

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.C.P. Nos. 410, 430, 1064, and 1065**

The Civil Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. Nos. 410, 430, 1064, and 1065 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 **May 22, 2015**. 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,

Peter J. Hoffman  
Chair

**Rule 410. Real Property Actions**

(a) In actions involving title to, interest in, possession of, or charges or liens upon real property, original process shall be served upon the defendant in the manner provided by Rule 400 et seq.

(b)(1) If in an action involving an interest in real property the relief sought is possession or mortgage foreclosure, original process also shall be served upon any person not named as a party who is found in possession of the property. The sheriff shall note the service in the return.

(2) If the relief sought is possession, the person so served shall thereupon become a defendant in the action. Upon praecipe of the plaintiff the prothonotary shall index the name of the person found in possession as a party to the action.

(3) If the relief sought is mortgage foreclosure, the person so served shall not thereby become a party to the action.

(c) If service is made pursuant to an order of court under Rule 430(a), the court shall direct one or more of the following methods of service:

(1) publication as provided by Rule 430(b),

**Note: See Rule 1064 for additional requirements for service of original process by publication for actions to quiet title involving subsurface mineral rights.**

(2) posting a copy of the original process on the most public part of the property,

(3) registered mail to the defendant's last known address, and

(4) such other methods, if any, as the court deems appropriate to give notice to the defendant.

**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*, [238 Pa. Super. 362,] 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*, [468 Pa. 165,] 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 CFR Part 265, (2) inquiries of relatives, neighbors, friends, and employers of the defendant, [and] (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 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.

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(NAME)

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(ADDRESS)

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(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 1064. Service**

**[Rescinded.] In actions involving subsurface mineral rights, if the plaintiff seeks to serve original process by publication pursuant to Rule 430 and obtains actual knowledge of the defendant's address outside the county in which the property is located, the plaintiff shall conduct a 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.**

**Rule 1065. Specific Averments**

**(a) Except as provided in subdivision (b), [T]the plaintiff shall describe the land in the complaint.**

**(b) In an action to quiet title involving subsurface mineral rights, the complaint shall describe the land by attaching:**

**(1) an abstract of the mineral title, and**

**(2) a statement of acreage involved that includes a metes and bounds description.**

## **Explanatory Comment**

The Civil Procedural Rules Committee is proposing the amendment of Rules 410, 430, 1064, and 1065 to update the requirements for the service of original process by publication generally and provide additional requirements when the action to quiet title involves subsurface mineral rights. Currently, when a plaintiff is unable to serve original process on a defendant pursuant to Rule 400, the Rules of Civil Procedure allow a plaintiff to serve original process by publication pursuant to Rule 430 governing service by special court order. For service by publication to be allowed, the plaintiff must file a motion with an affidavit describing the good faith efforts on the part of the plaintiff to locate the defendant. The note to Rule 430 currently provides illustrations of what constitutes a good faith effort to locate a defendant and the proposed amendment would expand the sources to be searched to include courthouse records and a reasonable internet search. By including these sources, the amendment is intended to update the rule to use modern technology in an effort to locate a defendant as well as records that are already available at the courthouse. In many instances courthouse records are available on line as well.

With regard to actions to quiet title of subsurface mineral rights, the proposed recommendation would reconstitute Rule 1064, which formerly governed service generally for actions to quiet title. The reconstituted rule would require a plaintiff, who has obtained actual knowledge of the defendant's address outside the county in which property at issue is located, to conduct a search for the defendant in that locale in addition to the requirements of Rule 430(a).

The proposed recommendation would also amend Rule 1065 governing the content of a complaint in actions to quiet title of subsurface mineral rights to require an adequate and verified land description in the complaint which would include an abstract

of the mineral title, and a statement of acreage involved with a metes and bounds description.

Cross-references to reconstituted Rule 1064 are also proposed for the notes to Rule 430(a) governing service by special order of court and Rule 410(c)(1) governing service in real property actions in order to aid the practitioner in finding the additional requirements set forth in that rule for service by publication in quiet title actions involving subsurface mineral rights.

By the Civil Procedural Rules  
Committee

Peter J. Hoffman  
Chair