executed upon in any magisterial district court. All further process must take place in the court of common pleas.

The Committee also plans to propose minor stylistic changes to Rules 515-516 and 1007, as well as an amendment of the Official Note to Rule 515 to reflect that constable fees are governed by 44 Pa.C.S. § 7161(d).