

**SUPREME COURT OF PENNSYLVANIA  
CIVIL PROCEDURAL RULES COMMITTEE**

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.Civ.P. 400 and  
Proposed Rescission of Pa.R.Civ.P. 400.1**

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.Civ.P. 400 and the rescission of Pa.R.Civ.P. 400.1 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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Civil Procedural Rules Committee  
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Pennsylvania Judicial Center  
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All communications in reference to the proposal should be received by **November 17, 2022**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Civil Procedural Rules Committee,

Kathleen Duffy Bruder  
Chair

**Rule 400. Person to Make Service.**

- [(a) Except as provided in subdivisions (b) and (c) and in Rules 400.1 and 1930.4, original process shall be served within the Commonwealth only by the sheriff.**
- (b) In addition to service by the sheriff, original process may be served also by a competent adult in the following actions:**
  - (1) a civil action in which the complaint includes a request for injunctive relief under Rule 1531, perpetuation of testimony under Rule 1532, or appointment of a receiver under Rule 1533;**
  - (2) partition;**
  - (3) a declaratory judgment when declaratory relief is the only relief sought; and**
  - (4) a civil action in which there is a complete diversity of citizenship between all plaintiffs and all defendants, and at least one defendant is a citizen of Pennsylvania.**

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

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

- (c) When the sheriff is a party to the action, original process shall be served by the coroner or other officer authorized by law to perform the duties of coroner.**
- (d) If service is to be made by the sheriff in a county other than the county in which the action was commenced, the sheriff of the county where service may be made shall be deputized for that purpose by the sheriff of the county where the action was commenced.]**

**[EXPLANATORY COMMENT — 1985**

**See Explanatory Comment preceding Rule 400.]**

(This is an entirely new text.)

- (a) **General Rule.** Original process shall be served within the Commonwealth by the sheriff or a competent adult.
- (b) **Sheriff as a Party.** When the sheriff is a party to the action, original process shall be served by the coroner or other officer authorized by law to perform the duties of coroner.
- (c) **Service by Sheriff Outside of County Where Action is Commenced.** If service is to be made by the sheriff in a county other than the county where the action was commenced, the sheriff of the county where service may be made shall be deputized for that purpose by the sheriff of the county where the action was commenced.

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

**Rule 400.1. Reserved. [Provisions for all Courts of the First Judicial District.**

- (a) In an action commenced in the First Judicial District, original process may be served**
  - (1) within the county by the sheriff or a competent adult, 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.**

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

- (c) Rescinded.**

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

**SUPREME COURT OF PENNSYLVANIA  
CIVIL PROCEDURAL RULES COMMITTEE**

**PUBLICATION REPORT**

**Proposed Amendment of Pa.R.Civ.P. 400 and  
Proposed Rescission of Pa.R.Civ.P. 400.1**

The Civil Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pennsylvania Rule of Civil Procedure 400 and the rescission of Pennsylvania Rule of Civil Procedure 400.1 to provide for service of original process within the Commonwealth by the sheriff or a competent adult for all civil actions.

The Committee received a request to consider the amendment of Pa.R.Civ.P. 400 to allow service of original process by a competent adult within the Commonwealth for all civil actions in addition to service by the sheriff. The requester contended that sheriff offices' resources are stretched, especially recently during the COVID-19 pandemic, the tightening labor market, and increased operating costs. Permitting a competent adult to serve original process would allow sheriff offices to devote more of their limited resources to courthouse duties, transporting prisoners, and protecting court employees. At the same time, such service would provide plaintiffs the ability to secure service of original process properly, timely, and pursuant to specific instructions.

