

THE COURTS

Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 5]

Order Rescinding Rule 508; No. 207 Judicial Administration Doc. No. 1

Order

Per Curiam:

And Now, this 7th day of June, 1999, Pa.R.J.A. 508 is hereby rescinded.

[Pa.B. Doc. No. 99-997. Filed for public inspection June 25, 1999, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 200 AND 400]

Temporary Rule Governing Electronic Filing of Legal Papers; No. 315 Civil Procedural Rules Doc. No. 5

Order

Per Curiam:

And Now, this 14th day of June, 1999, the Pennsylvania Rules of Civil Procedure are amended as follows:

- (1) New Rule 205.4 is promulgated to read as follows.
- (2) The Note to Rule 440(a)(1)(i) is amended to read as follows.

Rule 205.4 promulgated by this Order shall be rescinded on December 31, 2001.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 1999.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 205.4. Temporary Provisions for Electronic Filing and Service of Legal Papers.

(a) As used in this rule, the following words shall have the following meanings:

“electronic filing,” the electronic transmission of legal papers by means other than facsimile transmission,

“filing party,” an attorney, party or other person who files a legal paper by means of electronic filing, and

“legal paper,” a pleading or other paper filed in an action, but not including

(1) a writ of summons or a complaint that is original process naming an original defendant or an additional defendant, unless the court by local rule provides otherwise, or

(2) a notice of appeal from an award of a board of arbitrators or a notice of appeal or other legal paper, the filing of which is prescribed by the Rules of Civil Procedure Governing Actions and Proceedings before District Justices.

(b) A party may file a legal paper with the prothonotary by means of electronic filing if electronic filing is permitted by general rule, rule of court or special order of court. The filing shall be in the format of Adobe PDF, WordPerfect for Windows or Microsoft Word for Windows. Except as otherwise provided by law, a legal paper filed electronically shall be deemed the equivalent of the original document.

(1) The electronic filing of a legal paper constitutes

(i) a certification by the filing party that the original hard copy was properly signed and, where applicable, verified, and

(ii) a certification as provided by the signature to a legal paper under Rule 1023(b), the violation of which shall be subject to the sanction provision of Rule 1023(c).

(2)(i) The filing party shall maintain the original hard copy of the document filed.

(ii) Any other party at any time may require the filing party to file the original hard copy by filing with the prothonotary and serving upon the filing party a notice to file the original hard copy with the prothonotary within fourteen days of the filing of the notice.

(c)(1) The prothonotary when authorized to accept filings by electronic transmission shall provide electronic access at all times. The time and date of filing and receipt shall be that registered by the prothonotary's computer system.

(2) The prothonotary may designate a website for the electronic filing of legal papers. Access to the website shall be available by the attorney identification number issued by the Court Administrator of Pennsylvania or an identification number issued by the website administrator.

(d) A filing party shall pay the cost of the electronic filing of a legal paper by depositing with the prothonotary, in advance, sufficient funds or by authorizing payment by credit or debit card.

(e)(1) A filing party shall be responsible for

(i) any delay, disruption, interruption of the electronic signals and readability of the document electronically filed, and

(ii) the maintenance of sufficient funds deposited with the prothonotary or of a credit or debit account to cover the cost of electronic filing.

(2) The filing party accepts the risk that a document filed by means of electronic filing may not be properly or timely filed with the prothonotary.

(f) When electronic filing is permitted as set forth in subdivision (b), the court by local rule shall provide for

(1) a filing status message to the filing party,

(2) the maintenance by the prothonotary of an electronic file only, or of such electronic and such hard copy files as set forth in the rule,

Official Note: A hard copy file is not required by this rule. If the local rule requires a hard copy file,

the requirement may extend to all cases or only to certain specified cases. For example, the court may require hard copy files for cases listed for trial or scheduled for argument while maintaining only electronic files for all other cases.

(3) additional procedures, if necessary, to ensure the security of the web site and the electronic files,

(4) procedures for the payment of prothonotary's fees and costs, and

(5) such other procedures and matters necessary to the operation of a system of electronic filing.

