

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

NOTICE OF PROPOSED RULEMAKING

**Proposed Adoption of Pa.R.C.P. No. 243 and
Proposed Amendment of Pa.R.C.P. Nos. 237.1, 1037, 2955, 3031, 3103, and 3146**

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Rule 243 and the amendment of Rules 237.1, 1037, 2955, 3031, 3103, and 3146 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 will neither constitute a part of the rules nor will 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:

**Karla M. Shultz, Counsel
Civil Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9526
civilrules@pacourts.us**

All communications in reference to the proposal should be received by **April 23, 2021**. 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 Civil Procedural Rules Committee,

John J. Hare
Chair

PUBLICATION REPORT

The Civil Procedural Rules Committee received a request to determine whether certain requirements of the Servicemembers Civil Relief Act, 50 U.S.C. § 3901 *et seq.* should be added to the Rules of Civil Procedure to ensure that an eligible defendant receives the protections of the Act.

The Act provides, in pertinent part, “for the temporary suspension of judicial administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.” *Id.* §§ 3931(a), 3951. The Act applies to all civil actions in which the defendant does not appear and requires the plaintiff to file an affidavit prior to the entry of default judgment stating (1) whether the defendant is in military service and showing necessary facts to support the affidavit; or (2) the plaintiff is unable to determine whether the defendant is in military service. *See id.* § 3931.

The Rules of Civil Procedure presently reference the Act or its predecessor, the Soldiers’ and Sailors’ Civil Relief Act, 50 U.S.C. App. § 520, in Rule 2955 (Confession of Judgment), Rule 3031 (Judgment Upon Default or Admission), Rule 3103 (Commencement of Execution of Judgment for the Payment of Money), and Rule 1920.46 (Affidavit of Non-Military Service). The specific requirements of the affidavit are left for the practitioner or self-represented party to determine. The Committee observed that many judicial districts currently have local rules governing affidavits of non-military service with varying degrees of specificity as to when they are required and their content.

The Committee was asked to consider whether additional guidance on the requirements of the Act with regard to non-military service affidavits should be expanded in the present rules and incorporated into other Rules of Civil Procedure. Having reviewed the Act and local rules, the Committee believes there is merit in a uniform statewide rule setting forth the requirements in the Act for the affidavit. In doing so, the rules would provide certainty that eligible defendants receive the protections of the Act, inform practitioners and self-represented persons alike of the need to evaluate whether an affidavit is required, and set forth the specific requirements found in the Act for the content of the affidavit.

Accordingly, the Committee is considering proposing new Rule 243 to codify the requirements of Section 3931 of the Act into the Rules of Civil Procedure, as well as amendments to existing rules to cross reference the new rule and the Act.

New Rule 243 includes the following: Subdivision (a) provides that a party must comply with the requirements of the Act in any civil action in which the defendant does not make an appearance. Subdivision (b) requires the plaintiff to file the affidavit indicating the status of military service of the defendant. Subdivision (c) authorizes a

form affidavit to be developed by the Administrative Office of Pennsylvania Courts, upon consultation with the Committee, and published on the UJS website (www.pacourts.us) for ease of use by both practitioners and self-represented parties.

In addition to the new rule, notes have been added to Rule 237.1 (Notice of *Praecipe* to Enter Judgment of *Non Pros* or Default), Rule 1037 (Judgment Upon Default or Admission), Rule 2955 (Confession of Judgment), Rule 3031 (Judgment Upon Default or Admission), Rule 3146 (Judgement Against Garnishee Upon Default or Admission in Answer to Interrogatories) to cross reference new Rule 243 and cite to the Act. The citation to the Act in the note to Rule 3103 has been updated and stylistic changes have been made throughout the rules.

It is anticipated the Domestic Relations Procedural Rules Committee will address any warranted amendment of Rule 1920.46.

All comments, concerns, and suggestions concerning this proposal are welcome.

(This is an entirely new rule.)

Rule 243. Servicemembers Civil Relief Act. Affidavit.

