

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

Amendment of Rule 205(a) of the Pennsylvania Rules of Disciplinary Enforcement; No. 318 Disciplinary Doc. No. 3

#### Order

*Per Curiam:*

*And Now*, this 4th day of March, 1997, Rule 205(a) of the Pennsylvania Rules of Disciplinary Enforcement is amended to read as follows.

To the extent that notice of proposed rulemaking would be required by Rule 103 of the Pennsylvania Rules of Judicial Administration or otherwise, the immediate amendment of such rule is hereby found to be required in the interest of justice and efficient administration.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration and the amendment shall be effective immediately.

#### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart B. DISCIPLINARY ENFORCEMENT

#### CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

##### Subchapter B. MISCONDUCT

#### Rule 205. The Disciplinary Board of the Supreme Court of Pennsylvania.

(a) The Supreme Court shall appoint a board to be known as "The Disciplinary Board of the Supreme Court of Pennsylvania" which shall be composed of **fourteen (14) members of the Bar of this Commonwealth [ , one of whom shall be designated by the Court as Chairman and another as Vice-Chairman, ]** and two non-lawyer electors. **One of the members shall be designated by the Court as Chair and another as Vice-Chair.**

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[Pa.B. Doc. No. 97-436. Filed for public inspection March 21, 1997, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[231 PA. CODE CHS. 200, 400, 1000, 1300, 1910,  
2300, 2950, 2970, 3000]

Revision of Rule 400 et seq. Governing Service of Original Process; Proposed Recommendation No. 142

The Civil Procedural Rules Committee proposes to recommend the amendment of Rule of Civil Procedure 400 et seq. governing service of original process. The Committee is publishing the proposed recommendation to the bench and bar for comments and suggestions prior to its submission to the Supreme Court. All communications should be sent no later than May 16, 1997 to Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, Pennsylvania 17055, or E-Mail to hdon@courts.state.pa.us.

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 nor will it be officially adopted or promulgated by the Court.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 400. SERVICE OF ORIGINAL PROCESS SERVICE GENERALLY

[ 400. Person to Make Service. ]

400. Service. Acceptance of Service.

[ 400.1. Temporary Provisions for Philadelphia County. ]

401. Time for Service. Reissuance, Reinstatement and Substitution of Original Process. Copies for Service.

402. [ **Manner of Service. Acceptance of Service ]  
Service upon Individuals. Adults. Minors. Incapacitated Persons.**

402.1. Service upon the Commonwealth and Political Subdivisions.

402.2. Service Upon Partnerships, Unincorporated Associations, and Corporations and Similar Entities.

402.3. Service Upon Additional Defendants.

403. Service by Mail.

404. Service Outside the Commonwealth.

405. Return of Service.

#### SERVICE IN PARTICULAR ACTIONS

410. Real Property Actions.

[ **411. Actions for Support. ]** (Rescinded effective 1/1/96)

[ 412. Actions for Custody, Partial Custody and Visitation Actions for Divorce or Annulment of Marriage. ] (Rescinded effective 1/1/96)

**SERVICE UPON PARTICULAR PARTIES**

- [ 420. Minors. ]
- [ 421. Incapacitated Persons. ]
- [ 422. The Commonwealth and Political Subdivisions. ]
- [ 423. Partnerships and Unincorporated Associations. ]
- [ 424. Corporations and Similar Entities. ]
- [ 425. Additional Defendants. ]

**SERVICE PURSUANT TO SPECIAL ORDER OF COURT**

430. Service Pursuant to Special Order of Court. Publication.

**SERVICE OF LEGAL PAPERS OTHER THAN ORIGINAL PROCESS**

- 440. Service of Legal Papers other than Original Process.
- 441. Service on Minors or Incapacitated Persons.

**SERVICE GENERALLY**

**Rule 400. Person to Make Service.**

Present Rule 400 is rescinded and new Rule 400 is promulgated to read as follows:

**Rule 400. Service. Acceptance of Service.**

(a) Service of original process shall be made within the Commonwealth by the sheriff or a competent adult who is not a party

**Official Note:** If original process is to be served by the sheriff in a county other than where the action was commenced, the plaintiff may either deliver the process directly to the sheriff of the county where service is to be made or deliver the process to the sheriff of the county where the action was commenced who shall deputize the sheriff of the county where service may be made.

(1) by handing a copy in the manner provided by Rules 402 through 402.3, or

**Official Note:** Rules 402 through 402.3 govern service upon particular parties.

(2) by mailing a copy in the manner provided by Rule 403 and Rules 402 through 402.3.

**Official Note:** Rules 402 through 402.3 govern service upon particular parties. Rule 403 governs service by mail.

(b) Service of original process shall be made outside the Commonwealth in the manner provided by Rule 404.

(c) If service cannot be made under the applicable rule, service of original process shall be made in the manner provided by order of court pursuant to Rule 430.

(d) The return of service shall be made in the manner provided by Rule 405.

(e) In lieu of service under these rules, the defendant or his authorized agent may accept service of

original process by filing a separate document which shall be substantially in the following form:

(Caption)

**Acceptance of Service**

I accept service of the \_\_\_\_\_ (on behalf of \_\_\_\_\_ and certify that I am authorized to do so).

\_\_\_\_\_  
(Date) (Defendant, or Authorized Agent)

\_\_\_\_\_  
(Mailing Address)

**Official Note:** The plaintiff should insert in the first blank the name of the document being accepted, i.e. writ of summons or complaint.

When accepting service in person, the defendant would delete the part of the sentence in parentheses.

**Rule 400.1. Temporary Provisions for Philadelphia County.**

Rescinded.