(g) Copies of all legal papers other than original process filed in an action or served upon any party to an action may be served

(1) as provided by Rule 440 or

(2) by electronic transmission, other than facsimile transmission, if the parties agree thereto or an electronic mail address is included on an appearance or prior legal paper filed with the court in the action. Service is complete when the legal paper is sent. A paper served electronically is subject to the certifications set forth in subdivision (b)(1).

Official Note: An electronic mail address set forth on letterhead is not a sufficient basis under this rule to permit electronic service of legal papers.

(h) This rule shall be rescinded on December 31, 2001.

CHAPTER 400. SERVICE OF ORIGINAL PROCESS SERVICE OF LEGAL PAPERS OTHER THAN ORIGINAL PROCESS

Rule 440. Service of Legal Papers Other than Original Process.

(a)(1) Copies of all legal papers other than original process filed in an action or served upon any party to an action shall be served upon every other party to the action. Service shall be made

(i) by handling or mailing a copy to or leaving a copy for each party at the address of the party's attorney of record endorsed on an appearance or prior pleading of the party, or at such other address as a party may agree, or

Official Note: Such other address as a party may agree might include a mailbox in the prothonotary's office or an e-mail address.

For electronic service by means other than facsimile transmission, see Rule 205.4(g).

* * * * *

Explanatory Comment

Rule 205.4 governing electronic filing and service of legal papers is a temporary rule and is intended as a further step in the process of introducing the concept of electronic documents into a system accustomed solely to paper documents. It is anticipated that changes in the procedural rules will be needed as technology progresses and the actual experiences of those counties which utilize this rule demonstrate the need for modifications. For that reason, a termination date of December 31, 2001 has been set for this rule.

The purpose of the rule is not to provide a comprehensive manual but, rather, a framework upon which a local court can proceed with the electronic filing and service of legal documents while allowing the flexibility to adapt the process on the basis of actual experience.

The rule addresses several aspects of electronic filing. It provides definitions of key terms, contains a description of the form, content and handling of documents, and an enumeration of the responsibilities of the prothonotary and the parties. The rule concludes with the procedure for electronic service of legal papers.

Subdivision (a)(2) is the definitional provision. The subject of the rule, "electronic filing," is defined as the electronic transmission of legal papers but the term excludes facsimile transmission which is governed by Rule 205.3.

Most importantly, the term "legal paper" is defined as excluding original process unless the court by local rule provides otherwise. For the purposes of this temporary rule, the local court is in a better position to make the determination of whether to include original process based upon a knowledge of the court's technological capabilities.

Subdivision (b) is concerned with the form and content of the legal papers themselves. Three computer formats are explicitly designated for legal papers which are filed electronically. Adobe PDF was chosen because it is becoming a nationally recognized standard format and has a great deal of flexibility in terms of its ability to include other media beside the printed word. WordPerfect for Windows and Microsoft Word for Windows are included as they are the two most commonly used word-processor software packages.

Regarding legal papers themselves, Rule 205.4(b)(1) provides that the electronic filing of a legal paper constitutes the same certification as a signature on a traditionally filed legal paper under Rule 1023.

Paragraph (2) completes subdivision (b) by requiring that the filing party maintain the original hard copy of the legal paper and also by providing a procedure by which any other party to the action may require the filing of the original hard copy. This is a means of ensuring the integrity of the filing system and the genuineness of the legal papers filed by the parties.

The burden of establishing the physical elements of the system is placed upon the prothonotary. Subdivision (c) requires the prothonotary to provide electronic access at all times and a means for recording the time and date of the filing. The subdivision also permits the prothonotary to designate a website for the electronic filing of legal papers. Under Rule 205.4(f), the prothonotary is required to make available to the filing party a filing status message which would confirm that the legal paper was filed successfully. The same subdivision also permits the prothonotary to maintain either an electronic file only or both electronic and hard copy files.

In order to take advantage of the convenience which the rule will provide, a filing party will also bear important responsibilities. Subdivision (d) requires that the filing party pay the costs of electronic filing by the advance deposit of sufficient funds with the prothonotary or by the use of a credit or debit card.

