

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 33]

Order Amending Rule 3331 of the Rules of Appellate Procedure; No. 233 Appellate Procedural Rules

Order

Per Curiam

And Now, this 13th day of June, 2013, the proposal having been submitted without publication in the interest of efficient administration:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Appellate Procedure 3331 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and the amendment herein shall be effective immediately.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE III. MISCELLANEOUS PROVISIONS

CHAPTER 33. BUSINESS OF THE SUPREME COURT

REVIEW OF SPECIAL PROSECUTIONS OR INVESTIGATIONS

Rule 3331. Review of Special Prosecutions or Investigations.

(a) *General rule.*—Within the time specified in Rule 1512(b)(3) (special provisions), any of the following orders shall be subject to review pursuant to Chapter 15 (judicial review of governmental determinations):

* * * * *

(5) An order of the type specified in Paragraphs (1) through [(5)] (4) of this subdivision which contains a statement by the lower court pursuant to 42 Pa.C.S. § 702(b) (interlocutory appeals by permission). Chapter 13 (interlocutory appeals by permission) shall not be applicable to such an order.

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[Pa.B. Doc. No. 13-1152. Filed for public inspection June 28, 2013, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CHS. 300 AND 500]

Proposed Amendments to Rules 313, 506 and 507

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania

adopt amendments to Rules 506 and 507 of the Minor Court Civil Rules, as well as the Official Note to Rule 313. The Committee has not yet submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the Committee's Official Notes to the rules. The Supreme Court does not adopt the Committee's Official Notes or the contents of the explanatory reports.

The text of the proposed changes precedes the Report. Additions are shown in bold; deletions are shown in bold and brackets.

We request that interested persons submit written suggestions, comments, or objections concerning this proposal to the Committee through counsel,

Pamela S. Walker, Counsel
Supreme Court of Pennsylvania
Minor Court Rules Committee
Pennsylvania Judicial Center
PO Box 62635

Harrisburg, PA 17106-2635

Fax: 717-231-9546

or email to: minorrules@pacourts.us

no later than August 30, 2013.

By the Minor Court Rules Committee

MARY P. MURRAY,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 300. CIVIL ACTION

Rule 313. Service Outside the Commonwealth.

When service of the complaint is to be made upon a defendant outside the Commonwealth, it shall be made:

(1) by delivery in the manner prescribed by Rule 308, 309, 310 or 311, whichever is applicable, by a Pennsylvania sheriff or constable or by any adult, other than the plaintiff designated by the magisterial district judge or

(2) by certified or registered mail as provided by Rule 308, 309 or 310, whichever is applicable;

(a) if the registered or certified mail is returned with a notation by the postal authorities that receipt was refused, then the magisterial district judge may serve the complaint by sending a copy of the complaint by ordinary mail to the same address with a return address on the envelope. Service by ordinary mail is complete if the mail is not returned to the sender within fifteen days after the mailing; or

(b) if the mail is returned with a notation by the postal authorities that it was unclaimed, the plaintiff shall make service by another means pursuant to these rules, or

(3) in the manner provided or prescribed by the law of the place in which service is to be made for service in that place in an action in any of its courts of general jurisdiction.

Official Note: See the Judicial Code, § 5322, 42 Pa.C.S. § 5322 (as amended by § 10(61) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53)

and § 5329(1), 42 Pa.C.S. § 5329(1), as to the basis of personal jurisdiction over persons outside the Commonwealth. The magisterial district judge may designate any Pennsylvania sheriff or constable to make service under subdivision (1), but such service should not be attempted if it would be offensive to the jurisdiction in which service is to be made. See Uniform Interstate and International Procedures Act, § 2.02, Commissioners' Comment, 13 Uniform Laws Annotated 297. Alternatively, the magisterial district judge may designate any adult other than the plaintiff to make service under subdivision (1). Although the magisterial district judge may not designate the plaintiff as the person to make such service, the plaintiff may suggest to the magisterial district judge the name of a person to make service. If service is made by ordinary mail under subdivision (2), the magisterial district judge shall note that fact on the [**original complaint form**] **docket** with the remark that a sufficient time having elapsed the ordinary mail was not returned [**and**]. **The magisterial district judge** shall attach to the original complaint form the returned certified or registered letter with the notation by the postal authorities that the defendant refused to accept it. If service is to be made under subdivision (3), the magisterial district judge may send the service copy of the complaint to an appropriate official of the jurisdiction in which service is to be made. If service is made under subdivisions (1) or (3), proof of service may be made on the form provided under Rule 314A with such alterations as may be necessary or in any manner provided by the law of the jurisdiction in which the service is made for proof of service in an action in any of its courts of general jurisdiction.

