

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed amendment of Pa.R.C.P. No. 1930.4

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. No. 1930.4 for the reasons set forth in the accompanying publication 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 neither will 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 14, 2021**. 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 Domestic Relations Procedural Rules
Committee

The Honorable Daniel J. Clifford
Chair

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE**

RULE PROPOSAL 184

*** The following rule text replaces the current rule text in its entirety ***

Rule 1930.4. Service of Original Process in Domestic Relations Matters

(a) *Personal Service.*

(1) *Persons Who May Serve.* A sheriff or competent adult, as defined in Pa.R.C.P. No. 76, may effectuate personal service of original process in all domestic relations matters, including Protection of Victims of Sexual Violence or Intimidation matters.

(2) *Manner of Service.*

(i) A sheriff or competent adult may serve original process:

(A) by handing a copy of the original process to the defendant;

(B) at the defendant's residence by handing a copy of the original process to:

(I) an adult member of the family with whom the defendant resides; but if an adult family member is unavailable, then to an adult in charge of the residence; or

(II) the clerk or manager of the hotel, inn, apartment house, boarding house, or other place of lodging; or

(C) at the defendant's office or usual place of business by handing a copy of the original process to the defendant's agent or the person for the time being in charge; or

(ii) pursuant to special order of court.

(3) *Service in Protection From Abuse and Protection of Victims of Sexual Violence or Intimidation Matters.*

- (i) If the sheriff or competent adult cannot complete personal service within 48 hours after a Protection From Abuse or a Protection of Victims of Sexual Violence or Intimidation petition is filed, the court may authorize alternative service by special order as set forth in subdivision (a)(2)(ii).
- (ii) Alternative service may include, but is not limited to, service by mail pursuant to subdivision (b) or service by commercial carrier pursuant to subdivision (c).

(b) *Service by Mail.*

(1) In all domestic relations matters, except Protection from Abuse and Protection of Victims of Sexual Violence or Intimidation matters, a party may serve the original process, a notice or order to appear, if required, and other orders or documents, as necessary, by United States Postal Service's (USPS) first class regular and certified mail to the defendant's last known address.

- (i) The party serving the original process by mail shall:
 - (A) restrict delivery of the certified mail to the addressee only; and
 - (B) request a return receipt.
- (ii) *Completed Service by Mail.* Service of original process is complete when:
 - (A) the return receipt bears the defendant's purported signature indicating receipt of the certified mail;
 - (B) the return receipt acknowledges delivery of the certified mail to the defendant consistent with USPS policy and the regular mail is not returned within 15 days of mailing; or
 - (C) USPS returns the certified mail indicating the defendant refused delivery, but the regular mail is not returned within 15 days of mailing.

(iii) *Incomplete Service by Mail.*

(A) Service of original process is incomplete when:

- (I) USPS returns the certified mail with a notation indicating that the mail was unclaimed by the defendant; or
- (II) is otherwise inconsistent with subdivision (b)(1)(ii).

(B) If service by mail is incomplete, the party attempting service shall utilize another method pursuant to these rules to effectuate service.

(2) *Protection from Abuse and Protection of Victims of Sexual Violence or Intimidation Matters.* A party may serve original process by mail, if authorized by the court under subdivision (a)(2)(ii).

(c) *Service by Commercial Carrier.*

(1) In all domestic relations matters, except Protection from Abuse and Protection of Victims of Sexual Violence or Intimidation matters, a party may serve the original process, a notice or order to appear, if required, and other orders or documents, as necessary, by commercial carrier and USPS regular first class mail to the defendant's last known address.

(i) The party serving the original process by commercial carrier shall:

(A) restrict delivery of the commercial carrier's package to the defendant's address only; and

(B) request that the commercial carrier return a return receipt showing to whom delivered, the date of delivery, and the address where delivered.

(ii) *Completed Service by Commercial Carrier.* Service of original process is complete when:

(A) the return receipt bears the defendant's purported

signature indicating receipt of the commercial carrier's package;

(B) the return receipt acknowledges delivery of the commercial carrier's package to the defendant's address consistent with the commercial carrier's policy and the regular mail is not returned within 15 days; or

(C) the commercial carrier returns the package indicating the defendant refused delivery, but the regular mail is not returned within 15 days of mailing.

(iii) *Incomplete Service by Commercial Carrier.*

(A) Service of original process is incomplete when:

(I) the commercial carrier returns the package indicating that the package was unclaimed by the defendant; or

(II) is otherwise inconsistent with subdivision (c)(1)(ii).

(B) If service by commercial carrier is incomplete, the party attempting service shall utilize another service method pursuant to these rules.

(2) *Protection from Abuse and Protection of Victims of Sexual Violence or Intimidation Matters.* A party may serve original process by commercial carrier, if authorized by the court under subdivision (a)(2)(ii).