Most importantly, subdivision (e) expressly provides that a "filing party accepts the risk that a document filed by means of electronic filing may not be properly or timely filed with the prothonotary." This latter provision is based upon the concern that the immediacy of the electronic transfer of legal papers may foster increased dependency upon last-minute preparation and filing, leaving insufficient time in which to remedy either a deficiency in the legal paper being filed or the inability to effectuate the filing.

Subdivision (g) of the rule provides for electronic service of legal papers. Paragraph (2) provides that service of such papers shall be deemed complete when sent. This provision is designed to be the electronic equivalent of the rule for service by mail as set forth in Rule 440(b) which provides that service is complete upon mailing.

Service of legal papers electronically requires the consent of the person to be served either by written agreement or an electronic mail address on a prior legal paper filed with the court. A note to the proposed rule is explicit in stating that such an electronic mail address on an attorney's letterhead is an insufficient basis for electronic service.

Additionally, Rule 440 governing service of legal papers other than original process has been amended by adding a paragraph to the note following subdivision (a)(1)(i) cross-referring to the service provisions contained in new Rule 205.4(g).

*By the Civil Procedural
Rules Committee*

EDWIN L. KLETT,
Chairperson

[Pa.B. Doc. No. 99-998. Filed for public inspection June 25, 1999, 9:00 a.m.]

PART I. GENERAL

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

**Amendment of Rules Governing Service of Original Process and Other Legal Papers; No. 316
Civil Procedural Rules Doc. No. 5**

Order

Per Curiam:

And Now, this 14th day of June, 1999, the Pennsylvania Rules of Civil Procedure are amended to read as follows:

I. Rules 400, 400.1, 420, 421, 422, 423, 424, and 425, are rescinded.

II. New Rules 400, 400.1, 402.1, 402.2, 402.3, 450 and 451 are promulgated.

III. Rules 402, 403, 410, 1075.1, 1075.4, 1352, 1910.22, 2308, 2958.1, 2973.2, 3111, 3129.2, 3140 and 3283 are amended.

IV. Rules 405, 411, and 412 are amended by the addition of notes.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective September 1, 1999.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 400. SERVICE OF ORIGINAL PROCESS

SERVICE GENERALLY

Rule 400. Person to Make Service.

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 persons authorized by Rule 400.2 by handing a copy in the manner provided by Rules 402 through 402.2.

Official Note: Rules 402 through 402.2 govern service upon particular parties.

Rule 400(a) insofar as it provides for service of original process by the sheriff or a competent adult who is not a party applies to all courts of the First Judicial District. See the Order of the Supreme Court promulgating the rule.

(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 the defendant's authorized agent may accept service of original process by filing a separate document which shall be substantially in the form prescribed by Rule 450.

Rule 400.1. Provisions for All Courts of the First Judicial District.

Rule 400.1 is rescinded and new Rule 400.1 is promulgated to read as follows:

Rule 400.1. Person to Make Service. Within the Commonwealth Generally. Within the First Judicial District.

(a)(1) Except as provided in subdivision (b)(1), original process shall be served within the Commonwealth by the sheriff or a competent adult.

Official Note: See Rule 76 for the definition of "competent adult." The definition does not prohibit service by an attorney for a party or an employee of the attorney.

Service of original process in domestic relations matters is governed by Rule 1930.4.

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.

(2) Subdivision (a)(1) shall apply to all courts of the First Judicial District.

(b)(1) A court by local rule may provide that original process shall be served within the Commonwealth

(i) by the sheriff or a competent adult in the actions in equity, partition, prevent waste, and declaratory judgment when declaratory relief is the only relief sought, and

(ii) by the sheriff in all other actions.

(2) Subdivision (b)(1) shall not apply to the courts of the First Judicial District.

(c) If original process is to be served in a county other than the county in which the action is pending, it shall be served only by a person authorized to make service in the other county.

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

[(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 an adult defendant, or

(2) by handing a copy to the 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. 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.

(Editor's Note: Rules 402.1—402.3 are new and are printed in regular type to enhance readability.)

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 by handing a copy to the person in charge.

(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 by handing a copy to the person in charge.

