

THE COURTS

Title 246—MINOR COURT RULES

PART I. GENERAL

[246 PA. CODE CHS. 200, 300—500 AND 800]

Order Amending Rules 202, 307, 403—405, 506, 508, 516 and 811 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices; No. 127; Magisterial Doc. No. 1; Book No. 2

(Editor's Note: The text of the Rules was previously printed at 31 Pa.B. 4055 (July 28, 2001).)

Introductory Statement

The Minor Court Rules Committee has prepared a Final Report explaining the amendments to Rules 202, 307, 403, 404, 405, 506, 508, 516, and 811 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, effective August 1, 2001. These rule changes provide for service of process by certified constables or certified deputy constables and further provide for the use of constables from outside the county in which the issuing magisterial district is situated in cases where the district justice has no certified constables in the county. The changes also provide for several technical or "housekeeping" amendments to these rules. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 16th day of July, 2001, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at 29 Pa.B. 6331 (December 18, 1999), and a Final Report to be published with this *Order*:

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 202, 307, 403, 404, 405, 506, 508, 516, and 811 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective August 1, 2001.

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 200. RULES OF CONSTRUCTION; GENERAL PROVISIONS

Rule 202. Definitions.

As used in these rules:

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(3) Constable—[**Includes a**] Means a certified constable or a certified deputy constable.

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Official Note

Justices of the peace are now statutorily known as "district justices." [**See the Judicial Code, § 102,**] See

42 Pa.C.S. § 102[, and § 3(d) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53,] and 42 P. S. § 20003(d). As to [**their**] district justices' civil jurisdiction, [**see the Judicial Code, § 1515(a),**] see 42 Pa.C.S. § 1515(a) [, as amended by § 10(18) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53]. [**A definition**] The definitions of "sheriff" and "constable" [**has been included which will**] include their deputies. As to deputy sheriffs, [**see Act of August 9, 1955, P. L. 323, § 1202, 16 P. S. § 1202; Act of July 28, 1953, P. L. 723, Art. XII, § 1202, 16 P. S. 4202**] see 16 P. S. §§ 1202 and 4202. As to deputy constables, [**see Act of June 19, 1913, P. L. 534, § 1, 13 P. S. § 21; Act of April 15, 1834, P. L. 537, § 113 and Act of June 8, 1907, P. L. 465, § 1, 13 P. S. § 22; Act of April 15, 1834, P. L. 537, § 114, 13 P. S. § 23**] see 13 P. S. §§ 21—23. As to certification of constables and deputy constables, see 42 Pa.C.S. § 2942.

Amended April 25, 1979, effective in 30 days, June 30, 1982, effective 30 days after July 17, 1982; amended effective Dec. 1, 1983; amended July 16, 2001, effective August 1, 2001.

CHAPTER 300. CIVIL ACTION.

Rule 307. Service of the Complaint.

Service shall be made at least ten [**(10)**] days before the hearing, in the following manner.

(1) A copy of the complaint for each defendant shall be delivered by the district justice for service to the sheriff of, or any **certified** constable in, the county in which the magisterial district of the district justice is situated. **If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth.** If the complaint is delivered for service to the sheriff and service is to be made in a county other than the one in which the magisterial district of the district justice is situated, the sheriff shall deputize the sheriff of the county in which service is to be made. A **certified** constable may serve the complaint anywhere in the Commonwealth.

(2) If service is to be made in a county other than the one in which [**his**] the district justice's magisterial district is situated, the district justice, instead of acting in accordance with **subdivision** (1), [**above,**] may:

(a) send the copy of the complaint for service to a district justice in the county in which service is to be made who shall deliver it for service to the sheriff of, or any **certified** constable in, that county [, or] . **If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth, or**

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Official Note

This rule provides a number of alternative methods of serving the complaint. Subdivision (1) permits a **certified** constable to serve the complaint anywhere in the Commonwealth and authorizes deputized service by sheriffs. [**Subdivision**] **Subparagraph** (2)(a) permits service out of the county through district justices in the county in

which service is to be made, a method of service which might be preferable to service under subdivision (1) by a **certified** constable of the county where the complaint was filed when that county is a considerable distance from the county of service. **[Subdivision] Subparagraph (2)(b)** provides for service in Philadelphia by writ servers of the Philadelphia Municipal Court or by the sheriff of Philadelphia, although service may still be made in accordance with subdivision (1) if the district justice so desires. Subdivision (3) makes service by mail, when permitted, at the option of the plaintiff. This was done because service by mail will ordinarily reduce costs.

Amended effective Feb. 1, 1973; amended Jan. 29, 1976, effective in 30 days; April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; **amended July 16, 2001, effective August 1, 2001.**

CHAPTER 400. EXECUTION OF JUDGEMENTS FOR THE PAYMENT OF MONEY

Rule 403. Issuance and Reissuance of Order of Execution.