(a) In any civil action in which a defendant does not make an appearance, the plaintiff shall comply with the requirements of the Servicemembers Civil Relief Act, 50 U.S.C. § 3901 *et seq.*

(b) For every individual defendant, the plaintiff shall file an affidavit indicating that

(1) the defendant is in military service;

(2) the defendant is not in military service; or

(3) the plaintiff is unable to determine whether the defendant is in military service.

(c) The Court Administrator of Pennsylvania, in conjunction with the Civil Procedural Rules Committee, shall design and publish the form affidavit required by subdivision (b). The latest version of the form shall be available on the website of the Administrative Office of Pennsylvania Courts at www.pacourts.us.

Rule 237.1. Notice of [Praecipe] Praecipe for Entry of Judgment of [Non Pros] Non Pros for Failure to File Complaint or by Default for Failure to Plead.

(a)(1) As used in this rule,

“judgment of [non pros] non pros” means a judgment entered by [praecipe] praecipe pursuant to Rules 1037(a) and 1659;

Note: When a defendant appeals from a judgment entered in a magisterial district court, Pa.R.C.P.M.D.J. No. 1004(b) authorizes the appellant to file a [praecipe] praecipe for a rule as of course upon the appellee to file a complaint or suffer entry of a judgment of [non pros] non pros. The entry of the judgment of [non pros] non pros is governed by [Pa.R.C.P. No.] Rule 1037(a) and is subject to this rule.

“judgment by default” means a judgment entered by [praecipe] praecipe pursuant to Rules 1037(b), [1511(a),] 3031(a) and 3146(a).

(2) No judgment of [non pros] non pros for failure to file a complaint or by default for failure to plead shall be entered by the prothonotary unless the [praecipe] praecipe for entry includes a certification that a written notice of intention to file the [praecipe] praecipe was mailed or delivered

(i) in the case of a judgment of [non pros] non pros, after the failure to file a complaint and at least ten days prior to the date of the filing of the [praecipe] praecipe to the party’s attorney of record or to the party if unrepresented, or

(ii) in the case of a judgment by default, after the failure to plead to a complaint and at least ten days prior to the date of the filing of the [praecipe] praecipe to the party against whom judgment is to be entered and to the party’s attorney of record, if any.

The ten-day notice period in subdivision (a)(2)(i) and (ii) shall be calculated forward from the date of the mailing or delivery, in accordance with Rule 106.

Note: The final sentence of Rule 237.1(a)(2) alters the practice described in the decision of *Williams v. Wade*, 704 A.2d 132 (Pa. Super. 1997).

(3) A copy of the notice shall be attached to the [praecipe] praecipe.

(4) The notice and certification required by this rule may not be waived.

Note: A certification of notice is a prerequisite in all cases to the entry by **[praecipe] praecipe** of a judgment of **[non pros] non pros** for failure to file a complaint or by default for failure to plead to a complaint. Once the ten-day notice has been given, no further notice is required by the rule even if the time to file the complaint or to plead to the complaint has been extended by agreement.

See Rule 237.4 for the form of the notice of intention to enter a judgment of **[non pros] non pros** and Rule 237.5 for the form of the notice of intention to enter a judgment by default.

- (b) This rule does not apply to a judgment entered
- (1) by an order of court,
 - (2) upon **[praecipe] praecipe** pursuant to an order of court, or
 - (3) pursuant to a rule to show cause.

Note: See Rule 3284 which requires that in proceedings to fix fair market value of real property sold, notice must be given pursuant to the requirements of Rule 237.1 *et seq.*

See Rule 243 for the affidavit required by the Servicemembers Civil Relief Act, 50 U.S.C. § 3901 et seq., setting forth facts showing whether the defendant is in military service as a prerequisite to the entry of a default judgment.

Rule 1037. Judgment Upon Default or Admission. Assessment of Damages.

(a) If an action is not commenced by a complaint, the prothonotary, upon **[praecipe] praecipe** of the defendant, shall enter a rule upon the plaintiff to file a complaint. If a complaint is not filed within **[twenty] 20** days after service of the rule, the prothonotary, upon **[praecipe] praecipe** of the defendant, shall enter a judgment of **[non pros] non pros**.

Note: See Rule 237.1(a)(2) which requires the **[praecipe] praecipe** for judgment of **[non pros] non pros** to contain a certification of written notice of intent to file the **[praecipe] praecipe**.