(c) Service of original process upon a political subdivision shall be made

(1) by handing a copy to

(i) the person in charge at the political subdivision's office of the solicitor or legal department, or

(ii) the person in charge at the office of the political subdivision, or

(iii) an agent duly authorized by the political subdivision to receive service of process, or

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

(2) by serving the mayor, or the president, chairman, secretary or clerk of the governing body in the manner prescribed by Rule 402(a).

(d) 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) Provided that the person served is not a plaintiff in the action, service of original process upon an association shall be made

(1) by serving any partner, officer, trustee or registered agent of the association in the manner prescribed by Rule 402(a), or

(2) by handing a copy to the manager, clerk or other person for the time being in charge of any regular place of business or activity of the association, or

(3) by handing a copy to an agent authorized by the association in writing to receive service of process for it.

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 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] the **addressee's** authorized agent. Rule 403 has been drafted to accommodate the Postal Service procedures with respect to restricted delivery.

Rule 405. Return of Service.

* * * * *

(b) A return of service shall set forth the date, time, place and manner of service, the identity of the person served and any other facts necessary for the court to determine whether proper service has been made.

Official Note: See Rule the form of the return when service is made by a person other than the sheriff.

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SERVICE IN PARTICULAR ACTIONS

Rule 410. Real Property Actions.

* * * * *

(b)(l) 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 as 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.

FORMS

(Editor's Note: Rules 450 and 451 are new and are printed in regular type to enhance readability.)

Rule 450. Acceptance of Service. Form.

The acceptance of service provided by Rule 400(e) 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 451. Return of Service by Person Other than the Sheriff. Forms.

(a) The return of service shall be substantially in one of the following forms when service is made by a person other than the sheriff upon an individual defendant (subdivision (b)), upon an association (subdivision (c)) or by mail (subdivision (d)). Appropriate adjustments may be made to the forms to accommodate methods of service or parties not covered.

Official Note: Appropriate adjustments will be required, for example, when service is made upon a minor, an incapacitated person, the Commonwealth or a political subdivision or where service is made by posting property or pursuant to a special order of court.

(b) The return of service upon an individual defendant served pursuant to Rule 402 and Rule 404(1) shall be substantially in the following form:

Caption

RETURN OF SERVICE

(Adult Individual)

The undersigned makes the following return of service:

_____ document
was served upon
_____ on _____
Defendant Date
at _____ . m. o'clock at _____ ,
Time Address
_____, _____, Pennsylvania,
Municipality County
by handing a copy
_____ to the defendant.
_____ at defendant's residence or place of lodging
to an adult member of the family:

(name and relationship of family member)
to an adult person in charge of the residence:

(name of person in charge)
to the manager or other person authorized to accept
deliveries of United States mail:

(name of manager or person and title or position)
_____ at defendant's office or usual place of business to
the defendant's agent or to the person for the time being
in charge:

(name of agent or person in charge)

Signature and Affidavit

I, _____, certify that I am eighteen years of age or older and that I am not a party to the action or an employee or relative of a party.

I verify that the statements made in this affidavit and return of service are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____
_____ Person Making the Return

(c) The return of service upon a partnership, unincorporated association, corporation or similar entity served pursuant to Rule 402.2(b) and 404(1) shall be substantially in the following form:

Caption

RETURN OF SERVICE

(Partnership, Unincorporated Association, Corporation or Similar Entity)

The undersigned makes the following return of service:
_____ was served upon

_____ Document
_____ on _____
_____ Defendant Date
at _____ . m. o'clock at _____ ,
Time Address
_____, _____, Pennsylvania,
Municipality County
by handing a copy
as follows, to a person not a plaintiff in the action:
_____ to any partner, officer, trustee or registered agent:

(Name of partner, officer, trustee or registered agent)
_____ at the partner's, officer's, trustee's or registered agent's residence or place of lodging
to an adult member of the family:

(name and relationship of family member)
to an adult person in charge of the residence:

(name of person in charge)
to the manager or other person authorized to accept deliveries of United States mail:

(name of manager or person and title or position)
_____ at the partner's, officer's, trustee's or registered agent's office or usual place of business to the agent or to the person for the time being in charge:

(name of agent or person in charge)
_____ at a regular place of business or activity of the association
to any partner, officer, trustee or registered agent of the association:

(Name of partner, officer, trustee or registered agent)
to the manager, clerk or other person for the time being in charge:

(Name of manager, clerk or other person in charge)

___ to an agent authorized by the association in writing to receive service of process for it:

(Name of authorized agent)

Signature and Affidavit

I, _____, certify that I am eighteen years of age or older and that I am not a party to the action or an employee or relative of a party.

