

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.C.P. No. 400**

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. No. 400 governing the person to make service 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 **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

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

**PUBLICATION REPORT**

The Civil Procedural Rules Committee is considering proposing the amendment of Rule 400(b) governing those actions in which both the sheriff and a competent adult may serve original process. The proposal is the result of the Committee’s examination of the holding in *Encompass Ins. Co. v. Stone Mansion Restaurant Inc.*, 902 F.3d 147 (3d Cir. 2018) concerning the removal of actions from state to federal court and permitting pre-service or “snap” removal.

28 U.S.C. § 1441(a) provides that a civil action brought in a state court may be removed to federal court where there is federal subject matter jurisdiction, including where there is complete diversity of citizenship between all plaintiffs and all defendants. Section 1441(b) states the “forum defendant” exception to that rule: an action otherwise removable on the basis of diversity jurisdiction “may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which the action is brought.” 28 U.S.C. § 1441(b) (emphasis added).

In *Encompass Ins. Co.*, the United States Third Circuit Court of Appeals held that Section 1441(b) does not prevent removal to federal court on the basis of diversity jurisdiction where there is a forum defendant when the forum defendant has not yet been served. In other words, removal is proper where the plaintiff intends to serve and proceed against an in-state defendant, but removal is filed before both joinder and service have occurred.

Preliminarily, delay between the filing of the complaint and original service provides opportunity for “snap” removal. As reported to the Committee, the method of original service available to plaintiffs is a significant factor in the magnitude of any delay. For example, employing a private process server permits prompt, plaintiff-directed service on defendants whereas the timing of sheriff-effectuated service varies widely within Pennsylvania. The Committee focused on reducing this potential inconsistency in statewide practice as it relates to “snap” removal.

The Committee observed that Rule 400(a) provides that the sheriff must serve original process of civil actions within the Commonwealth. Rule 400(b) sets forth certain, discrete civil actions for which, in addition to service by the sheriff, original process within the Commonwealth may be served by a competent adult. These include civil actions in which the complaint includes a request for injunctive relief, perpetuation of testimony, appointment of a receiver; partition; and declaratory judgment when declaratory relief is the only relief sought. In addition, Rule 400.1 also permits service of original process in Philadelphia County only by either the sheriff or a competent adult.

The various means of permissible original service in Pennsylvania, as provided by the Rules, has resulted in disparate delays in original service, which has led to inconsistent “snap” removal opportunities based upon the county of filing. To address this disparity, the Committee is proposing a modest amendment to Rule 400(b) to extend service of original process by a competent adult to every county only in the narrow category of cases impacted by the *Encompass Ins. Co.* decision, providing the same options for service in these cases regardless of the county in which the defendant is located.

An alternative resolution would be to remove the category of cases subject to “snap” removal from operation of Rule 400(b) so that such cases must also be served by sheriff pursuant to Rule 400(a). However, this approach, which seemingly fosters additional delay, appeared contrary to the purpose of the Rules to obtain speedy determinations of actions. See, e.g., Pa.R.C.P. No. 128.

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

**Rule 400. Person to Make Service.**

(a) Except as provided in subdivisions (b) and (c) and in Rules 400.1 and 1930.4, original process shall be served within the Commonwealth only by the sheriff.

(b) In addition to service by the sheriff, original process may be served also by a competent adult in the following actions:

(1) a civil action in which the complaint includes a request for injunctive relief under Rule 1531, perpetuation of testimony under Rule 1532 or appointment of a receiver under Rule 1533[.];

(2) partition[, and];

(3) declaratory judgment when declaratory relief is the only relief sought[.]; and

(4) a civil action in which there is a complete diversity of citizenship between all plaintiffs and all defendants, and at least one defendant is a citizen of Pennsylvania.

Note: See Rule 76 for the definition of “competent adult.”

Service of original process in domestic relations matters is governed by Rule 1930.4.

(c) When the sheriff is a party to the action, original process shall be served by the coroner or other officer authorized by law to perform the duties of coroner.

(d) If service is to be made by the sheriff in a county other than the county in which the action was commenced, the sheriff of the county where service may be made shall be deputized for that purpose by the sheriff of the county where the action was commenced.