

Rule 314. Return, Waiver and Failure of Service; Reinstatement

A. The person serving the complaint shall, at or before the time of the hearing, make proof of service which shall show (1) the manner of service, (2) the date, time, and place of service and, (3) the name and relationship or title, if any, of the person on whom the complaint was served. The proof of service shall be filed with the original complaint.

B. When service is made by certified mail or comparable delivery method resulting in a return receipt in paper or electronic form, the return receipt shall be filed with the original complaint.

C. The appearance of a defendant in person or by representative or the filing by 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 60 days of the filing of the complaint, the magisterial district judge shall dismiss the complaint without prejudice.

E. **(1) When the complaint is dismissed without prejudice for failure to make service pursuant to paragraph D of this rule as to all defendants, [U]pon 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] the complaint** 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 is filed.

(2) When the complaint has been filed against multiple defendants and subsequently dismissed without prejudice for failure to make service pursuant to paragraph D of this rule as to less than all defendants, any further action against an unserved defendant after a hearing on the merits or the entry of a default judgment must be initiated by the filing of a new complaint.

Official Note: The provision concerning appearance not being a waiver of venue was inserted in **[subdivision] paragraph** C of this rule to prevent the concentration of business in the office of a favorable magisterial district judge. Also, the public cannot generally be expected to be aware of venue provisions. See Rule 302H regarding improper venue.

[Subdivision] Paragraph D is intended to prevent the accumulation of stale claims in the office of the magisterial district judge.

[Subdivision] Subparagraph E(1) provides for the reinstatement, upon written request of the plaintiff, of a complaint that has been dismissed without prejudice for failure to make service under **[subdivision] paragraph D against all defendants.** **[Compare] Compare** Pa.R.C.P. No. 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 magisterial district judge 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 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] subparagraph E(1)** 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. The cost for reinstating a complaint is specified in Section 1725.1 of the Judicial Code, 42 Pa.C.S. § 1725.1. In addition, there may be additional server costs for service of the reinstated complaint.

Subparagraph E(2) addresses the scenario involving multiple defendants when timely service is not made upon all defendants, resulting in a dismissal without prejudice as to some defendants. Subparagraph E(2) clarifies that the plaintiff may not reinstate the complaint after the hearing or entry of a default judgment in this circumstance, but must initiate an entirely new action by filing a new complaint, subject to the applicable fees and costs for a new filing.