I verify that the statements made in this affidavit and return of service are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____
Person Making the Return

(d) The return of service by mail shall be substantially in the following form:

Caption

**RETURN OF SERVICE
(United States Mail)**

The undersigned makes the following return of service: _____ was mailed to Document _____

_____ on _____
Defendant Date
at _____ m. o'clock at

Time Address
_____, _____, Pennsylvania:
Municipality County

___ The signed receipt is attached.
___ The mail, refused and returned, is attached. A copy mailed to the defendant at the same address by ordinary mail with the return address of the sender appearing thereon has not been returned within fifteen days after mailing.

Signature and Affidavit

I, _____, certify that I am a competent adult not a party to the action.

I verify that the statements made in this affidavit and return of service are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____
Person Making the Return

CHAPTER 1000. ACTIONS AT LAW

Subchapter E. ACTION IN REPLEVIN

CONFORMING AMENDMENTS

Rule 1075.1. Writ of Seizure Upon Notice and Hearing.

* * * * *

(d) The motion and notice of the hearing may be served by [**any competent**] an 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 provided by [**Rule**] **Rules 402[(a)] through 402.2** for the 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 provided by [**Rule**] **Rules 402[(a)] through 402.2** for service of original process and shall take possession of the property.

* * * * *

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**] _____:
(Name(s) of Defendant(s))

[**You are directed to notify** _____,
(Name(s) of Defendant(s))
the defendant(s),] **You are hereby notified** that _____ [,

(Name(s) of Plaintiff(s))
the plaintiff(s),] has (have) 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] defendant,** 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**] an [**competent**] adult in the manner prescribed by [**Rule**] **Rules**

402[(a)] through 402.2 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 402.2** for the service of original process upon a defendant, or

Official Note: See Rule 76 for the definition of "competent adult".

* * * * *

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 402.2** for the service of original process upon a defendant, or

Official Note: See Rule 76 for the definition of "competent adult".

* * * * *

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 prescribed by [**Rule**] **Rules 402[(a)] through 402.2** 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.**

* * * * *

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

* * * * *

(c) The written notice shall be prepared by the plaintiff, shall contain the same information as the handbills or may consist of the handbill and shall be served at least thirty days before the sale on all persons whose names and addresses are set forth in the affidavit required by Rule 3129.1.

(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 prescribed by [**Rule**] **Rules 402[(a)] through 402.2** for the service of original process upon a defendant, or

Official Note: See Rule 76 for the definition of "competent adult".

* * * * *

Rule 3140. Notice by garnishee.

* * * * *

(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**] **an [competent]** adult at any place within or without the Commonwealth in the manner prescribed by [**Rule**] **Rules 402[(a)] through 402.2** for service of original process or when it is mailed to the defendant by registered mail directed to [**his**] **the defendant's** last known address.

Subchapter E. ENFORCEMENT OF JUDGMENTS IN SPECIAL ACTIONS PROCEEDINGS UNDER SECTION 8103(A) TO FIX FAIR MARKET VALUE OF REAL PROPERTY SOLD

Rule 3283. Service.

(a) The petition shall be served

* * * * *

(2) upon any other respondent

(i) by the sheriff or a competent adult [**who is not a party to the action**] in the manner prescribed by [**Rule**] **Rules 402[(a)] through 402.2** for service of original process, or

Official Note: See Rule 76 for the definition of "competent adult".

* * * * *

Explanatory Comment

The rules of civil procedure governing service of original process have been amended to provide that service may be made in all actions by a competent adult who is not a party unless a court by local rule requires that service be made by the sheriff only. Most of the amendments are directed to effecting this revision. In a few instances, rules are made gender neutral.

Rule 400. Service. Acceptance of Service.

Rule 400 which formerly governed the person who may make service has been rescinded. New Rule 400 govern-

ing service and acceptance of service provides an overview of service and is substituted in place of the former rule.