**Rule 402. [ Manner of Service. Acceptance of Service ] Service upon Individuals. Adults. Minors. Incapacitated Persons.**

(a) Original process may be served upon a defendant who is a competent adult

- (1) by handing a copy to the defendant; or
- (2) by handing a copy

(i) at the residence of the defendant to an adult member of the family with whom [ he ] the defendant resides; but if no adult member of the family is found, then to an adult person in charge of such residence; or

(ii) at the residence of the defendant to the [ clerk or ] manager [ of ] or other person authorized to accept deliveries of United States mail at the hotel, inn, apartment house, boarding house or other place of lodging at which [ he ] the defendant resides; or

(iii) at any office or usual place of business of the defendant to [ his ] the defendant's agent or to the person for the time being in charge thereof [ . ]; or

(3) by mailing a copy to the defendant at the defendant's residence or office or usual place of business.

**Official Note:** See Rule 403 for the manner of service by mail.

[ (b) In lieu of service under this rule, the defendant or his authorized agent may accept service of original process by filing a separate document which shall be substantially in the following form:

(Caption)

**Acceptance of Service**

I accept service of the \_\_\_\_\_ (on behalf of \_\_\_\_\_ and certify that I am authorized to do so).

\_\_\_\_\_  
(Date) (Defendant, or Authorized Agent)

\_\_\_\_\_  
(Mailing Address)

**Official Note:** The plaintiff should insert in the first blank the name of the document being accepted, i.e. writ of summons or complaint.

When accepting service in person, the defendant would delete the part of the sentence in parentheses. ]

(b) If the defendant is a minor or an incapacitated person, original process shall be served

(1) upon the minor or the incapacitated person in the manner prescribed for service of original process upon a competent adult defendant, or

(2) by handing or mailing a copy to the [incapacitated person's] guardian of the minor or incapacitated person.

**Official Note:** Rule 76 defines "minor" and Rule 2026 defines "guardian."

The plaintiff cannot obtain a valid judgment against a minor until a guardian has been appointed; and a judgment obtained without the appointment of a guardian may be vacated and a guardian appointed forthwith, in accordance with Rule 2034. In all instances, the court in appointing a guardian for a minor may require that the guardian be served with copies of the pleadings already served upon the minor or others and may also grant such continuance as is necessary to prepare and present the case of the minor. The court may also make orders extending the time for filing pleadings on behalf of the minor.

Rule 2051 defines "incapacitated person." Rule 2053 provides for the representation of an incapacitated person who is a defendant by a guardian or a guardian ad litem.

**Rule 402.1. Service upon the Commonwealth and Political Subdivisions.**

(a) Service of original process upon the Commonwealth or an officer of the Commonwealth shall be made at the office of the named defendant and the office of the Attorney General either by handing a copy to the person in charge thereof or by mail.

**Official Note:** See Rule 403 for the manner of service by mail.

(b) Service of original process upon a department, board, commission or instrumentality of the Commonwealth, or a member thereof, shall be made at the office of the named defendant and the office of the Attorney General either by handing a copy to the person in charge thereof or by mail.

(c)(1) Service of original process upon a political subdivision shall be made at the political subdivision's office of the solicitor or legal department either by handing a copy to the person in charge or by mail.

(2) If the process cannot be served as provided by subparagraph (1), it shall be served

(i) by handing or mailing a copy to an agent duly authorized by the political subdivision to receive service of process, or

(ii) at the office of the defendant

(A) by handing a copy to the person in charge or to the mayor, or the president, chairman, secretary or clerk of the governing body, or,

(B) by mail.

(3) If service cannot be made as provided by subparagraphs (1) and (2) and a certificate is filed showing the effort to make service and the inability to do so, service shall be made in the manner prescribed by Rule 402(a) upon the mayor, or the president, chairman, secretary or clerk of the governing body.

**Official Note:** See Rule 76 for the definition of "political subdivision."

(c) This rule shall not apply to an appeal from an administrative determination, order or decree of such officer, department, board, commission or instrumentality.

**Rule 402.2. Service upon Partnerships, Unincorporated Associations, and Corporations and Similar Entities.**

(a) As used in this rule,

"association" means a partnership and all partners named in the action, an unincorporated association or a corporation or similar entity;

"officer" when referring to an officer of a corporation or similar entity means an executive officer as defined by Rule 2176.

**Official Note:** Rule 2176 defines executive officer as "a chairman, president, vice-president, treasurer, secretary, general manager, or any like officer of a corporation or similar entity."

(b) Service of original process upon an association shall be made

(1) by handing a copy to any of the following persons provided the person served is not a plaintiff in the action:

(i) any partner, officer, trustee or registered agent of the association at any regular place of business or activity of the association, or

(ii) the manager, clerk or other person for the time being in charge of any regular place of business or activity of the association, or

(iii) an agent authorized by the association in writing to receive service of process for it, or

(2) by mailing a copy to the association at any regular place of business or activity or to an agent authorized in writing by the association to receive service of process for it.

**Official Note:** See Rule 403 governing service by mail.

(c) If service cannot be made as provided by subdivision (b) and a certificate is filed showing the effort to make service and the inability to do so, then service shall be made upon any partner, officer, trustee or registered agent of the association who is not a plaintiff in the action in the manner provided by Rule 402(a).

**Rule 402.3. Service upon Additional Defendants.**

(a) Original process shall be served upon an additional defendant who is not already a party to the action in the same manner as if the additional defendant were an original defendant. Copies of all pleadings filed in the action shall be served with the complaint against the additional defendant.

**Official Note:** Prior pleadings must be served with the complaint whether the complaint is original process served upon the additional defendant or a pleading served under Rule 440. See Rule 213(b) for the right of an additional defendant to move for a severance and Rule 1006(d) for the right to move for a change of venue.

(b) The defendant or additional defendant who has filed a complaint shall serve a copy upon every prior party but need not attach copies of any pleadings previously filed in the action.

**Rule 403. Service by Mail.**

If [ a rule of civil procedure authorizes ] original process is to be served by mail, a copy of the process shall be mailed to the defendant by any form of United States mail requiring a receipt signed by the defendant or [ his ] the defendant's authorized agent. Service is complete upon [ delivery of the mail ] the defendant or the defendant's authorized agent signing the required receipt.

