

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.C.P. Nos. 430, 1018.1, and 1064

The Civil Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. Nos. 430 governing service by order of court, 1018.1 governing the notice to defend, and 1064 governing service in quiet title actions involving subsurface mineral, oil, and gas rights for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 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 reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will neither constitute a part of the rules nor will be officially 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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All communications in reference to the proposal should be received by **October 19, 2018**. 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,

David L. Kwass
Chair

Rule 430. Service Pursuant to [Special] Order of Court. [Publication.]

[(a) If service cannot be made under the applicable rule the plaintiff may move the court for a special order directing the method of service. The motion shall be accompanied by an affidavit stating the nature and extent of the investigation which has been made to determine the whereabouts of the defendant and the reasons why service cannot be made.]

Note: A sheriff's return of "not found" or the fact that a defendant has moved without leaving a new forwarding address is insufficient evidence of concealment. *Gonzales v. Polis*, 357 A.2d 580 (Pa. Super. 1976). Notice of intended adoption mailed to last known address requires a "good faith effort" to discover the correct address. *Adoption of Walker*, 360 A.2d 603 (Pa. 1976). An illustration of a good faith effort to locate the defendant includes (1) inquiries of postal authorities including inquiries pursuant to the Freedom of Information Act, 39 C.F.R. Part 265, (2) inquiries of relatives, neighbors, friends, and employers of the defendant, (3) examinations of local telephone directories, courthouse records, voter registration records, local tax records, and motor vehicle records, and (4) a reasonable internet search.

See Rule 1064 for additional requirements for service of original process by publication for actions to quiet title involving subsurface mineral, oil, or natural gas rights.]

(a) If service cannot be made under any other rule, a party may file a motion with the court for an order permitting any methods of service which are reasonably calculated to provide actual notice to the defendant.

(1) The methods of service requested may include, but are not limited to, one or more of the following:

(i) service via email or social media account;

Note: Any contact through email or social media account must comply with the Rules of Professional Conduct.

(ii) mailing the legal paper to an address known to be the defendant's address;

(iii) mailing the legal paper to an address the defendant is currently receiving mail;

Note: Pursuant to the Freedom of Information Act, 39 C.F.R. § 265.2, postal authorities are required to state in writing whether a defendant is currently receiving mail at a particular address.

(iv) service by any other method which is reasonably calculated to provide actual notice to the defendant; and

(v) if service cannot be accomplished by any of the above listed methods, service by publication consistent with due process.

(2) Upon request of a party, the court may allow any competent adult to make service in the manner provided by Rule 402(a).

(3)(i) The motion requesting service pursuant to subdivision (a)(1)(i) – (iv) shall be accompanied by an affidavit stating the nature and extent of the investigation that has been made to determine the whereabouts of the defendant, the reasons why service pursuant to any other rule cannot be made, and the reasons why the method of service requested is reasonably calculated to provide actual notice to the defendant.

(ii) The motion requesting service by publication pursuant to subdivision (a)(1)(v) shall be accompanied by an affidavit stating the nature and extent of the investigation that has been made to determine the whereabouts of the defendant, and the reasons why service pursuant to subdivision (a)(1)(i)-(iv) cannot be made.

Note: See Rule 1064 for additional requirements for service of original process pursuant to this rule for actions to quiet title involving subsurface mineral, oil, or natural gas rights.

(b)[(1)] If service of process by publication has been authorized by rule of civil procedure or order of court, the publication shall be by advertising a notice of the action once in the legal publication, if any, designated by the court for the publication of legal notices and in one newspaper of general circulation within the county. The publication shall contain the caption of the action and the names of the parties, state the nature of the action, and conclude with a notice substantially in the following form:

NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

(NAME)

(ADDRESS)

(TELEPHONE NUMBER)

Note: The office shall be that designated by the court under Rule 1018.1(c).

[(2) When service is made by publication upon the heirs and assigns of a named former owner or party in interest, the court may permit publication against the heirs or assigns generally if it is set forth in the complaint or an affidavit that they are unknown.]

Rule 1018.1. Notice to Defend. Form.

(a) Every complaint filed by a plaintiff and every complaint filed by a defendant against an additional defendant shall begin with a notice to defend in substantially the form set forth in subdivision (b). No other notice to plead to a complaint shall be required.