Subdivision (a) of new Rule 400 governs service within the Commonwealth and cross-refers to new Rule 400.1 governing the person who may make service and Rules 402 through 402.2 governing the manner of service. Subdivisions (b), (c) and (d) of new Rule 400 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.

Alternatively, a defendant may accept service of original process and subdivision (e) so provides. The form of the acceptance of service is found in new Rule 450 at the end of the service chapter.

Rule 400.1. Person to Make Service. Within the Commonwealth Generally. Within the First Judicial District.

Rule 400.1, which formerly governed the person who may make service within the first Judicial District, has been rescinded. New Rule 400.1 is substituted in place of the former rule and provides for the person who may make service not only in the First Judicial District but in the remainder of the Commonwealth as well.

Subdivision (a)(1) of the new rule provides for service by the sheriff or a competent adult. The manner in which these persons make service is provided by Rules 402 through 402.2. Previously, the alternative of service by a competent adult was limited to Philadelphia County under former Rule 400.1.

Subdivision (a)(1), however, is qualified by subdivision (b)(1) which allows a local court of common pleas to "opt out" of service by a competent adult under subdivision (a)(1) and to restrict service of process to service by the sheriff only. The rule provides no guidelines but leaves the decision to the discretion of each judicial district. Assuming that some courts will exercise this option, it will be necessary for attorneys who commence actions requiring out-of-county service to learn if the particular county requires service by the sheriff only and to have service effected accordingly. Under subdivision (c), an attorney must look to the county where service is to be made to determine whether service must be made by the sheriff alone or may be made by either the sheriff or a competent adult.

Subdivisions (a)(2) and (b)(2) are applicable only to the First Judicial District, Philadelphia County. The Supreme Court of Pennsylvania on July 2, 1998 extended service by competent adult under former Rule 400.1 to all courts of the First Judicial District (Philadelphia County) and subdivision (a)(1) continues this policy. Subdivision (b)(2) prohibits the courts of the First Judicial District from promulgating a local rule "opting out" of service by competent adult and restricting service to the sheriff under subdivision (b)(1).

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

Rule 402(a) continues to state the basic procedures for personal service upon adult individuals by the traditional method of handing a copy to specified persons.

Prior to amendment, subdivision (a)(2)(ii) provided for service upon "the clerk or manager of the . . . place of lodging at which the defendant resides". In place of the "clerk or manager", service is made under the revised rule upon the "manager or other person authorized to accept deliveries of United States mail."

As previously noted, former subdivision (b) of Rule 402 governing acceptance of service is moved to Rule 400 as

subdivision (e) and the form of the acceptance to new Rule 450. New Rule 402(b) is derived from Rules 420 and 421, combining service upon minors and incapacitated persons in one subdivision. These revisions merely change the location of the provisions.

Rule 402, therefore, governs service upon all individual defendants: 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 and is derived from former Rule 422.

Subdivision (a) of the new rule is based upon subdivision (a) of former 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) which requires service at the office of the particular Commonwealth entity being sued and at the office of the Attorney General.

Subdivision (c) governing service upon a political subdivision is divided into paragraphs (1) and (2). Paragraph (1) provides three alternatives for service by handing a copy of the process to three categories of persons. The first alternative for service under subdivision (c)(1)(i) is new: handing a copy to "the person in charge 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. The remaining two categories of persons upon whom service may be made are "the person in charge at the office of the political subdivision" under new subdivision (c)(1)(ii) and "an agent duly authorized by the political subdivision to receive service of process" under new subdivision (c)(1)(iii). These provisions are derived from former Rule 422(b)(2) and (1) respectively. Subdivision (c)(2) is derived from former Rule 422(b)(3) and provides for service by handing a copy of process "to the mayor, or the president, chairman, secretary or clerk of the governing body in the manner prescribed by Rule 402(a)." Subdivision (c)(2) contains two revisions to the prior practice. First, the phrase "of the governing body" replaces the language of former Rule 422(b)(3): "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." Second, the new rule contains the phrase "in the manner prescribed by Rule 402(a)." Whereas service under subdivision (c)(1) is limited to handing a copy of process to the persons specified, the manner of service under subdivision (c)(2) is not so limited but encompasses both handing a copy to the specified persons under Rule 402(a)(1) and substituted service under Rule 402(a)(2).