(1) If the mail is returned with notation by the postal authorities that the defendant refused to accept the mail, the plaintiff shall have the right of service by mailing a copy to the defendant at the same address by ordinary mail with the return address of the sender appearing thereon. Service by ordinary mail is complete if the mail is not returned by the postal authorities to the sender within fifteen days after mailing.

(2) If the mail is returned with notation by the postal authorities that it was unclaimed, the plaintiff shall make service by another means pursuant to these rules.

**Official Note:** The United States Postal Service provides for restricted delivery mail, which can only be delivered to the addressee or his authorized agent. Rule 403 has been drafted to accommodate the Postal Service Procedures with respect to restricted delivery.

See Rule 402 governing individuals, Rule 402.1 governing the Commonwealth and political subdivisions and Rule 402.2 governing partnerships, unincorporated associations, and corporations and similar entities for provisions specifying the place where process is to be mailed.

**Rule 404. Service Outside the Commonwealth.**

Original process shall be served outside the Commonwealth within ninety days of the issuance of the writ or the filing of the complaint or the reissuance or the reinstatement thereof:

**Official Note:** For reissuance and reinstatement of original process, see Rule 401(b).

(1) [ by a competent adult who is not a party ] in the manner provided by Rule [ 402(a) ] 400(a) governing service within the Commonwealth;

(2) [ by any competent adult by mail in the manner provided by Rule 403 ] Rescinded;

(3) in the manner provided by the law of the jurisdiction in which the service is made for service in an action in any of its courts of general jurisdiction;

(4) in the manner provided by treaty; or

**Official Note:** A treaty may provide that to effect service a plaintiff must satisfy requirements which are in addition to the procedures specified by this rule.

(5) as directed by the foreign authority in response to a letter rogatory or request.

**Official Note:** Sections 5323 and 5329(2) of the Judicial Code, 42 Pa.C.S. §§ 5323, 5329(2), provide additional alternative procedures for service outside the Commonwealth.

**SERVICE IN PARTICULAR ACTIONS**

**Rule 410. Real Property Actions.**

\* \* \* \* \*

(b)(1) If in an action involving an interest in real property the relief sought is possession or mortgage foreclosure, original process also shall be served upon any person not named at a party who is found in possession of the property. The sheriff or other person making service shall note the service in the return.

\* \* \* \* \*

**Rule 411. Actions for Support.**

Rescinded.

**Official Note:** For service of original process in domestic relations matters, see Rule 1930.4.

**Rule 412. Actions for Custody, Partial Custody and Visitation. Actions for Divorce or Annulment of Marriage.**

Rescinded.

**Official Note:** For service of original process in domestic relations matters, see Rule 1930.4.

**SERVICE UPON PARTICULAR PARTIES**

**Rule 420. Minors.**

Rescinded.

**Official Note:** For service upon minors, see Rule 402(b).

**Rule 421. Incapacitated Persons.**

Rescinded

**Official Note:** For service upon incapacitated persons, see Rule 402(b).

**Rule 422. The Commonwealth and Political Subdivisions.**

Rescinded.

**Official Note:** For service upon the Commonwealth and political subdivisions, see Rule 402.1.

**Rule 423. Partnerships and Unincorporated Associations.**

Rescinded.

**Official Note:** For service upon partnerships and unincorporated associations, see Rule 402.2.

**Rule 424. Corporations and Similar Entities.**

Rescinded.

**Official Note:** For service upon corporations and similar entities, see Rule 402.2.

**Rule 425. Additional Defendants.**

Rescinded.

**Official Note:** For service upon additional defendants, see Rule 402.3.

CONFORMING AMENDMENTS

CHAPTER 200. BUSINESS OF COURTS

Rule 234.2. Subpoena. Issuance. Service. Compliance. Prisoners. Fees.

\* \* \* \* \*

(b) A copy of the subpoena may be served upon any person within the Commonwealth by a competent adult

(1) [ in the manner ] by handing a copy as prescribed by [ Rule ] Rules 402[ (a) ] through 402.3;

(2) by any form of mail requiring a return receipt, postage prepaid, restricted delivery. Service is complete upon delivery of the mail to the defendant or any of the persons referred to in Rule 402(a)(2). The return receipt may be signed by the defendant or any of such persons; or

(3) by ordinary mail. The mail shall contain two copies of the Notice and Acknowledgment prescribed by Rule 234.9 and a self-addressed stamped envelope.

Official Note: A subpoena served by ordinary mail is not enforceable unless the witness acknowledges having received it. See Rule 234.5(a)

\* \* \* \* \*

CHAPTER 1000. ACTIONS AT LAW

Subchapter E. ACTION IN REPLEVIN

Rule 1075.1. Writ of Seizure Upon Notice and Hearing.

\* \* \* \* \*

(d) The motion and notice of the hearing may be served by any competent adult by leaving a copy at the address endorsed on an appearance or prior pleading, but if there is no such endorsement, then [ in the manner ] by handing a copy as provided by [ Rule ] Rules 402[ (a) ] through 402.3 for service of original process or, if that is not possible, then by any other means reasonably calculated to give notice. The return of service shall be governed by Rule 405.

\* \* \* \* \*

Rule 1075.4. Service of the Writ of Seizure.

(a) The sheriff shall serve the writ of seizure, together with a copy of the complaint and motion for ex parte issuance of the writ if the writ has been issued ex parte, upon the defendant and any person not a party who is found in possession of the property, [ in the manner ] by handing a copy as provided by [ Rule ] Rules 402[ (a) ] through 402.3 for service of original process and shall take possession of the property.

Official Note: A writ of seizure may not be served by mail.

\* \* \* \* \*

CHAPTER 1300. COMPULSORY ARBITRATION

Subchapter B. FORMS

Rule 1352. Form of Writ of Summons in Action of Ejectment.

