

RULE 314. RETURN, WAIVER AND FAILURE OF SERVICE; REINSTATEMENT

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C. The appearance of a defendant in person or by representative or the filing by [him] **a defendant** 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.

D. If the complaint is not served on the defendant in time to permit holding a hearing within [**sixty (60)**] **60** days of the filing of the complaint, the district justice shall dismiss the complaint without prejudice.

E. Upon written request of the plaintiff, a complaint **that has been dismissed without prejudice for failure to make service pursuant to subdivision D of this rule** may be reinstated at any time and any number of times. The date of reinstatement shall be the date upon which the request for reinstatement [**was**] **is** filed.

Note

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Subdivision E [**will permit**] **provides for** the reinstatement, upon written request of the plaintiff, of a complaint [**which**] **that** has been dismissed without prejudice for failure [**of**] **to make** service under subdivision D. Compare Pa.R.C.P. No. [**1010(b)**] **401(b)**. The written request for reinstatement may be in any form and may consist of a notation on the permanent copy of the complaint form, "Reinstatement of complaint requested," [,] subscribed by the plaintiff. The district justice shall mark all copies of the reinstated complaint, "Complaint reinstated. Request for reinstatement filed on (date)." If it is necessary to use a new form [**or form sets**] for the reinstated complaint, the reinstated complaint, except for service portions thereof, shall be an exact copy of the original complaint, although signatures may be typed **or printed** with the mark "/s/" indicating an actual signature. The language in subdivision E that a complaint may be reinstated "at any time" will permit reinstatement after a faulty service without waiting for further proceedings in the case. Reinstatement must occur within the period of the statute of limitations from the date of the last filing or reinstatement. Since a reinstated complaint is merely a continuation of the original action, there is no filing fee for reinstating a complaint. **However, there may be additional server costs for service of the reinstated complaint.**

Amended October 17, 1975, effective in 90 days; amended effective March 24, 1977; amended 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 February 12, 2002, effective immediately.**

RULE 504. SETTING THE DATE FOR HEARING; DELIVERY FOR SERVICE

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Note

The hearing date in subdivision (1) of this rule [**was**] **is** required to be set not less than seven days from the filing of the complaint because of the requirement [**of Pa. R.C.P.D.J. No.] in Rule 506(B)** that service be made at least five days before the hearing. It was thought that the requirement that the [**complaint be served**] **hearing be held** not more than fifteen days from the filing of the complaint should provide ample time to make the type of service required in these cases. [**However, the complaint may be reinstated upon written request of the plaintiff as in trespass and assumpsit cases. See Pa. R.C.P.D.J. No. 314 (E) and the Note to Pa. R.C.P.D.J. No. 314.**]

The notice for the defendant set forth in subdivision (4) of this rule varies somewhat from the notice required in [**trespass and assumpsit**] **civil** actions under [**Pa. R.C.P.D.J. No.] Rule 305**. There are a number of reasons for this. First, there can be no default judgment in these possessory actions and, secondly, it was thought that cross-complaints of defendants in these cases should be limited to those arising out of the occupancy of the premises.

Amended Oct. 17, 1975, effective in 90 days; June 30, 1982, effective 30 days after July 17, 1982; March 28, 1996, effective March 29, 1996; **Note revised Febraury 12, 2002, effective immediately.**