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

New Rule 402.2 combines present Rules 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. With one exception, the manner of service remains unchanged.

The one change in practice is in the area of corporations and similar entities. Formerly, service upon a

corporation might be made under Rule 424(a)(1) by handing a copy of the process to "an executive officer, partner or trustee of the corporation or similar entity." However, these persons could not be served by means of substituted service under Rule 402(a)(2) by handing a copy of the process, for instance, to a member of the household or the manager of the place of lodging. Under new Rule 402.2(b), service may be made pursuant to any of the provisions of Rule 402(a), i.e., by personal or substituted service, irrespective of whether the party to be served is a partnership, an unincorporated association or a corporation or similar entity. Rule 402.2 describes the manner of service upon an association by handing a copy to specified persons. It is incorporated by reference into Rule 400(a) governing service within the Commonwealth and Rule 404(1) governing service outside the Commonwealth. However, Rule 402.2 is not a limitation upon service outside the Commonwealth. Rules 400(b) and 404 provide for service outside the Commonwealth without restriction upon the type of defendant as an individual or an association and Rule 404 specifies five alternative methods of service, including service by mail.

Rule 402.3. Service Upon Additional Defendants

New Rule 402.3 is derived from former Rule 425. 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, subdivision (a) formerly provided that service was 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 405. Return of Service

Rule 405 is revised by the addition of a note to subdivision (b) calling attention to new Rule 451 providing forms of return of service when service is made by a person other than the sheriff. Not all instances of service are provided as there are three forms relating to service upon adult individuals, service upon associations and service by mail. New Rule 451(a) advises that appropriate adjustments should be made when service is made upon a defendant or by a method not covered by the forms.

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 service in the manner prescribed by prior Rule 402(a), thus incorporating its provisions for service. The cross-reference is broadened where applicable to include Rule 402 in its entirety and new Rules 402.1 and 402.2.

*By the Civil Procedural
Rules Committee*

EDWIN L. KLETT,
Chairperson

[Pa.B. Doc. No. 99-999. Filed for public inspection June 25, 1999, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CHS. 100 AND 300]

Order Amending Pa.R.C.P.D.J. No. 317 and Adopting Pa.R.C.P.D.J. No. 113; No. 208 Judicial Administration Doc. No. 1

Order

Per Curiam:

Now, this 3rd day of May, 1999, the Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings Before District Justices are amended as follows:

1. Rule 317 governing the Subpoena of Witnesses is amended to read as follows.
2. Rule 113 Governing Facsimile Signatures is adopted and reads as follows.

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

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 100. RULES AND STANDARDS WITH RESPECT TO OFFICES OF DISTRICT JUSTICES

Rule 113. Use of Facsimile Signature.

A district justice may authorize the use of a facsimile signature in lieu of an original signature on certain documents listed by the Administrative Office of Pennsylvania Courts. Such list shall include, but not be limited to, district justice time payment orders, notices of hearing or judgment and DL-38 forms. An original signature shall be required on all checks, reports, dispositions, affidavits, arrest and search warrants, subpoenas, commitments, complaints, court orders, emergency protection from abuse orders and certifications.

Explanatory Comment—1999

This rule has been adopted in recognition that facsimile signatures have been used successfully for routine clerical functions in both federal and state court offices including, but not limited to, the offices of the prothonotary, clerk of courts, and register of wills. Facsimile signatures will serve much the same purpose as signature stamps or signatures of clerks currently being used for matters similar to those encompassed by this rule. See 42 Pa.C.S. § 1303 (provides for the use of a signature stamp for traffic court judges). See also *Commonwealth v. Charles D. Emmanuel, Jr.*, 462 A.2d 653 (Pa. 1983) (use of a rubber stamp facsimile of the district attorney's signature on bills of information held to satisfy the signature requirement of Pa.Crim.P. 225(b)).

Adopted May 3, 1999, effective immediately.

CHAPTER 300. CIVIL ACTION

Rule 317. Subpoena of Witnesses.