(b) The prothonotary, on **[praecipe] praecipe** of the plaintiff, shall enter judgment against the defendant for failure to file within the required time a pleading to a complaint which contains a notice to defend or, except as provided by subdivision (d), for any relief admitted to be due by the defendant's pleadings.

Note: See Rule 237.1 which requires the **[praecipe] praecipe** for default judgment to contain a certification of written notice of intent to file the **[praecipe] praecipe**.

While the prothonotary may enter a default judgment in an action legal or equitable, only the court may grant equitable relief. See subdivision (d).

(1) The prothonotary shall assess damages for the amount to which the plaintiff is entitled if it is a sum certain or which can be made certain by computation, but if it is not, the damages shall be assessed at a trial at which the issues shall be limited to the amount of the damages.

(2) In all actions in which the only damages to be assessed are the cost of repairs made to property

(i) the prothonotary on **[praecipe] praecipe** of the plaintiff, waiving any other damages under the judgment, and the filing of the affidavits provided by subparagraphs (ii) and (iii) shall assess damages for the cost of the repairs;

(ii) the **[praecipe] praecipe** shall be accompanied by an affidavit of the person making the repairs; the affidavit shall contain an itemized repair bill setting forth the charges for labor and material used in the repair of the property; it shall also state the qualifications of the person who made or supervised the repairs, that the repairs were necessary, and

that the prices for labor and material were fair and reasonable and those customarily charged;

(iii) the plaintiff shall send a copy of the affidavit and repair bill to the defendant by registered mail directed to the defendant's last known address, together with a notice setting forth the date of the intended assessment of damages, which shall be not less than **[ten] 10** days from the mailing of the notice and a statement that damages will be assessed in the amount of the repair bill unless prior to the date of assessment the defendant by written **[praecipe] praecipe** files with the prothonotary a request for trial on the issue of such damages; an affidavit of mailing of notice shall be filed.

Note: By Definition Rule 76, registered mail includes certified mail.

(c) In all cases, the court, on motion of a party, may enter an appropriate judgment against a party upon default or admission.

Note: For the form of notice to defend, see Rule 1018.1.

(d) In all cases in which equitable relief is sought, the court shall enter an appropriate order upon the judgment of default or admission and may take testimony to assist in its decision and in framing the order.

See Rule 243 for the affidavit required by the Servicemembers Civil Relief Act, 50 U.S.C. § 3901 et seq., setting forth facts showing whether the defendant is in military service as a prerequisite to the entry of a default judgment.

Rule 2955. Confession of Judgment.

(a) 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.

Official Note: [There are local rules in some counties requiring the filing of an affidavit of non-military service. See also the Servicemembers Civil Relief Act, 50 U.S.C.A. Appendix § 521.] See Rule 243 for the affidavit required by the Servicemembers Civil Relief Act, 50 U.S.C. § 3901 et seq., setting forth facts showing whether the defendant is in military service as a prerequisite to the entry of a default judgment.

Rule 3031. Judgment upon Default or Admission. Assessment of Damages.

(a) The prothonotary, on **[praecipe]** *praecipe* of the plaintiff, shall enter judgment against a defendant or terre tenant for failure within the required time to plead to the writ or for any relief admitted to be due by the defendant's or terre tenant's pleading. The prothonotary shall assess damages as directed in the **[praecipe]** *praecipe* for judgment.

Note: **[See the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. § 520 requiring an affidavit setting forth facts showing that the defendant is not in military service as a prerequisite to the entry of a default judgment.]**

See Rule 243 for the affidavit required by the Servicemembers Civil Relief Act, 50 U.S.C. § 3901 et seq., setting forth facts showing whether the defendant is in military service as a prerequisite to the entry of a default judgment.

[See] See Rule 237.1 [et seq] et seq. which requires a ten-day notice as a prerequisite to the entry of a default judgment.

(b) In all cases the court, on motion of a party, may enter an appropriate judgment against a party upon default or admission.

Rule 3103. Commencement[;]. [i]Issuance.