Current Pa.R.Civ.P. 400(a) requires that original process be served by a sheriff within the Commonwealth subject to certain exceptions. Those exceptions include service by a competent adult in addition to service by a sheriff for civil actions where the complaint includes a request for injunctive relief under Pa.R.Civ.P. 1531, perpetuation of testimony under Pa.R.Civ.P. 1532, or appointment of a receiver under Pa.R.Civ.P. 1533; partition actions; declaratory judgment actions when declaratory relief is the only relief sought; and civil actions subject to snap removal. Moreover, Pa.R.Civ.P. 400.1 permits service of original process by a competent adult in all civil actions in Philadelphia County in addition to service by the sheriff.

The Committee considered the merits of expanding service of original process within the Commonwealth to include service by a competent adult. Preliminarily, the Committee rejected basing a rulemaking proposal for the purpose of alleviating perceived resource limitations within sheriff offices. Matters of budgeting and personnel for independently elected offices are beyond the Committee's purview. Instead, the Committee evaluated the request in terms of establishing uniformity of service for all civil actions by permitting the plaintiff to choose either service by the sheriff or by a competent adult.

First, the Committee took note of an absence of concern with the current exceptions allowing service of original process using a competent adult. A previous proposal recently adopted by the Supreme Court to amend Pa.R.Civ.P. 400(b) expanding service by a competent adult for civil actions subject to snap removal was endorsed by commenters. See 52 Pa.B. 682 (January 29, 2022). Second, the proliferation of process servers in the Philadelphia area is indicative that the option of service of original process by a competent adult is being utilized in that county. This utilization suggests the efficacy and efficiency of that mode of service is at least comparable to sheriff service. Moreover, service of original process by a competent adult is permitted for citations in orphans' court proceedings, see Pa.R.O.C.P. 3.5, and in domestic relations matters, see Pa.R.Civ.P. 1930.4. The Committee specifically welcomes comments regarding experience using a competent adult for service of original process. Third, the Committee believes there is merit in having one, consistent rule governing service of original process within Pennsylvania for all civil actions.

The Committee also considered how current practice in Pennsylvania compared to service of original process in other states. To determine whether other states limited service of original process to the sheriff only, the Committee reviewed procedural rules and statutes of the remaining 49 states. The research revealed one other state limiting service of original process to the sheriff only: New Hampshire. Service of original process in the other states breaks down as follows:

- Twenty-three states permit service by a sheriff or other person authorized by law and a person 18 years of age or older who is not a party to the action – Colorado, Idaho, Iowa, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Montana, Nevada, New Mexico, New York (outside NYC), North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Virginia, Washington, West Virginia, Wyoming
- Twenty-two states, which permit service by both the sheriff or a competent adult, require the court or other authority to appoint or designate by order the person 18 years of age or older who is not a party to the action - Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Maine, Massachusetts, Missouri, Nebraska, New Jersey, Ohio, Oklahoma, Texas, Vermont
- Two states permit service by any adult not a party and 18 years of age or older; there is no provision service by the sheriff. - Tennessee and Wisconsin
- One state permits service by the sheriff, or the party or party's attorney if the party elects to undertake responsibility for service - Kansas

- California, New York (within NYC), Oklahoma, and Texas require certification, registration, or licensure of process servers

Based on this review, the Committee concluded that Pennsylvania's practice of allowing only the sheriff to serve original process within the Commonwealth for most civil actions is an outlier compared to the majority of other states.

Accordingly, the Committee believes that expanding and making uniform service of original process to permit service by a competent adult, in addition to service by a sheriff, would benefit plaintiffs with direct, timely, and efficient service, and bring the procedure in step with other states' practice. Please note this proposal is not intended to eliminate sheriff service, but to provide plaintiffs an option in selecting a mode of serving original process rather than the rules mandating the mode in an inconsistent manner within Pennsylvania. Insofar this proposal may free up sheriff offices' resources for other duties, the Committee specifically invites comments from all stakeholders on that matter.

The Committee is also proposing the deletion of the 1985 Explanatory Comment prefacing Pa.R.Civ.P. 400-449. The text of that historical commentary has been omitted from the instant publication due to length and for readers' ease of review.

The Committee invites all comments, concerns, and suggestions.