A district justice may issue subpoenas throughout the Commonwealth to require the attendance of witnesses in any case of action triable before [him] the district justice. The subpoena may also require the person

to produce at the time of hearing documents or things that are under the possession, custody or control of that person.

Explanatory Comment—1999

The district justice retains the discretion to limit the production of documents or things to that which is relevant to the cause of action before the district justice.

Amended June 30, 1982, effective 30 days after July 17, 1982. Amended May 3, 1999, effective immediately.

(See Explanatory Comment—1969 following Rule 301)

[Pa.B. Doc. No. 99-1000. Filed for public inspection June 25, 1999, 9:00 a.m.]

Title 25—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1689 S 1989

Order

And Now, this 3rd day of June, 1999, it is hereby ordered that D.C.L.R.C.P. 1910.4 shall be adopted as follows:

Rule 1910.4. Fees.

Fees for service rendered by the Dauphin County Domestic Relations Section shall be set in accordance with a Fee Schedule established by the Section and approved by the Court. Copies of the Fee Schedule shall be available at the Section Office.

This amendment shall be effective September 1, 1999.

By the Court

CLARENCE C. MORRISON,
President Judge

[Pa.B. Doc. No. 99-1001. Filed for public inspection June 25, 1999, 9:00 a.m.]

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1793 S 1989

Order

And Now, this 7th day of June, 1999, the Dauphin County Local Rules of Civil Procedure on arbitration are amended as follows:

Rule 1303. Listing of a Case. Notice. Location. Continuances.

(a)(1) A party or attorney to an arbitration case [, or his attorney,] shall file a Praecipe for Arbitration in the Prothonotary's Office at least six weeks prior to the date scheduled for the beginning of an arbitration week and shall concurrently serve a copy of the Praecipe on all other parties or attorneys. The praecipe shall contain the following statement:

This matter will be heard by a board of arbitrators at the time, date, and place specified by the Chair of the panel but, if one or more of the parties is not present at the hearing, the matter

may be heard at the same time and date before a Judge of the Court without the absent party or parties. There is no right to a trial de novo on appeal from a decision entered by a Judge.

A hearing under the provision of this notice shall be heard by the Arbitration Judge if his/her schedule so permits.

(2) [Prior] At least 30 days prior to filing [the] a praecipe to list for arbitration, [that] a party or [his] attorney must notify all other parties or [their] attorneys of the intention to list.

(3) All hearings shall be in the Dauphin County Court-house unless otherwise agreed to in writing by the parties or [their] attorneys and the Court Administrator.

These amendments shall be effective as to arbitrations held after August 1, 1999.

By the Court

CLARENCE C. MORRISON,
President Judge

[Pa.B. Doc. No. 99-1002. Filed for public inspection June 25, 1999, 9:00 a.m.]

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1793 S 1989

Order

And Now, this 14th day of June, 1999, the Dauphin County Local Rules of Civil Procedure are amended as follows:

Rule 1915.15. Form of Complaint.

In addition to the information required by Pa.R.C.P. 1915(a) each complaint or Motion for Hearing relating to child custody or visitation shall contain a second cover sheet substantially in the following format:

PLAINTIFF : IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA
: CIVIL ACTION
: CUSTODY/VISITATION
: NO.
DEFENDANT : NO.

ORDER OF COURT

AND NOW, upon consideration of the attached Complaint, it is hereby directed that the parties and their respective counsel appear before the Custody Conference Officer on the ___ day of _____, __, at _____ m., at _____, [at] for a Pre-Hearing Custody Conference. At such Conference, an effort will be made to resolve the issues to be heard by the Court[,] and to enter into a Temporary Order. [All children age five or older shall also be present at the Conference.] Children need not be present at the Conference unless their presence is requested by the Custody Conference Officer. Failure to appear at the Conference may provide grounds for entry of a temporary or permanent Order.

FOR THE COURT:

Dauphin County Lawyer Referral Service
213 North Front Street
Harrisburg, PA 17101
(717) 232-7536

Date _____ By _____

Custody Conference Officer

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

These amendments shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

CLARENCE C. MORRISON,
President Judge

[Pa.B. Doc. No. 99-1003. Filed for public inspection June 25, 1999, 9:00 a.m.]
