

## 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.**

## FINAL REPORT<sup>1</sup>

### *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

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<sup>1</sup> 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.

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 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. Specifically, 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.