

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.C.P. No. 401(b)(2)

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 401(b)(2) governing the reissuance or reinstatement of original process 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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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 **September 25, 2020**. 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,

John J. Hare
Chair

Rule 401. Time for Service. Reissuance, Reinstatement, and Substitution of Original Process.

(a) Original process shall be served within the Commonwealth within 30 days after the issuance of the writ or the filing of the complaint.

Note: See Rule 404 for the time for service outside the Commonwealth.

(b)(1) If service within the Commonwealth is not made within the time prescribed by subdivision (a) of this rule or outside the Commonwealth within the time prescribed by Rule 404, the prothonotary upon *praecipe* and upon presentation of the original process, shall continue its validity by reissuing the writ or reinstating the complaint, by writing thereon “reissued” in the case of a writ or “reinstated” in the case of a complaint.

(2) A writ may be reissued or a complaint reinstated at any time and any number of times. A new party defendant may be named in a reissued writ or a reinstated complaint **only if the writ or complaint has not been served on any defendant.**

Note: A new party defendant cannot be added to a reissued writ or reinstated complaint if service has been completed on a defendant already named in the writ or complaint. For cases involving multiple defendants, a new party defendant cannot be added to a reissued writ or reinstated complaint if service has been completed on any defendant already named in the writ or complaint.

If a new party defendant cannot be added pursuant to this rule, other procedures are available. See Rule 219 to discontinue to start a new action; Rule 1033 to amend the caption of the writ or complaint by agreement of the party or by leave of court; or Rule 2232 to seek leave of court for an order joining a defendant.

(3) A substituted writ may be issued or a substituted complaint filed upon *praecipe* stating that the former writ or complaint has been lost or destroyed.

(4) A reissued, reinstated, or substituted writ or complaint shall be served within the applicable time prescribed by subdivision (a) of this rule or by Rule 404 after reissuance, reinstatement, or substitution.

(5) If an action is commenced by writ of summons and a complaint is thereafter filed, the plaintiff, instead of reissuing the writ, may treat the complaint as alternative original process and as the equivalent for all purposes of a reissued writ, reissued as of the date of the filing of the complaint. Thereafter the writ may be reissued, or the complaint may be reinstated as the equivalent of a reissuance of the writ, and the plaintiff may use either the reissued writ or the reinstated complaint as alternative original process.

Note: If the applicable time has passed after the issuance of the writ or the filing of the complaint, the writ must be reissued or the complaint reinstated to be effective as process. Filing or reinstatement or substitution of a complaint, which is used as alternative process under this subdivision, has been held effective in tolling the statute of limitations as the reissuance or substitution of a writ.

Explanatory Comment

Rule 401(b)(2) provides: “A writ may be reissued or a complaint reinstated at any time and any number of times. A new party defendant may be named in a reissued writ or a reinstated complaint.” On its own, a literal reading of Rule 401(b)(2) suggests that a new party defendant can be added at any time upon the reissuance of a writ or reinstatement of a complaint; neither the rule nor its explanatory comment provide context as to its application. In practice, self-represented litigants have interpreted this provision to allow new defendants to be added simply by reissuing the writ or reinstating the complaint without any context as to whether service of the writ or complaint has already been completed pursuant to subdivision (a) on a named defendant. In addition, the rule does not provide any guidance as to the operation of this subdivision when there are multiple defendants.

The proposed amendment would clarify that a new party defendant may be added to a reissued writ or reinstated complaint only if service of the writ or complaint on the defendant has not yet been completed. A proposed note would also be added to provide guidance for cases involving multiple defendants: if service has been completed for any defendant, a plaintiff cannot add a new defendant pursuant to this rule. In addition, the proposed note would cross-reference three other procedural methods for adding a defendant should a plaintiff be precluded from doing so pursuant to Rule 401(b)(2). These procedural methods include: discontinuance pursuant to Rule 229 and starting a new action; agreement by the parties or seeking leave of court to amend the pleading pursuant to Rule 1033, and seeking leave of court for an order joining a defendant pursuant to Rule 2232.

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