The writ of summons in an action of ejectment [ shall be directed to the sheriff and ] shall be in substantially the following form:

Commonwealth of Pennsylvania

County of \_\_\_\_\_

(Caption)

To [ the Sheriff of the County of ] \_\_\_\_\_ (Defendant(s)):

[ Your are directed to notify \_\_\_\_\_ (Name(s) of Defendant (s)) the defendant(s), ] You are hereby notified that \_\_\_\_\_ the plaintiff(s), has (have) (Names of Plaintiff(s))

commenced an action of ejectment against you which [ said defendant(s) is (are) ] you are required to defend.

This action concerns the land here described:

\_\_\_\_\_ (Describe land)

\_\_\_\_\_

\_\_\_\_\_

If this land is in your possession [ of anyone ] but you are not named above as a party, you are [ directed to notify him that he has ] hereby notified that you have been added as a defendant and [ is ] are required to defend this action.

\_\_\_\_\_ (Name of Prothonotary (clerk))

Date: \_\_\_\_\_ Seal of the Court By \_\_\_\_\_ (Deputy)

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.22. Attachment of Income.

\* \* \* \* \*

(d)(1) The order of attachment shall be substantially in the form prescribed by Rule 1910.31 and shall be served upon the obligor's employer by a competent adult [ in the manner ] by handing a copy as prescribed by [ Rule ] Rules 402[ (a) ] through 402.3 governing service of original process or by registered mail, return receipt requested. Service by mail is complete upon the return of the registered mail receipt personally signed by the employer or other evidence of service satisfactory to the court.

\* \* \* \* \*

CHAPTER 2300. INTERPLEADER BY DEFENDANTS

Rule 2308. Service of process on interpleaded claimants.

\* \* \* \* \*

[ (d) Rescinded.

Official Note: Original process may be served in any county of the Commonwealth under Rule 402. Subdivision (d) of this rule is therefore rescinded as obsolete. ]

**CHAPTER 2950. CONFESSION OF JUDGMENT FOR MONEY**

**Rule 2958.1. Notice Served Prior to Execution.**

\* \* \* \* \*

(b) The notice shall be served

(1) upon a defendant in the judgment who has not entered an appearance

(i) by the sheriff or by a competent adult who is not a party to the action in the manner prescribed by [ **Rule** ] **Rules 402[ (a) ] through 402.3** for the service of original process upon a defendant, or

(ii) by the plaintiff mailing a copy in the manner prescribed by Rule 403, or

(iii) pursuant to special order of court as prescribed by Rule 430 if service cannot be made as provided in subparagraphs (i) or (ii), or

(2) upon a defendant in the judgment who has entered an appearance, by the plaintiff in the manner provided by Rule 440.

\* \* \* \* \*

**CHAPTER 2970. CONFESSION OF JUDGMENT FOR POSSESSION OF REAL PROPERTY**

**Rule 2973.2. Notice Served Prior to Execution.**

(b) The notice shall be served

(1) upon a defendant in the judgment who has not entered an appearance

(i) by the sheriff or by a competent adult who is not a party to the action in the manner prescribed by [ **Rule** ] **Rules 402[ (a) ] through 402.3** for the service of original process upon a defendant, or

(ii) by the plaintiff mailing a copy in the manner prescribed by Rule 403, or

(iii) pursuant to special order of court as prescribed by Rule 430 if service cannot be made as provided in subparagraphs (i) or (ii), or

(2) upon a defendant in the judgment who has entered an appearance, by the plaintiff in the manner provided by Rule 440.

\* \* \* \* \*

**CHAPTER 3000. JUDGMENTS**

**Subchapter D. ENFORCEMENT OF MONEY JUDGMENTS FOR THE PAYMENT OF MONEY**

**Rule 3111. Service of the writ on garnishee; effect.**

(a) The writ shall be served by the sheriff upon the garnishee [ **in the manner** ] **by handing a copy to the persons** prescribed by [ **Rule** ] **Rules 402[ (a) ] through 402.3** 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** ] A garnishee **who is served [ was ] but** not named in the writ [ **he** ] shall be added as a garnishee and return made accordingly.

**Official Note: A writ of execution may not be served by mail.**

\* \* \* \* \*

**Rule 3129.2. Notice of sale; handbills; written notice; publication.**

\* \* \* \* \*

(c) \*\*\*

(1) Service of the notice shall be made

(i) upon a defendant in the judgment who has not entered an appearance and upon the owner of the property

(A) by the sheriff or by a competent adult who is not a party to the action [ **in the manner** ] **handing a copy as** prescribed by [ **Rule** ] **Rules 402[ (a) ] through 402.3** for the service of original process upon a defendant, or

\* \* \* \* \*

**Rule 3140. Notice by garnishee.**

(a) Upon being served with the writ, the garnishee shall promptly forward a copy to the defendant.

(b) Upon filing [ **his** ] answers to interrogatories, the garnishee shall promptly forward a copy to the defendant.

(c) A copy is forwarded within the requirement of this rule when it is delivered to the defendant by a competent adult at any place within or without the Commonwealth [ **in the manner** ] **by handing a copy as** prescribed by [ **Rule** ] **Rules 402[ (a) ] through 402.3** for service of original process or when it is mailed to the defendant by registered mail directed to his last known address.

**Official Note:** Registered mail includes certified mail. See Definition Rule 76.

**Explanatory Comment**

Recommendation No. 142 proposes two major revisions to the rules of civil procedure governing service of original process. First, service may be made in all actions by a competent adult who is not a party. Second, service may be made in all actions by United States mail. Most of the proposed amendments described hereafter are directed to effecting these revisions.

**Rule 400. Person to Make Service**

Rule 400 which presently governs the person who may make service will be rescinded. New Rule 400 governing service and acceptance of service will be substituted in place of the present rule.

New Rule 400 provides an overview of service of original process. Subdivision (a) provides for service by the sheriff or a competent adult not a party to the action who may hand a copy to specified persons as provided by Rules 402 through 402.3 or mail a copy pursuant to Rule 403.

