

Rule 1033. Amendment.

- (a) **General Rule.** A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, add a person as a party, correct the name of a party, or otherwise amend the pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence offered or admitted.
- (b) **Relation Back.** An amendment correcting the name of a party against whom a claim has been asserted in the original pleading relates back to the date of the commencement of the action if, within 90 days after the period provided by law for commencing the action, the party received notice of the institution of the action such that it will not be prejudiced in maintaining a defense on the merits and the party knew or should have known that the action would have been brought against the party but for a mistake concerning the identity of the proper party.
- (c) **John Doe Defendants.** An amendment substituting the actual name of a defendant for a Doe designation as provided in Rule 2005 relates back to the date of the commencement of the action if, within the time provided by Rule 401 for service, the defendant named by the amendment has received actual or constructive notice of the commencement of the action such that it will not be prejudiced in maintaining a defense on the merits and the defendant knew or should have known that the action would have been brought against it but for lack of knowledge of the defendant's actual name.
- (d) **Highlighting of Amendments.**
 - (1) **A party filing a motion to amend a pleading shall attach:**
 - (i) **a clean copy of the proposed amended pleading; and**
 - (ii) **a comparison copy of the proposed amended pleading identifying the changes by striking through the material to be deleted and underlining the material to be added.**
 - (2) **If there is a discrepancy between the clean copy and the comparison copy of the proposed amended pleading, the clean copy shall be the controlling document.**

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

Explanatory Comment—2013

Rule 1033 has been amended to specifically state that an amendment may add a person as a party. It is the practice of litigants and trial courts to refer to Rule 1033 when a party seeks to amend a pleading to add another party. The purpose of this amendment is to eliminate any uncertainty as to whether a motion to amend a pleading to add an additional party is governed by Rule 1033. There is no conflict between this proposed amendment and Rule 2232(c) because the latter addresses the question of when a court may order the joinder of any additional person.

Subdivision (b) of Rule 2232 addressing the joinder of an additional party is being rescinded. The provision is unnecessary because if a party has been misjoined or no claim for relief is asserted, a dismissal should be sought through the rules governing preliminary objections, judgment on the pleadings, and summary judgment. If a plaintiff wants to drop a defendant, he or she should use the rules governing the discontinuance of an action.

Explanatory Comment—2017

Currently, the Rules of Civil Procedure do not expressly permit an amendment correcting the name of a party against whom a claim is asserted to relate back without a showing of concealment when the statute of limitations has expired and the effect of that correction operates to add another party. However, case law has interpreted the Rules to permit such an amendment within the statute of limitations. Rule 1033 has been amended to expressly permit amendments correcting the name of the party against whom a claim is asserted to relate back to the date of the commencement of the action if within ninety days after the period provided by law for commencing the action, the party to be brought in by the amendment has received notice of the commencement of the action such that it will not be prejudiced in obtaining a defense on the merits, and the party knew or should have known that the action would have been brought against the party but for a mistake concerning the identity of the proper party.

Consider the following example: Harry Roberts, who resides at 949 Alcoma Street, Pittsburgh, PA, was the driver of an automobile which struck the plaintiff when he was crossing the intersection at Grant and Forbes Street, Pittsburgh, PA, at approximately 11:00 a.m. on October 11, 2013. The plaintiff's complaint, filed on October 2, 2015, mistakenly identifies the driver as Henry Rosen. He is the only named defendant in the complaint.

On October 7, 2015, the Sheriff made service by serving Mary Roberts at 949 Alcoma Street, Pittsburgh, PA. She is described in the Sheriff's Return as the wife of the defendant. On January 2, 2016, the complaint is amended to correct "Henry Rosen" to "Harry Roberts."

The amendment of Rule 1033 expressly permits the plaintiff to amend the complaint to correct the name of the defendant to Harry Roberts, because it is clear from the body of the complaint that the plaintiff was suing the driver of the automobile which struck the plaintiff and service of the complaint furnished sufficient notice to Harry Roberts that a lawsuit has been initiated against him for actions he is liable for even though the defendant is identified on the complaint as Henry Rosen. This is consistent with existing case law and codifies current practice.

The Federal Rules of Civil Procedure and a majority of states have rules of procedure governing the relation back of amendments, which are similar to this amendment. The interests of justice are served by a rule of civil procedure permitting a party to correct a complaint that provides an incorrect name of a party when there is no prejudice to the party brought in by the amendment.

The amendment of Rule 1033 does not alter the concealment doctrine and the discovery rule. The amendment is intended to cover situations in which neither the concealment doctrine nor the discovery rule apply.