

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

ADOPTION REPORT

Amendment of Pa.R.Civ.P. 1033

On September 6, 2024, the Supreme Court of Pennsylvania amended to Pennsylvania Rule of Civil Procedure 1033 relating to the amendment of pleadings. The Civil Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, cmt. The statements contained herein are those of the Committee, not the Court.

The Committee received a request to consider amending Pa.R.Civ.P. 1033 to require the attachment of the proposed amended pleading to a motion to amend. The requester suggested such a requirement would curb a problem encountered with opposing counsel, who had asked for the requester's consent to an amendment of a complaint, but refused to provide any substantive information about the amendment. In turn, the attorney seeking the amendment would file a motion to amend that likewise did not provide any information on the specific amendment nor was the proposed amended pleading attached to the motion because Pa.R.Civ.P. 1033 does not expressly so require.

The Committee initially observed that Pa.R.Civ.P. 1033 does not address the content for a motion to amend a pleading. Pa.R.Civ.P. 208.2 generally governs the content of motions, but does not specifically require the attachment of documents in support of the motion.

Noting the silence of requirements in the Rules of Civil Procedure, the Committee then examined local rules addressing the amendment of pleadings. Research revealed a handful of local rules governing amendments. These rules focused on the filing of amended pleadings, rather than the content of the motion to amend. McKean County Local Rule 1033 and Potter County Local Rule 1033 both require "[t]he amendment pleading [to] clearly indicate that it is an amended pleading, the paragraphs [to] be renumbered, and the new portion [to] be underlined." Clarion County Local Rule 1033, Franklin/Fulton Counties Local Rule 39-1033.1, Jefferson County Local Rule 1033, Mercer County Local Rule 1033, and Schuylkill County Local Rule 1033 are similar to the McKean and Potter County Local Rules except they do not require the underlining of the new portion of the pleading.

The Committee also examined procedural rules from other jurisdictions. Research revealed a relative dearth of procedural rules governing the requirements for the content of a motion to amend. New Jersey, Utah, and Puerto Rico all require the proposed

amended pleading to be attached to the motion to amend. See N.J.R. 4:9-1 (“A motion for leave to amend shall have annexed thereto a copy of the proposed amended pleading.”); U.R.C.P. Rule 15(a)(2) (“The party must attach its proposed amended pleading to the motion to permit an amended pleading.”); P.R.R.C.P. 13.1 (“The entire amended pleading shall be attached to the motion for leave to amend the pleadings.”). New York is the most comprehensive in that it requires the proposed amended pleading to accompany the motion to amend and to show the changes to be made to the pleading. See N.Y.C.P.L.R. 3025(b) (“Any motion to amend ... pleadings shall be accompanied by the proposed amended ... pleading clearly showing the changes or additions to be made to the pleading.”)

The Committee also examined rules from Delaware and Maryland. Del. Sup. Ct. R. 15(aa) is similar to the McKean and Potter County Local Rules described above in that it applies to the filing of amended pleadings and requires the amended pleading to indicate how it differs from the original pleading. Md.R.C.P. 2-341(e) also applies to the filing of amended pleadings and requires the filing of the amended pleading together with a comparison copy showing through specified textual indicators the text to be deleted and the text to be added.

In developing the amendment to Pa.R.Civ.P. 1033, the Committee favored the approach taken by New York to require the attachment of the proposed amended pleading the motion to amend and for the proposed amended pleading to explicitly show the changes to be made. This will ensure that both parties and the court will be certain of the exact text being amended in a pleading. In addition, the Committee modified this language slightly to include explicit provisions, as found in the Maryland rule, to specify that the proposed amended pleading show through textual indicators, either by striking through or bracketing deletions, or by underlining or bolding additions, the text to be amended.

The Committee published the proposal for comment, see 52 Pa.B. 5118 (August 20, 2022), and received two comments in support of the proposal as drafted.

Subsequent to publication, the amendment to Pa.R.Civ.P. 1033 was further refined. First, it was reconsidered whether a party filing the motion to amend should also file a copy of the proposed amended pleading without textual indicators, *i.e.*, a “clean” copy. The requirement of a clean copy would remove any burden on the trial court and the opposing party from having to resolve the amended notations to determine the final version of the text.

In developing this requirement, it was recognized that requiring both the attachment of a clean copy and a comparison copy may lead to discrepancies between those two documents, and that the rule would benefit with an express requirement establishing the controlling document. It was reasoned that the clean copy is the

document formally replacing the prior pleading, whereas the comparison copy is operating as an aid to the parties and the court in determining the motion to amend. As a result, the rule was modified to provide that the clean copy is the controlling document in the event there are discrepancies between the two documents.

Second, the requirement in the proposed rule permitting various format options to show additions and deletions in the comparison copy of the amended pleading was reconsidered. A single, uniform format would provide consistency in practice and procedure throughout the Commonwealth. As a result, the amendment was modified to require a single, uniform format for showing additions and deletions in the comparison copy: deletions must be shown by striking through the material to be deleted and additions must be shown by underlining the material to be added.

The amendment becomes effective January 1, 2025.