Subdivisions (b), (c) and (d) cross-refer, respectively, to service outside the Commonwealth under Rule 404, service pursuant to special order of court under Rule 430, and the return of service under Rule 405. No change is proposed to Rules 405 and 430 and they are not included in this recommendation.

Alternatively, a defendant may accept service of original process and subdivision (e) so provides. Subdivision (e) is taken verbatim from present Rule 402(b).

**Rule 402. Service upon Individuals. Adults. Minors. Incapacitated Persons**

Rule 402(a) continues to state the basic procedures for personal service upon competent adult individuals. In addition to the traditional method of handing a copy to

specified persons, subdivision (a)(3) provides for "mailing a copy to the defendant at the defendant's residence or office or usual place of business."

Present subdivision (a)(2)(ii) provides for service upon "the clerk or manager of the . . . place of lodging at which the defendant resides." In place of the "clerk or manager", it is proposed that service be made upon the "manager or other person authorized to accept deliveries of United States mail."

As previously noted, present subdivision (b) of Rule 402 governing acceptance of service will be moved without change to Rule 400 as subdivision (e). New Rule 402(b) is derived from Rules 420 and 421 without change, combining service upon minors and incapacitated persons in one subdivision.

Rule 402, therefore, will govern service upon all individual defendants: competent adults, minors and incapacitated persons.

#### Rule 402.1. Service upon the Commonwealth and Political Subdivisions

New Rule 402.1 governs service upon the Commonwealth and political subdivisions. The rule has been drafted to accommodate service both by competent adult and by mail.

Subdivision (a) of the new rule is based upon subdivision (a) of present Rule 422. It is limited, however, to the Commonwealth or an officer of the Commonwealth as a defendant. Service of original process upon a particular "department, board, commission or instrumentality of the Commonwealth, or a member thereof" is governed by subdivision (b) and requires service at the office of the particular Commonwealth entity being sued and at the office of the Attorney General.

Subdivision (c) governs service upon a political subdivision and merely bears a resemblance to the present rule. It provides a hierarchy of service whether by competent adult or by mail. The primary place of service under subdivision (c)(1) is at "the political subdivision's office of the solicitor or legal department." The office mentioned is an office maintained by the political subdivision as the office of its solicitor or legal department and not the private office of an attorney retained to perform legal duties. If process cannot be served in such a manner because there is no such office, then service may be made under subdivision (c)(2) upon an authorized agent or at the office of the defendant upon specified persons.

Proposed Rule 402.1(c)(2)(ii)(A) specifies the persons who may be served with process at the office of the defendant: "the person in charge or to the mayor, or the president, chairman, secretary or clerk of the governing body." This represents a change from the language of present Rule 422(b)(3) which provides for handing a copy to the person in charge or to the mayor, or the president, chairman, secretary or clerk of "the tax levying body thereof, and in counties where there is no tax levying body, the chairman or clerk of the board of county commissioners."

There is a third option under subdivision (c)(3) if service cannot be made as provided by subdivisions (c)(1) or (2) and a certificate has been filed so stating. This method is by service under Rule 402(a) on the persons listed in subdivision (c)(2)(ii)(A) mentioned above.

#### Rule 402.2. Service Upon Partnerships, Unincorporated Associations, and Corporations and Similar Entities

Rule 402.2 combines present Rule 423 governing service on partnerships and unincorporated associations and Rule 424 governing service on corporations and similar entities. One service rule governs all three of these types of "associations." The new rule uses the term "association" and defines it to include all of the entities mentioned above. With one exception, the manner of service remains unchanged.

The one change in practice is in the area of corporations and similar entities. Presently, service upon a corporation may be made under Rule 424(1) by handing a copy of the process to "an executive officer, partner or trustee of the corporation or similar entity." However, these persons cannot be served under Rule 402(a)(2) or (3) by handing a copy of the process to a member of the household or the clerk or manager of the place of lodging.

Under proposed Rule 402.2(c), service may be made pursuant to Rule 402(a) irrespective of whether the party to be served is a partnership, an unincorporated association or a corporation or similar entity. The condition for such service is that service cannot be made as provided by subdivision (b) and "a certificate is filed showing the effort to make service and the inability to do so."

#### Rule 402.3. Service Upon Additional Defendants

New Rule 402.3 is derived from present Rule 425 with no change in substance. The language of the new rule has been made gender neutral.

#### Rule 403. Service by Mail

Present Rule 403 governing service by mail is revised in two respects. First, subdivision (a) explicitly states what was previously implied, that the mail to be used is United States mail. Second, present subdivision (a) provides that service is complete upon delivery of the mail. The revised subdivision provides that service is complete "upon the defendant or the defendant's authorized agent signing the required receipt."

#### Rule 404. Service Outside the Commonwealth

The manner of service outside the Commonwealth remains unchanged. The revisions simply conform the rule to accommodate the changes previously described.

#### Rule 410. Real Property Actions

Subdivision (b)(1) is revised to accommodate service by competent adult by referring to the sheriff "or other person making service."

#### Conforming Amendments

Several rules cross-refer to Rule 402(a) and incorporate its provisions for service. Where service by mail is not appropriate or mail service is otherwise provided, these rules are revised to refer to "handing a copy as provided by Rules 402 through 402.3."

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chairperson*

[Pa.B. Doc. No. 97-437. Filed for public inspection March 21, 1997, 9:00 a.m.]

[231 PA. CODE CHS. 1300 AND 3000]

Technical Amendment of Rule 1480 et seq. Relating to Compulsory Arbitration and Judgments; No. 270, Doc. No. 5

Order

*Per Curiam:*

And Now, this 5th day of March, 1997, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. Rules 1480, 1481, 3010, 3011, 3232, 3233, 3242, 3243, 3244, 3245, 3249 and 3250 are rescinded and notes are added to read as follows.