(b)

[[CAPTION]] CAPTION

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

(Name)

(Address)

(Telephone Number)

Note: The above notice does not change any of the rules relating to the pleading of objections and defenses. This rule applies to all complaints including those where service is **[by publication]**

pursuant to Rule 430. [For the mandatory content of the **publication in such cases see Rule 430(b).**] When a defendant is served outside the United States, Rule 1026(b) provides a sixty-day period for pleading.

(c) Each court shall by local rule designate the officer, organization, agency or person to be named in the notice from whom information can be obtained.

(d) A court may by local rule require the notice to be repeated in one or more designated languages other than English.

Rule 1064. Service.

In actions involving subsurface mineral, oil, or natural gas rights, if the plaintiff seeks to serve original process **[by publication]** pursuant to Rule 430 and obtains actual knowledge of a last known address of the defendant outside the county in which the property is located, the plaintiff shall explain in the affidavit required by Rule 430**[(a)]** the search for the defendant in that locale.

Note: For service of original process, see Rule 410 governing service in actions involving real property. See Rule 430 for additional requirements for service of original process **[by publication]**.

Explanatory Comment

The amendment of Rule 430 governing service pursuant to order of court, including service by publication, is intended to clarify procedure and modernize such service. The amended rule sets forth the standard by which a court may evaluate whether a method of service may be used and encourages the use of various methods. While the current rule implicitly permits service by any method so ordered by the court, not just publication, the amendment explicitly provides the methods and the procedure to follow.

Subdivision (a) of the amended rule provides that when a motion requesting service by court order, the court may permit any method that is reasonably calculated to provide actual notice to the defendant. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)(holding that an alternative method of service should provide “notice that is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”). *Mullane* continues to be controlling law. See *Jones v. Flowers*, 547 U.S. 220 (2006).

A party who seeks service pursuant to this procedure is required to file a motion with the court requesting the method or methods of service that are reasonably calculated to provide actual notice to the defendant. Subdivision (a)(1)(i)-(v) lists the methods of service that may be used. Recognizing the usefulness of electronic media, the methods available for service include email and social media accounts. Subdivision (a) also permits service by more traditional method: mailing a legal paper to an address known to be the defendant’s address or to an address where the defendant is currently receiving mail.

Subdivision (a)(3)(i) requires a motion requesting a method of service pursuant to subdivision (a)(1)(i-iv) to be accompanied by an affidavit stating the nature and extent of the investigation that has been made to determine the whereabouts of the defendant, the reasons why service pursuant to any other rule cannot be made, and the reasons why the method of service requested is reasonably calculated to provide actual notice to the defendant. When leave is sought to serve by email or social media account, the moving party must set forth with specificity in the affidavit the reasons the moving party believes the email or social media account belongs to the defendant, and the basis for concluding that the defendant regularly accesses the email or social media account. When service by this method is approved, unless the court provides otherwise, service of the summons or complaint must be made on the defendant through email or by sending or posting on the social media account a private message designed to minimize public access or disclosure of the filing of the action against the defendant.

Service by publication remains as a method of service in the rule. If service cannot be accomplished by any of the methods in subdivision (a)(1)(i)-(iv), subdivision (a)(1)(v) permits the court to order service by publication to the extent that such service is consistent with due process. Subdivision (a)(3)(ii) requires a motion requesting service by publication to include an affidavit stating the nature and extent of the investigation that has been made to determine the whereabouts of the defendant, and the reasons why service cannot be made pursuant to subdivision (a)(1)(i)-(iv).

Subdivision (a)(2) permits service by a competent adult provided there is court approval to do so.

Current subdivision (b)(2) has been deleted. The subdivision, which provided for a court to permit service by publication against the heirs or assigns generally if set forth in the complaint or affidavit they are unknown, has been removed in light of the holding in *Northern Forests, II v. Keta Realty Co.*, 130 A.3d 19 (Pa. Super. 2016), *petition for allowance of appeal denied*, 158 A.3d 1237 (Pa. 2016).

Conforming amendments have also been made to Rule 1018.1 governing the notice to defend and Rule 1064 governing additional requirements for service of actions to quiet title in subsurface mineral, oil, and gas rights. These amendments delete the reference to “service by publication” and instead refer to “service pursuant to Rule 430”.

By the Civil Procedural
Rules Committee

David L. Kwass
Chair