(a) Execution shall be commenced by filing a **[praecipe] praecipe** for a writ of execution with the prothonotary of any county in which judgment has been entered. Except as otherwise prescribed by Rule 2963 governing a judgment entered by confession, the **[praecipe] praecipe** shall be in the form prescribed by Rule 3251.

Note: The following Acts of Assembly contain special procedures in connection with the issuance of the writ:

Section 428 of the Act approved June 2, 1915, P. L. 736, as amended, 77 P.S. § 951, providing for filing with the prothonotary an affidavit of default in payments before execution may issue on workmen's compensation judgments.

Section 712 of the Act approved May 15, 1933, P. L. 565, as amended, 71 P.S. § 733-712 requiring leave of court for execution against a financial institution of which the Secretary of Banking is in possession as receiver.

Section 3377 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 3377, providing that execution may not issue on judgments against decedents other than on mortgages, ground rents or conditional sales of real or personal property without agreement in writing of the personal representative or approval of the Orphans' Court.

The **[Soldiers' and Sailors'] Servicemembers** Civil Relief Act, **[50 U.S.C.A. Appendix 520] 50 U.S.C. § 3901 et seq.**

(b) A writ issued by the prothonotary of the county in which judgment was entered originally or by transfer or certification from another court in the same county may be directed to the sheriff of any county within the Commonwealth.

Note: Rule 2959(a)(1) authorizes the defendant in a confessed judgment to move to open judgment either in the county of entry or of execution.

(c) When a judgment is transferred to another county, a writ issued by the prothonotary of the transferee county may be directed only to the sheriff of his county.

(d) Writs may be issued at the same or different times or to the sheriffs of different counties without a prior return of any outstanding writ.

(e) Upon issuance of the writ the prothonotary shall transmit it directly to the sheriff to whom it is directed or upon plaintiff's request deliver it to the plaintiff or the plaintiff's representative for transmittal.

Rule 3146. Judgment against [g]Garnishee upon [d]Default or [a]Admission in [a]Answer to [i]Interrogatories.

(a)(1) If the garnishee within the time allowed by these rules fails to file an answer to interrogatories containing a notice to answer, the prothonotary on **[praecipe]** *praecipe* of the plaintiff shall enter judgment unliquidated in amount, in favor of the plaintiff and against the garnishee. The amount of the judgment shall thereafter be assessed by the court on motion, notice to the garnishee with a copy to the defendant in the form provided by subdivision (a)(2), and hearing. At the hearing the garnishee may raise defenses against the judgment debtor available under Rule 3145, provided that written notice thereof has been given to all parties not less than **[ten] 10** days prior to the hearing. If the garnishee appears, the court shall determine and enter judgment for the value of the property of the defendant in the hands of the garnishee but shall not enter judgment in excess of the judgment of the plaintiff against the defendant together with interest and costs. If the garnishee fails to appear, or if appearing offers no evidence, the amount of the judgment shall thereupon be entered in the amount of the plaintiff's judgment against the defendant together with interest and costs, and the court may also award to the plaintiff reasonable expenses including attorney's fees.

(2) The notice required by subdivision (a)(1) shall be in substantially the following form:

* * *

(b)(1) Subject to **[paragraph (2) of this]** subdivision **(b)(2)**, the prothonotary, on **[praecipe]** *praecipe* of the plaintiff, shall enter judgment against the garnishee for the property of the defendant admitted in the answer to interrogatories to be in the garnishee's possession, subject to any right therein claimed by the garnishee, but no money judgment entered against the garnishee shall exceed the amount of the judgment of the plaintiff against the defendant together with interest and costs. The entry of judgment shall not bar the right of the plaintiff to proceed against the garnishee as to any further property or to contest any right in the property claimed by the garnishee.

(2) If the garnishee is a bank or other financial institution, the prothonotary, in the absence of an order of court, shall not enter judgment pursuant to paragraph (1) of this subdivision as to funds of any account of the defendant that is identified in the garnishee's answer to interrogatory no. 7 or 8.

Note: See Rule 243 for the affidavit required by the Servicemembers Civil Relief Act, 50 U.S.C. § 3901 et seq., setting forth facts showing whether the defendant is in military service as a prerequisite to the entry of a default judgment.