2. Rules 3160 and 3181(f) are amended to read as follows.

3. Rule 3191 is promulgated to read as follows.

4. The notes to Rules 3182, 3190 are amended to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 1997.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1300. COMPULSORY ARBITRATION

Subchapter E. ABOLITION OF SPECIAL ACTIONS

Rule 1480. Domestic Attachment.

Rescinded

Official Note: Rule 1480 governing domestic attachment has been rescinded as obsolete.

Rule 1481. Civil Arrest Before Judgment.

Rescinded.

Official Note: Rule 1481 governing civil arrest before judgment has been rescinded as its substance has been incorporated into Section 5108(b) of the Judicial Code, 42 Pa.C.S. § 5108(b).

CHAPTER 3000. JUDGMENTS

Subchapter A. TRANSFER OF JUDGMENTS TO OTHER COUNTIES

Rule 3010. Acts Of Assembly not suspended.

Rescinded.

Official Note: [ This act authorizes the defendant in confessed judgments transferred to another county to petition for opening of judgment in the county of original entry or in the county of execution. ] The Act of 1945 prescribing venue of a petition to open a confessed judgment and preserved by this rule has been repealed. See Rule 2959(a)(1).

Rule 3011. Acts of Assembly suspended.

Rescinded.

Official Note: Former Rule 3011 preserved an Act of Assembly which was subsequently repealed.

Subchapter E. ENFORCEMENT OF JUDGMENTS IN SPECIAL ACTIONS

ACTION OF EJECTMENT

Rule 3160. Judgment; execution.

A judgment for possession shall be enforced by a writ of possession substantially in the form provided by Rule 3254. If the judgment includes rents, profits or damages, execution for such rents, profits or damages shall be in accordance with the rules governing the enforcement of judgments for the payment of money.

ACTION OF MORTGAGE FORECLOSURE

Rule 3181. Conformity to rules governing enforcement of judgments for payment of money.

\* \* \* \* \*

(f) Notice of Sale, Stay, Continuance:—Rule [ 3129 ] 3129.1 through .3.

\* \* \* \* \*

Rule 3182. Service of writ; levy.

\* \* \* \* \*

Official Note: Service of the writ upon the mortgagor or real owner is not required but notice of the sale is required by Rule [ 3129 ] 3129.1.

ACTIONS UPON MECHANICS' LIENS, MUNICIPAL AND TAX CLAIMS AND CHARGES ON LAND

Rule 3190. Judgment; execution.

\* \* \* \* \*

Official Note: [ The Acts ] Statutory procedures relating to enforcement of tax liens by sale under the Real Estate Tax Law of July 7, 1947, P.L. 1368, as amended, 72 P.S. § 5860.101 et seq., and other acts authorizing Treasurer's sale remain unsuspended. See Rule 3191(a)(2)(viii).

[ The writs of levavi facias provided by § 28 of the Municipal Claim Act of May 16, 1923, P.L. 207, 53 P.S. § 7278, and the Fiscal Code of April 9, 1929, P.L. 343, § 1404, as last amended August 7, 1963, P.L. 559, § 1, 72 P.S. § 1404, § 8 of Act of June 9, 1911, P.L. 736, 72 P.S. § 3491 and similar acts are abolished. ]

Statutory provisions relating to municipal claims and liens remain unsuspended. See Rule [ 3233 for Acts of Assembly not suspended relating to ] 3191(a)(2)(i) through (viii) for provisions including special stay provisions, sequestration of rents, upset price, sale clear of lien and preferences.

See Rule 3191(b) for Acts of Assembly suspended insofar as they provide for writs of levavi facias and scire facias.

Rule 3191. Acts of Assembly.

(a) The rules governing the enforcement of a judgment in rem in an action or proceeding upon a mechanics' lien, municipal claim, tax claim or charge on land shall not be deemed to suspend or affect:

(1) Mechanic's Liens.

(i) Sections 303(c) and 508 of the Act of August 24, 1963, P.L. 1175, No. 497, 49 §§ 1303(c) and 1508.

Official Note: These sections provide for the loss of the lien when property is conveyed in good faith prior to the filing of a claim and for the priority of a lien.



## (2) Municipal and Tax Claims.

(i) Section 24 of the Act of May 16, 1923, P. L. 207, as amended, 53 P. S. § 7275.

**Official Note:** This Section relates to sequestration of rents.

(ii) Section 27 of the Act of May 16, 1923, P. L. 207, 53 P. S. § 7277.

**Official Note:** This Section relates to stay upon entry of security and admission of validity of claim.

(iii) Section 29 of the Act of May 16, 1923, P. L. 207, as amended, 53 P. S. § 7279.

**Official Note:** This Section relates to upset sale price and discharge of liens.

(iv) Section 30 of the Act of May 16, 1923, P. L. 207, 53 P. S. § 7280.

**Official Note:** This Section relates to execution against quasi public corporations and preference of claims.

(v) Section 31 of the Act of May 16, 1923, P. L. 207, 53 P. S. § 7281.

**Official Note:** This Section relates to procedure for selling free and clear of all liens.

(vi) Sections 31.1, 31.2 of the Act of May 16, 1923, P. L. 207, as added and amended, 53 P. S. §§ 7282, 7283.

**Official Note:** These Sections relate to procedure for selling free and clear of all claims in first class counties and cities.

(vii) Section 32 of the Act of May 16, 1923, P. L. 207, 53 P. S. § 7293, as added and amended.

**Official Note:** This Section relates to right of redemption after sale.

(viii) The Real Estate Tax Sale Law approved July 7, 1947, P. L. 1368, as amended, 72 P. S. § 5860.101 and all other acts authorizing Tax Bureau or Treasurer's sale on tax liens.

(ix) Sections 4 to 9, inclusive, of the Act of March 1, 1956, P. L. (1955) 1196, 53 P. S. §§ 7287 to 7292, except insofar as § 7 relates to execution, acknowledgement and delivery of sheriff's deed.

**Official Note:** These Sections relate to sale of vacant lots in "conservation areas" free and clear of all liens and without any right of redemption.