A. Upon the filing of the request form, the district justice shall note on the form the time and date of its filing and shall issue the order of execution thereon. The district justice shall deliver the order of execution for service and execution to the sheriff of, or any **certified** constable in, the county in which the office of the district justice issuing the order is situated. **If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth.**

B. Upon written request by the plaintiff, an order of execution may be reissued at any time and any number of times except that any request for reissuance must be filed within five **[(5)]** years from the date of the judgment.

Official Note

Under subdivision A, the order may be executed by the sheriff of the county in which the office of the issuing district justice is situated, as well as by any **certified** constable in that county.

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Amended Jan. 29, 1976, effective in 30 days; amended effective March 24, 1977; April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; March 27, 1992, effective June 25, 1992 **[The March 27, 1992, Order provided in part: "In promulgating this Order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line]; amended July 16, 2001, effective August 1, 2001.**

Rule 404. Notation of Time of Receipt.

The sheriff or **certified** constable receiving the order shall note upon the form the date and time that **[he received]** it was received.

Official Note

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Amended July 16, 2001, effective August 1, 2001.

Rule 405. Service of Order of Execution.

A. **[Service of the order of execution shall be made by the sheriff or constable by levy within sixty (60) days of the issuance or reissuance of the**

order.] Service of the order of execution shall be made by the sheriff of, or any certified constable in, the county in which the office of the district justice is situated by levy within 60 days of the issuance or reissuance of the order. If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth.

B. At the time of the levy, the officer executing the order of execution shall give the defendant a copy of the order or leave it at the place of levy, but if the place of levy is not the defendant's residence or usual place of business and **[he] the defendant** has not been given a copy of the order the copy shall be mailed to **[his] the last known address of the defendant.** If the levy is made upon property of the defendant in the possession of another person, a copy of the order shall similarly be made available to that person as well as to the defendant.

Official Note

The **[sixty] 60** day limitation in subdivision A was considered to allow the executing officer sufficient time in which to make **[his] the** levy. The executing officer may make as many levies as necessary within the **[sixty] 60** day limitation under an order of execution.

Amended effective March 24, 1977; amended April 25, 1979, effective in 30 days; **amended July 16, 2001, effective August 1, 2001.**

CHAPTER 500. ACTIONS FOR THE RECOVERY OF POSSESSION OF REAL PROPERTY

Rule 506. Service of Complaint

A. The district justice shall serve the complaint by mailing a copy of it to the defendant by first class mail and by delivering a copy of it for service to the sheriff of, or any **certified** constable in, the county in which the office of the district justice is situated. **If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth.** The officer receiving the copy shall serve it by handing it to the defendant or to an adult person in charge for the time being of the premises possession of which is sought to be recovered or, if none of the above is found, by posting it conspicuously on those premises.

B. The copy shall be served at least five **[(5)]** days before the hearing.

Official Note

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Amended effective July 8, 1975; amended Oct. 17, 1975, effective in 90 days; Jan. 29, 1976, effective in 30 days; April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; **amended July 16, 2001, effective August 1, 2001.**

Rule 508. Claim by Defendant.

A. At any time before the hearing, the defendant **[, by filing his own complaint]** may file a **cross-complaint** on the form prescribed for **[trespass and assumpsit]** civil complaints, **[may assert in the case]** asserting any claim against the plaintiff which arises out of the occupancy of the premises and which is within the jurisdiction of the district justice.

B. If the defendant files such a cross-complaint, the district justice shall set a time and date for the hearing of both complaints together, which shall not be less than

[**seven (7)**] 7 or more than [**fifteen (15)**] 15 days from the filing of the defendant's complaint.

C. The defendant's cross-complaint shall be served on the plaintiff at least five [**(5)**] days before the hearing. At the option of the defendant, the district justice shall serve the cross-complaint by mailing a copy of it to the plaintiff. If the defendant does not request service by mail, the district justice shall deliver a copy of the cross-complaint for service to the sheriff of, or any **certified** constable in, the county in which the office of the district justice is located. **If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth.** The officer receiving the copy shall serve it by handing it to the plaintiff or to an adult person in charge for the time being of the plaintiff's residence or usual place of business.

Official Note

As to subdivision A of this rule, [**see the second paragraph of the note to**] **see the Note to Rule 504. [See also the Judicial Code, § 1515(a)(3), 42 Pa.C.S. § 1515(a)(3), as amended by § 10(18) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53,] See also 42 Pa.C.S. § 1515(a)(3),** as to waiver of jurisdictional limits, the defendant filing a cross-complaint being considered a "plaintiff" as to the cross-complaint within the meaning of this statute.

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Amended Oct. 17, 1975, effective in 90 days; Jan. 29, 1976, effective in 30 days; April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; **amended July 16, 2001, effective August 1, 2001.**

Rule 516. Issuance of Order for Possession.

