

Rule 76. Definitions

The following words and phrases when used in any rule promulgated by the Supreme Court under the authority of Article V, Section 10(c) of the Constitution of 1968, or of any Act of Assembly, shall have the following meanings, respectively, unless the context clearly indicates otherwise or the particular word or phrase is expressly defined in the chapter in which the particular rule is included:

“competent adult” means an individual eighteen years of age or older who is neither a party to the action nor an employee or a relative of a party

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

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

(1) in the manner prescribed by Rule 402(a);

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

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

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

Rule 400. Person to Make Service

(b) In addition to service by the sheriff, original process may be served also by a competent adult [who is not a party] in the following actions: equity, partition, prevent waste, and declaratory judgment when declaratory relief is the only relief sought.

NOTE: See Rule 76 for the definition of “competent adult”.

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

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

(a) In an action commenced in [Philadelphia County] the First Judicial District, original process may be served

(1) within the county by the sheriff or a competent adult [who is not a party to the action], or

(2) in any other county by deputized service as provided by Rule 400(d) or by a competent adult forwarding the process to the sheriff of the county where service may be made.

NOTE: See Rule 76 for the definition of “competent adult”.

The First Judicial District is comprised of Philadelphia County

(b) In an action commenced in any other county, original process may be served in Philadelphia County by deputized service as provided by Rule 400(d) or by a competent adult [who is not a party to the action].

NOTE: See Rule 76 for the definition of “competent adult”.

(c) [In an action for protection from abuse, service may be made by any competent adult.] Rescinded.

NOTE: For service in an action for protection from abuse, see Rule 1930.4(b).

Rule 404. Service Outside the Commonwealth

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

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

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

NOTE: See Rule 76 for the definition of “competent adult”.

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

Rule 1075.1. Writ of Seizure Upon Notice and Hearing

(d) The motion and notice of the hearing may be served by an[y competent] adult by leaving a copy at the address endorsed on an appearance or prior pleading, but if there is no such endorsement, then in the manner provided by Rule 402(a) 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 1910.13-1. Failure or Refusal to Appear Pursuant to Order of Court.

Bench Warrant

(a) If a party fails to appear at a conference and/or hearing as directed by order of court, the court may issue a bench warrant for the arrest of the party if it finds

(1) following a hearing on the record that the party had actual notice that the party was required to attend the conference and/or hearing, or

(2) upon the affidavit of a hearing officer or conference officer that

(iv) a competent adult [who is not a party to the action] handed a copy of the court order to the party, and filed an affidavit of service.

NOTE: See Rule 76 for the definition of “competent adult”.

Rule 1910.13-2. Form of Request for Bench Warrant and Supporting Affidavit.

Form of Bench Warrant

(a) Request for a bench warrant pursuant to Rule 1910.13-1 shall be in substantially the following form and shall be attached to the Bench Warrant form set forth in subdivision (b) of this rule:

[CAPTION]

REQUEST FOR BENCH WARRANT AND
SUPPORTING AFFIDAVIT

2. The party received the order of court scheduling the conference and/or hearing in the following manner:

(d) A competent adult [who is not a party to this action] handed a copy of the court order to the party. The adult's affidavit of service is attached.

Rule 1910.21-1. Civil Contempt. Petition. Service. No Answer Required

(d) The petition shall be served upon the respondent

(3) by a competent adult [who is not a party to the action]; or

NOTE: See Rule 76 for the definition of “competent adult”.

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 an [competent] adult in the manner prescribed by Rule 402(a) 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.

Note: ***

Rule 1930.4. Service of Original Process in Domestic Relations Matters

(a) Persons Who May Serve. Original process in all domestic relations matters may be served by the sheriff or a[ny] competent adult [who is not a party to the action]:

- (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 resides; but if no adult member of the family is found, then to an adult person in charge of such residence; or
 - (ii) at the residence of the defendant to the clerk or manager of 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 agent or to the person for the time being in charge thereof.
- (3) or pursuant to special order of court.

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

(b) Service in Protection From Abuse Matters. In Protection from Abuse matters only, original process may be served by an[y competent] adult.

Rule 2054. Actions by and Against Incapacitated Persons. Averments in Plaintiff's Pleadings

(c) An action in which a defendant is an incapacitated person shall be commenced against the defendant by name in the manner in which a like action is commenced against [a competent] an adult who is not incapacitated.

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 402(a) for the service of original process upon a defendant, or

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

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 402(a) for the service of original process upon a defendant, or

NOTE: See Rule 76 for the definition of “competent adult”.

Rule 3129.2. Notice of Sale. Handbills. Written Notice. Publication

(c) ***

(1) Service of the notice shall be made

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

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

NOTE: See Rule 76 for the definition of “competent adult”.

Rule 3140. Notice by garnishee

(c) A copy is forwarded within the requirement of this rule when it is delivered to the defendant by [a competent] an adult at any place within or without the Commonwealth in the manner prescribed by Rule 402(a) 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.

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

Rule 3283. Service

- (a) The petition shall be served
 - (1) ***
 - (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 402(a) for service of original process, or

NOTE: See Rule 76 for the definition of “competent adult”.

- (b) ***

Rule 4009.33. Motion for Entry upon Property of a Person Not a Party

(a) A motion to permit entry upon property of a person not a party shall begin with the notice prescribed by subdivision (c) and shall describe with reasonable particularity the property to be entered and the activities to be performed. The motion shall be served personally by [a competent] an adult in the same manner as original process. A copy of the motion shall also be served upon all other parties to the action pursuant to Rule 440.

EXPLANATORY COMMENT

The rules of civil procedure governing service of original process and other legal papers have used the term "competent adult". In certain instances, the term has been used with the restrictive language "who is not a party to the action".

The Supreme Court of Pennsylvania has amended Definition Rule 76 by adding the following definition: "competent adult' means an individual eighteen years of age or older who is neither a party to the action nor an employee or a relative of a party." In view of this new definition, the rules of civil procedure which used the term "competent adult who is not a party to the action" have been amended by deleting as unnecessary the restrictive language "who is not a party to the action." These rules using the term "competent adult" will be governed by the new definition. The rules which used the term "competent adult" without the restrictive language have been amended by deleting the word "competent," thus continuing to permit service by an adult without further restriction.

By the Civil Procedural
Rules Committee

Edwin L. Klett
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