(b) The following Acts of Assembly are suspended in accordance with the provisions of the Constitution of 1968, Article V, Section 10(c):

(1) Section 28 of the Act approved May 16, 1923, P. L. 207, 53 P. S. § 7278.

**Official Note:** This Section provides for execution upon a judgment by writ of *levari facias* and specifies the form of the writ and procedure thereon.

(2) Section 1404 of the Fiscal Code of April 9, 1929, P. L. 343, Art. XIV, 72 P. S. § 1404, only insofar as it may authorize sale of real estate subject to tax liens on writ of *scire facias*.

**Official Note:** This Section authorizes writs of *scire facias* to issue and be prosecuted to judgment and execution on Commonwealth tax liens.

(3) Section 7 of the Act approved March 1, 1956, P. L. (1955) 1196, 53 P. S. § 7290, insofar as it relates to acknowledgment and delivery of sheriff's deed.

**Official Note:** This Section relates to the execution, acknowledgment and delivery of deeds in sale of tax delinquent vacant lots located in blighted "conservation areas."

**ACTS OF ASSEMBLY NOT SUSPENDED****Rule 3232. Action of mortgage foreclosure.**

**Rescinded.**

**Official Note:** Former Rule 3232 preserved Acts of Assembly which were subsequently repealed.

**Rule 3233. Action upon mechanics' liens, municipal claims, tax claims, and charges on land.**

**Rescinded.**

**Official Note:** Former Rule 3233(a)(1) preserved statutory provisions which were subsequently repealed. See Rule 3191(a)(1)(i) for preservation of the Act of 1963 governing the enforcement of a judgment in rem in an action or proceeding upon a mechanics' lien.

All of the Acts of Assembly preserved by former Rule 3233(b) continue to be preserved under Rule 3191(a)(2).

**ACTS OF ASSEMBLY SUSPENDED****Rule 3242. Action of ejectment.**

**Rescinded.**

**Official Note:** Former Rule 3242 suspended statutory provisions which were subsequently repealed.

**Rule 3243. Action of replevin.**

**Rescinded.**

**Official Note:** Former Rule 3243 suspended statutory provisions which were subsequently repealed.

**Rule 3244. Action of mortgage foreclosure.**

**Rescinded.**

**Official Note:** Former Rule 3244 suspended statutory provisions which were subsequently repealed.

**Rule 3245. Action upon mechanics liens, municipal claims, tax claims and charges on land.**

**Rescinded.**

**Official Note:** See Rule 3191(b) for the suspension of statutory provisions governing writs of *scire facias* and *levari facias*.

**RULES SUPERSEDED****Rule 3249. Attachment rules superseded.**

**Rescinded.**

**Official Note:** Rule 3249 governing attachment rules superseded has been rescinded as obsolete.

**ABOLITION OF CIVIL ARREST AFTER JUDGMENT****Rule 3250. Abolition of civil arrest after judgment.**

**Rescinded.**

**Official Note:** Rule 3250 governing civil arrest after judgment has been rescinded as its substance has been incorporated into Section 5108(b) of the Judicial Code, 42 Pa.C.S. § 5108(b).

**Explanatory Comment**

The following recent amendments to the rules of civil procedure are technical in nature and do not affect practice or procedure.

I. Amendment of Rules Governing Transfer of Judgments and Enforcement of Judgments in Special Actions

The Judiciary Act Repealer Act (JARA), enacted in 1978, repealed literally thousands of statutory provisions governing civil practice and procedure and amended many others. Since that time the references to these repealed and amended statutes contained in the Rules of Civil Procedure have been eliminated gradually. The recent amendments continue this process, rescinding rules which preserved or suspended repealed statutes and amending rules by eliminating obsolete references and citations.

Rule 3160 governing the enforcement of a judgment of ejectment is amended to conform to Rule 1055 which provides for the complaint in an action of ejectment to state a cause of action for rents as well as profits and damages.

Rule 3191 governing the preservation and suspension of Acts of Assembly relating to an action or proceeding upon a mechanics' lien, municipal claim, tax claim or charge on land does not set forth new procedure but is a restatement and relocation of the substance of present Rules 3233 and 3245. New Rule 3191 immediately follows Rule 3190 governing the procedure in the same types of actions.

II. Rescission of Rules Abolishing Special Actions

Four rules relating to the abolition of special actions or procedures have been rescinded.

Rule 1480 promulgated in 1954 abolished the action of domestic attachment and suspended the Acts of Assembly which formed the basis of the action. Those Acts were repealed by JARA in 1978 so that Rule 1480 became obsolete.

Similarly, Rule 3249 promulgated in 1960 provided for the supersession of the then existing 1954 attachment rules and advised that pending attachment proceedings would be governed by the then newly adopted attachment execution rules. Thirty-six years later, the 1954 attachment rules remain superseded and the 1960 attachment execution rules continue in force, rendering Rule 3249 obsolete.

The substance of Rule 1481 abolishing civil arrest before judgment and Rule 3250 abolishing civil arrest after judgment has been incorporated into Section 5108(b) of the Judicial Code, thus rendering the rules unnecessary.

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chairperson*

[Pa.B. Doc. No. 97-438. Filed for public inspection March 21, 1997, 9:00 a.m.]

**[231 PA. CODE CH. 4000]**

**Amendment of Rule 4011 Governing Discovery;  
No. 271; Doc. No. 5**

**Order**

*Per Curiam:*

And Now, this 5th day of March, 1997, Pennsylvania Rule of Civil Procedure 4011 is amended to read as follows:

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 1997.

**Annex A**

**TITLE 231. RULES OF CIVIL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 4000. DEPOSITIONS AND DISCOVERY**

**Rule 4011. Limitation of Scope of Discovery and Deposition.**

No discovery or deposition shall be permitted which

- (a) is sought in bad faith;
- (b) would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent or any person or party;
- (c) **[relates to matter which]** is **[privileged]** beyond the scope of discovery as set forth in Rules 4003.1 through 4003.6; or
- (d) Rescinded.
- (e) would require the making of an unreasonable investigation by the deponent or any party or witness.
- (f) Rescinded.