Upon the filing of the request form, the district justice shall issue the order for possession and shall deliver it for service and execution to the sheriff of, or any **certified** constable in, the county in which the office of the district justice is situated. **If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth.** The order shall direct the officer executing it to deliver actual possession of the real property to the plaintiff.

Official Note

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Amended June 30, 1982, effective 30 days after July 17, 1982; **amended July 16, 2001, effective August 1, 2001.**

CHAPTER 800. MINORS AND INCOMPETENTS AS PARTIES

Rule 811. Service of the Complaint.

Service of the complaint upon a defendant who is an incompetent, or of a cross-complaint upon a plaintiff who is an incompetent, shall be upon his guardian. **This service shall be made in accordance with Rule 307.**

Official Note

Service is required to be upon the guardian. These rules generally assume the existence of a guardian whose identity is known. Compare Pa.R.C.P. No. [**2055(a)**] **421.**

Adopted June 1, 1971; **amended July 16, 2001, effective August 1, 2001.**

FINAL REPORT¹

Amendments to Rules 202, 307, 403, 404, 405, 506, 508, 516, and 811 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices

On July 16, 2001, effective August 1, 2001, upon the recommendation of the Minor Court Rules Committee, the Supreme Court of Pennsylvania amended Rules 202 (Definitions), 307 (Service of the complaint), 403 (Issuance and reissuance of order of execution), 404 (Notation of time of receipt), 405 (Service of order of execution), 506 (Service of complaint), 508 (Claim by defendant), 516 (Issuance of order for possession), and 811 (Service of the complaint) of the Rules of Conduct, Office Standards and Civil Procedure for District Justices.

I. *Background*

The Committee undertook a review of the rules relating to service of process for two reasons. First, Act 44-1994 amended the Judicial Code, 42 Pa.C.S. § 2942, to require that constables and deputy constables be certified by the Constables' Education and Training Board in order to perform judicial duties. Accordingly, the Committee recommended amendments to the rules to require that service be performed only by certified constables or deputy constables. In a related matter, the Committee had also received inquiries from district justices in counties that had no certified constables and therefore could not use any constable for service because the rules required that service be made by a constable in the county in which the district court is located. Accordingly, the Committee recommended amendments to the rules to relax this requirement in cases where the district justice has no certified constables in the county.

In conjunction with the amendments to the service rules, the Committee also recognized the need for several technical or "housekeeping" amendments to the rules.

II. *Discussion of Rule Changes*

A. *Use of Certified Constables*

Prior to these amendments, the rules for service of district justice court process required service be made by, "the sheriff of, or any constable in, the county in which the magisterial district of the district justice is situated." However, section 2942 of the Judicial Code, 42 Pa.C.S. § 2942, now requires all constables that effect this service to be certified by the Constables' Education and Training Board. Therefore, the Committee recommended that Rules 307, 403, 405, 506, 508, 516, and 811, all relating to service of process, be amended to provide that service shall be made by "the sheriff of, or any certified constable in, the county in which the magisterial district of the district justice is situated."

As a corollary to these changes, the Committee recommended that the definition of "constable" in Rule 202 be amended to mean a certified constable or a certified deputy constable.

B. *Use of Constables From Outside the County in Which the Magisterial District is Situated*

In addition, the Committee learned the requirement that only a certified constable can effectuate service has created a problem for some district justices in that their districts are in counties where there are no certified constables and the sheriff is unwilling to perform service. Thus, in order to alleviate this problem, the Committee

¹ The Committee's Final Report should not be confused with the official Committee Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee's Notes or the contents of the Committee's explanatory Final Reports.

recommended that Rules 307, 403, 405, 506, 508, 516, and 811 be amended to provide that service be made by "the sheriff of, or any certified constable in, the county in which the magisterial district of the district justice is situated. If this service is not available to the district justice, service may be made by any certified constable of the Commonwealth." This will permit a district justice to use constables from outside the district justice's county if there are no certified constables in the district justice's county and the sheriff is unwilling to perform the service for the district justice.

C. Technical and "Housekeeping" Amendments

In addition to the amendments relating to service by certified constables, the Committee recognized the need for several technical or "housekeeping" amendments. Spe-

cifically, in Rule 202, the Committee recommended several revisions to the Note to correct citation form and eliminate unnecessary statutory references. Also, a reference to section 2942 of the Judicial Code, 42 Pa.C.S. § 2942, relating to certification of constables and deputy constables, was added to this Note.

Also, the Committee recommended minor amendments or revisions to the Notes to Rules 307, 403, 404, 405, 506, 508, and 811 to address gender neutrality in the rules, to correct citation form or outdated cross-references, and to conform to modern drafting style.

[Pa.B. Doc. No. 01-1374. Filed for public inspection July 27, 2001, 9:00 a.m.]