

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

NOTICE OF PROPOSED RULEMAKING

Proposed Rescission of Pa.R.C.P. No. 401(c)

The Civil Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the rescission of Pa.R.C.P. No. 401(c) governing the copies for service of original process 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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Civil Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
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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 401. Time for Service. Reissuance, Reinstatement, and Substitution of Original Process. [Copies for Service.]

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

Note: **[See]** **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]** ***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.

(3) A substituted writ may be issued or a substituted complaint filed upon **[praecipe]** ***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.

[(c) The copy of the original process to be served upon the defendant shall be attested by the prothonotary or certified by the plaintiff to be a true copy.]

Rule 1008. Copies for Service.

Rescinded.

[Note: For the requirement of attested or certified copies for service, see Rule 401(c).]

Explanatory Comment

The Civil Procedural Rules Committee is proposing the rescission of Rule 401(c), which provides for the prothonotary to attest or for the plaintiff to certify that a copy of the complaint to be served on the defendant is a true copy. Originally adopted in 1946 as part of former Rule 1008, the attestation or certification provided a mechanism to ensure that the original and any copy to be served had been authenticated as a true copy in a time when reproduction of documents was more labor-intensive and prone to error. Today, the requirement is anachronistic given modern methods of document reproduction that easily permit exact copies. The note to rescinded Rule 1008 cross-referencing Rule 401(c) has also been deleted.

By the Civil Procedural
Rules Committee

David L. Kwass
Chair