**Explanatory Comment**

Rule 4011(c) presently provides that no discovery or deposition shall be permitted which "relates to matter which is privileged." The rule, however, is incomplete since Rules 4003.1 through 4003.6 governing the scope of discovery refer to other matters including relevancy as well as privilege. The rule has been amended to refer to Rules 4003.1 through 4003.6 and thereby encompass all of the concepts of those rules.

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chairperson*

[Pa.B. Doc. No. 97-439. Filed for public inspection March 21, 1997, 9:00 a.m.]

**[231 PA. CODE CH. 4000]**

**Proposed Amendments Relating to Physical and Mental Examination of Persons and Evaluation of Earning Capacity; Recommendation No. 143**

The Civil Procedural Rules Committee proposes to recommend the amendment of Rule of Civil Procedure 4010 governing the physical and mental examination of persons and the addition of new Rule 4010.1 governing the evaluation of earning capacity. The Committee is publishing the proposed recommendation to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

All communications in reference to the proposed recommendation should be sent not later than May 16, 1997 to: Harold K. Don, Jr., Esquire, Counsel, Civil Procedural Rules Committee, 5035 Ritter Road, Suite 700, Mechanicsburg, Pennsylvania 17055, or E-Mail to hdon@courts.state.pa.us.

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 nor will it be officially adopted or promulgated by the Court.

## Annex A

## TITLE 231. RULES OF CIVIL PROCEDURE

## PART I. GENERAL

## CHAPTER 4000. DEPOSITIONS AND DISCOVERY

## Rule 4010. Physical and Mental Examination of Persons.

(a)(1) As used in this rule, "examiner" means a physician or psychologist.

(2) When the mental or physical condition (including blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by [ a physician ] an examiner or to produce for examination the person in [ his ] the party's custody or legal control.

(3) The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

(4) The person to be examined shall have the right to have counsel or other representative present during the examination. The examiner's oral interrogation of the person to be examined shall be limited to matters specifically relevant to the scope of the examination. Counsel or another representative present should not participate in or interfere with the examination except to object to the scope of the questions of the examiner.

**Official Note:** Ordinarily, the facts giving rise to liability are not germane to an examination and the information which the examiner seeks should be limited to facts of liability germane to the issue of damages.

(5) The party who is being examined or who is producing for examination a person in the party's custody or legal control may have made at the party's expense a stenographic or audio recording of the examination. Upon request and payment of reasonable cost, the party who caused the recording to be made shall provide each other party with a copy of the recording.

(b)(1) If requested by the party against whom an order is made under this rule or the person examined, the party causing the examination to be made shall deliver to [ him ] the party or person examined a copy of a detailed written report of the [ examining physician ] examiner setting out [ his ] the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows [ that he is unable ] inability to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if [ a physician ] an examiner fails or refuses to make a report the court shall exclude [ his ] the examiner's testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege [ he ] the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine [ him ] the party in respect of the same mental or physical condition.

(3) Subdivision (b) applies to an examination made by agreement of the parties, unless the agreement expressly provides otherwise. It does not preclude discovery of a report of an examining physician or the taking of a deposition of the [ physician ] examiner in accordance with the provisions of any other rule.

**Rule 4010.1. Evaluation of Earning Capacity.**

(a) When the earning capacity of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to an evaluation by a suitably licensed or certified evaluation or to produce for evaluation the person in the party's custody or legal control.

(b) The evaluation shall be conducted in the manner prescribed by Rule 4010(a)(3) through (b)(3) inclusive.

(c) The evaluator may testify as a witness on the issue of damages only and not as a witness on the issue of liability.

**Explanatory Comment**

Rule 4010. Physical and Mental Examination of Persons

Rule 4010 is revised in three respects.

## 1. Examiner

Rule 4010 presently provides that only a physician may perform physical and mental examinations of persons. However, it has been suggested to the Civil Procedural Rules Committee that the provision is too narrow and that the category of persons authorized to perform examinations should be expanded.

The present amendment revises the rule to refer to an "examiner." An examiner is defined as "a physician or psychologist."

## 2. Examination

The present rule gives no guidance with respect to the conduct of the examination. New subdivision (a)(4) adds certain protections for the person being examined. These protections include the right to have counsel or another representative present at the examination and a limitation upon the examiner's interrogation of the person to be examined. The examiner is given appropriate latitude to conduct the examination as the rule directs that the attorney or other representative present "should not participate in or interfere with the examination except to object to the scope of the questions of the examiner."

New subdivision (a)(5) gives the party who is being examined or who is producing a person to be examined the right to make a stenographic or audio recording of the examination.

## 3. Gender Neutral

Additional revisions to the language make Rule 4010 gender neutral. However, these revisions do not affect practice and procedure.

**Rule 4010.1. Evaluation of Earning Capacity**

Rule 4010 is entitled "Physical and Mental Examination of Persons." Subdivision (a) provides that the rule may be invoked when "the *mental* or *physical* condition (including blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy."

In many cases, however, there may be no dispute as to physical or mental condition, but, given that condition, there is a dispute as to the ability of the party or person under the party's control to function in an employment setting. One party may seek an "evaluation" to gauge the effect of the condition upon another party's work-life or "evaluate" the other party's ability to be gainfully employed. Proposed Rule 4010.1 provides for such an evaluation "by a suitably licensed or certified evaluator."

The procedure governing the evaluation is the same as that governing physical and mental examinations since the procedure of Rule 4010 is incorporated by reference. However, subdivision (c) accords the party to be evaluated one additional protection: the evaluator "may testify as a witness on the issue of damages only and not as a witness on the issue of liability."

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chairperson*

[Pa.B. Doc. No. 97-440. Filed for public inspection March 21, 1997, 9:00 a.m.]