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

Rule 506. Service of Complaint.

A. The magisterial district judge shall serve the complaint by mailing a copy of it to the defendant by first class mail **and noting on docket the date of such mailing**, 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 magisterial district judge is situated. If this service is not available to the magisterial district judge, 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 days before the hearing.

Official Note: Under subdivision A of this rule, service must be made both by first class mail and delivery for service in the manner prescribed. In actions where wage garnishment may be sought under Pa.R.C.P. No. 3311, the plaintiff may authorize the sheriff or constable to make personal service upon a tenant/defendant. If a tenant/defendant is not present at the property the sheriff or constable is authorized to post the complaint so that the underlying landlord-tenant action may proceed. The plaintiff may authorize the sheriff or constable to make additional attempts to effectuate personal service upon the tenant/defendant so the plaintiff can later prove such service if attempting to garnish wages under Pa.R.C.P. No. 3311. Additional service attempts by the sheriff or constable may result in additional fees.

Rule 507. **Notation and Return of Service; Waiver of Service.**

A. The magisterial district judge shall note on the [**complaint form**] **docket** the date [**on which he mailed a service copy of the complaint to the defendant**] that a **service copy of the complaint was mailed to the defendant**, and the sheriff or constable serving a copy of the complaint shall, at or before the time of the hearing, make proof of service on the form provided, which shall show the manner of service and the day, hour and place thereof.

B. The appearance of a defendant in person or by representative or the filing by him of a claim in the case shall be deemed a waiver of any defect in service but not a waiver of a defect in venue.

Official Note: This rule parallels the provisions of Rule 314A and C [**of the trespass and assumpsit rules**].

REPORT

Proposed Amendments to Rules 506 and 507, and the Official Note to Rule 313 of the Minor Court Civil Rules

Notation of Mailing Date of Service Copy of Complaint

I. Introduction

The Minor Court Rules Committee (the "Committee") is proposing amendments to Rules 506 and 507, and the Official Note to Rule 313 of the Minor Court Civil Rules. The proposed amendments address the existing requirement that notations be made on the service copy of the complaint regarding the first class mailing date to the defendant, requiring instead that the notation be made on the docket.

By way of background, the Committee was contacted by a judicial automation attorney with the Administrative Office of Pennsylvania Courts and a judge of the court of common pleas inquiring about the requirement set forth in Pa.R.C.P.M.D.J. No. 507A ("Rule 507A"), which provides that a "magisterial district judge shall note on the complaint form the date on which he mailed a service copy of the complaint to the defendant." Both inquiries observed that, despite the requirement set forth in Rule 507A, the complaint form does not contain a field for such a notation. Moreover, the common pleas judge inquired whether the failure of the magisterial district judge to note the mailing date on the complaint would constitute a failure in service due to the failure to comply with the rule. Because proceedings in magisterial district courts, much more so than in other courts, rely heavily on the use of preprinted standardized forms, the Committee agreed that there should be consistency between the Rule 507A and the complaint form. The Committee published a proposal in the *Pennsylvania Bulletin* that amended Rule 507A by removing the notation requirement. See 40 Pa.B. 522 (January 23, 2010). In response to the publication, the Committee received comments from interested parties, and subsequently elected to modify the original proposal and republish for further comment.

II. Discussion

The Committee received comments following the first publication of the proposal, some of which pointed to a definite need to track the date of the service by first class mail so that it appears within the record. The Committee was persuaded by this correspondence, yet remained apprehensive that hinging proof of service upon a hand

written notation was entirely reliable. The Committee subsequently decided to propose requiring a notation on the docket, rather than a written notice on the service copy of the complaint. The website of the Administrative Office of Pennsylvania Courts, www.pacourts.us, provides online access to docket sheets, including landlord tenant cases, and the Committee anticipates that the notation regarding service by first class mail would be publicly accessible via this method.

III. *Proposed Rule Changes*

The Committee proposes adding a provision to Pa.R.C.P.M.D.J. No. 506A requiring that the magisterial district judge note on the docket the date of service by

first class mail. Similarly, the Committee proposes amending Rule 507A by deleting the requirement that the judge note the date of first class mailing on the service copy of the complaint, and, instead, require that the notation be made on the docket. Finally, in the interest of consistency, the Committee also proposes amending the Official Note to Pa.R.C.P.M.D.J. No. 313, regarding service outside the Commonwealth, to delete the requirement that notation of service by ordinary mail should be made “on the original complaint form”, and, instead, require such notation on the docket.

[Pa.B. Doc. No. 13-1153. Filed for public inspection June 28, 2013, 9:00 a.m.]