Note: This rule does not preclude a party or judicial district from utilizing the United States Postal Service's (USPS) or a commercial carrier's electronic return receipt or any similar service that electronically provides a return receipt.

(d) *Acceptance of Service.* The defendant or the defendant's authorized agent may accept service of original process as set forth in Pa.R.C.P. No. 402(b).

(e) *Time for Service.*

(1) *Service Within the Commonwealth.* Within 30 days of filing the

original process, a person or party shall serve the original process on a defendant located within the Commonwealth.

(2) *Service Outside of the Commonwealth.*

(i) Within 90 days of filing the original process, a person or party shall serve the original process on a defendant located outside the Commonwealth as:

(A) authorized by this rule;

(B) provided by the law of the jurisdiction in which defendant will be served;

(C) provided by treaty; or

(D) directed by the foreign authority in response to a letter rogatory or request.

(ii) *Protection from Abuse and Protection of Victims of Sexual Violence or Intimidation Matters.*

(A) A person shall serve original process on a defendant located outside of the Commonwealth by personal service as provided:

(I) in subdivision (a); or

(II) by the law in the jurisdiction where the defendant resides or is located.

(B) If personal service is not completed within 48 hours after the filing of the original process, a person or party may serve a defendant located outside of the Commonwealth by other means authorized by this rule.

(f) *Service of Original Process on an Incarcerated Party.*

(1) A party serving original process on an incarcerated party in a domestic relations action shall include:

(i) a notice of any proceeding; and

- (ii) a specific notice of the incarcerated party's right to petition the court to participate in the proceeding.
- (2) A party may petition the court requesting the incarcerated party to participate in a proceeding when:
- (i) the incarcerated party seeks to participate as provided by statute or rule; or
 - (ii) another party requires the incarcerated party's participation or testimony.

Note: See 23 Pa.C.S. § 4342(j) and Pa.R.C.P. No. 1930.3.

(g) *Reinstatement of Original Process.*

- (1) If a person or party cannot complete service within the time required by subdivision (e), the prothonotary shall reinstate the original process upon the party's praecipe:
- (i) accompanied by the original process; or
 - (ii) indicating that the original process has been lost or destroyed and accompanied by a substituted original process.
- (2) A person or party shall serve the reinstated original process within the time periods set forth in subdivision (e).
- (3) A party may:
- (i) request the prothonotary reinstate the original process at any time or any number of times; or
 - (ii) name a new party defendant in a reinstated original process.

(h) *Proof of Service.*

(1) *Original Process Served.*

- (i) A party or person serving the original process shall complete a proof of service, which shall be by an affidavit if an

individual other than a sheriff serves the original process.

- (ii) The proof of service shall state:
 - (A) the date and time of service;
 - (B) the place of service;
 - (C) the manner in which service was made;
 - (D) the identity of the person served;
 - (E) other facts necessary for the court to determine whether proper service has been made; and
 - (F) the additional documents required in subdivision (h)(3), as necessary.

(2) *Personal Service Pursuant to Subdivision (a).* The proof of service shall be filed in the appropriate filing office within ten days of the date of service.

(3) *Service by Mail or Commercial Carrier Pursuant to Subdivisions (b) or (c).*

(i) *Service Complete under Subdivision (b)(1)(ii)(A) or (c)(1)(ii)(A).* :

- (A) The proof of service shall include the return receipt bearing the defendant's purported signature; and
- (B) The proof of service shall be filed within ten days of the date the defendant signed the return receipt.

(ii) *Service Complete under Subdivision (b)(1)(ii)(B) or (c)(1)(ii)(B).*

- (A) The proof of service shall include:
 - (I) the return receipt or envelope acknowledging delivery to the defendant's residence consistent with USPS or the commercial carrier's policy; and

- (II) an affidavit indicating the regular US mail was not returned within 15 days of mailing.
 - (B) The proof of service shall be filed within ten days of the date:
 - (I) the return receipt acknowledges delivery to the defendant's address consistent with USPS or the commercial carrier's policy; and
 - (II) after the passage of time set forth in subdivisions (b)(1)(ii)(B) or (c)(1)(ii)(B).
- (iii) *Service Complete under Subdivision (b)(1)(ii)(C) or (c)(1)(ii)(C).*
 - (A) The proof of service shall include:
 - (I) the return receipt or envelope acknowledging the attempted delivery to the defendant's residence and that delivery had been refused; and
 - (II) an affidavit stating the regular mail was not returned within 15 days after mailing.
 - (B) The proof of service shall be filed within ten days of the date:
 - (I) the return receipt acknowledges the attempted delivery to the defendant's address consistent with USPS or the commercial carrier's policy; and
 - (II) after the passage of time set forth in subdivisions (b)(1)(ii)(C) or (c)(1)(ii)(C).
- (4) *Acceptance of Service Pursuant to Subdivision (d).*
 - (i) If the defendant or the defendant's authorized agent accepts service of the original process as authorized in subdivision (d), the defendant or the defendant's authorized agent shall

sign an Acceptance of Service on the form set forth in Pa.R.C.P. No. 402(b).

