

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of the Official Notes  
to Pa.R.C.P.M.D.J. Nos. 515-516 and 1007**

The Minor Court Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of the Official Notes to Pa.R.C.P.M.D.J. Nos. 515-516 and 1007, addressing the timeframe for requesting an order for possession, for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published 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  
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All communications in reference to the proposal should be received by April 29, 2015. 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,

Bradley K. Moss  
Chair

## **REPORT**

### **Proposed Amendment of the Official Notes to Pa.R.C.P.M.D.J. Nos. 515-516 and 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 the Official Notes to Pa.R.C.P.M.D.J. Nos. 515-516 and 1007. These rules address the timeframe for requesting an order for possession. The Committee is making this recommendation to clarify where a plaintiff may file a request for an order for possession when an appeal has been taken.

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

Currently, Rules 515 and 516 address a request for an order for possession, and 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 situation where 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. The Rules are silent on this scenario, leading to ambiguity about where the plaintiff should file a request for an order for possession.

The Committee discussed the situation 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. 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 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, even if the board of arbitrators has entered an arbitration award, so long as no supersedeas or bankruptcy stay remains in effect.

While reviewing the Official Note to Rule 515, the Committee noted that the statutory reference to the section of the Judicial Code governing fees for constables was outdated. The Committee will recommend updating the constable fee schedule reference to reflect statutory changes.

Finally, the Committee is concurrently seeking comments on a proposal that would rescind the rules governing writs of certiorari and making correlative rule changes, including changes to Rules 515-516. The Committee has not reprinted those proposed changes in this publication, but will ensure that any final recommendation to the Court on this matter conforms to the current status of that proposal.

### **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:

When a supersedeas has been terminated in a case that has been appealed to a court of common pleas, the plaintiff may request an order for possession from the magisterial district judge as long as the request is made within 120 days of the date of the entry of the judgment, and judgment has not been entered by the court of common pleas. The entry of a compulsory arbitration award pursuant to Pa.R.C.P. No. 1307(c) is not a bar to the issuance of an order for possession. After a court of common pleas enters judgment, the judgment of the magisterial district court is extinguished and may no longer be executed upon in any court. All further process must take place in the court of common pleas.

The Committee will also propose the amendment of the Official Note to Rule 515 to reflect that constable fees are governed by 44 Pa.C.S. § 7161(d).