- (ii) The Acceptance of Service shall be filed in the appropriate filing office within ten days of accepting service.

(5) *Original Process Not Served.*

- (i) If a party or person cannot serve the defendant within the time allowed in subdivision (e), the party or person attempting service:
 - (A) shall complete a proof of no service promptly; and
 - (B) file the proof of no service in the appropriate filing office within ten days of the expiration of time allowed for service in subdivision (e).
- (ii) If a party or a person other than a sheriff attempts service of the original process, the proof of no service shall be by an affidavit stating with particularity the efforts made to effect service.

Note: See Pa.R.C.P. No. 1910.4(a). The Domestic Relations Section is the filing office for child support, spousal support, and alimony *pendente lite* cases.

See Pennsylvania Rule of Professional Conduct 7.3(b)(4). The timing of an attorney's solicitation of a prospective client in actions governed by the Family Court Rules, see Pa.R.C.P. No. 1931(a), and actions pursuant to the Protection of Victims of Sexual Violence or Intimidation Act, see 42 Pa.C.S. §§ 62A03-62A20, is restricted until proof of service appears on the docket.

- (i) *Appearance at Hearing or Conference.* A party appearing for a hearing or conference will be deemed to have been served.

Comment - 2021

Sections 5323 and 5329(2) of the Judicial Code, 42 Pa.C.S. §§ 5323 and 5329(2), provide additional alternative procedures for service outside the Commonwealth. For Protection from Abuse and Protection of Victims of Sexual Violence or Intimidation matters, personal service outside of the Commonwealth must be attempted first before service can be made by certified and regular mail or by other means prescribed in subdivision (e)(2).

Subdivision (f) addresses service of original process on an incarcerated party, and the incarcerated party's right to appear and testify. See *Vanaman v. Cowgill*, 526 A.2d 1226 (Pa. Super. 1987) and *Salemo v. Salemo*, 554 A.2d 563 (Pa. Super. 1989).

**SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE**

PUBLICATION REPORT

RULE PROPOSAL 184

The Domestic Relations Procedural Rules Committee (Committee) is proposing an amendment to Pa.R.C.P. No. 1930.4. The rule addresses service of original process in domestic relations actions. Due to changes in the United States Postal Service (USPS) policy resulting from COVID-19, several individuals requested that the Committee review the service rule as the USPS policy change adversely affected postal employees from obtaining the defendant's signature on return receipts. After reviewing the issues, the Committee determined that several changes were necessary to address the USPS policy change and to implement an updated service method.

In March 2020, the USPS implemented changes to its policy for delivery of registered or certified restricted mail. According to its website, the USPS modified the "customer signature capture procedures. While maintaining a safe, appropriate distance, [postal] employees will request the customer's first initial and last name so that the employee can enter the information on the electronic screen or hard copy items such as return receipts." Unfortunately, the revised procedure as written does not comply with Pa.R.C.P. No. 1930.4; however, despite the written policy referenced, many return receipts were not consistent with the stated policy, and the recipient's first initial and last name were omitted entirely. Instead, the Committee reviewed documentation illustrating that the postal employee often used other nomenclature on the return receipts, which clearly did not identify the recipient.

Moreover, as was widely reported in the media, the increased burden on the postal service resulted in significant delays in delivery of the mail in general, but also, especially during the holiday season. Additionally, the return of the "signed" receipts to the party serving the original process were similarly adversely affected.

In Rule Proposal 184, the Committee is proposing a complete rewriting of Pa.R.C.P. No. 1930.4; however, most of the rule text remains unchanged, but is written into an outline format with some current subdivisions combined and renumbered. Also, official notes were incorporated into rule text or moved into the Comment. The Committee is proposing several substantive changes to address the issues reported to the Committee.

First, the Committee proposes addressing the USPS policy change by allowing return receipts that are consistent with USPS policy to acknowledge delivery to the addressee provided that the first class mail is not returned within 15 days. The current rule allows for similar service when the addressee refuses delivery and the first class mail is not returned.

Finally, the Committee proposes authorizing a party to utilize commercial carriers, such as UPS and FedEx, to effectuate original process service. Commercial carriers utilize tracking services, including return receipts, illustrating delivery to an address and the recipient's

signature. Unfortunately, unlike USPS, commercial carriers do not restrict delivery to an addressee, just to an address. Perfecting service on a particular defendant in this manner alone may not be possible. In order to resolve the issue, the proposed rule requires service of the original process by USPS first class mail, also. If that mail is not returned within 15 days and the commercial carrier's return receipt indicates delivery to the defendant's last known address, service is completed.

Accordingly, the Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.