

**SUPREME COURT OF PENNSYLVANIA  
MINOR COURT RULES COMMITTEE**

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.C.P.M.D.J. No. 314**

The Minor Court Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P.M.D.J. No. 314, providing that a complaint may not be reinstated under certain circumstances, 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 neither will constitute a part of the rules nor 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:

**Pamela S. Walker, Counsel  
Minor Court Rules Committee  
Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
PO Box 62635  
Harrisburg, PA 17106-2635  
FAX: 717-231-9526  
minorrules@pacourts.us**

All communications in reference to the proposal should be received by September 11, 2017. 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 Minor Court Rules Committee,

Anthony W. Saveikis  
Chair

## **REPORT**

### **Proposed Amendment of Pa.R.C.P.M.D.J. No. 314**

#### **REINSTATEMENT OF COMPLAINT**

##### **I. Introduction**

The Minor Court Rules Committee (“Committee”) is planning to propose the amendment of Pa.R.C.P.M.D.J. No. 314 to the Supreme Court of Pennsylvania. The rule addresses, among other things, reinstatement of a complaint following a dismissal without prejudice for failure to make timely service upon a defendant. The Committee is proposing to distinguish the procedure for cases when the complaint is dismissed as to all defendants from dismissal for only some of the defendants.

##### **II. Discussion**

Rule 314 addresses matters relating to service, including the return of service, dismissal of the complaint without prejudice for failure to make timely service on the defendant, and reinstatement of the complaint following a dismissal without prejudice for failure to make timely service.

The Committee received an inquiry regarding dismissal without prejudice and the ability to reinstate the complaint when the complaint names multiple defendants, not all defendants have been served, the complaint is dismissed as to the unserved defendant(s), but the case moves forward against the served defendant(s), and proceeds to a hearing or a default judgment. A concern arises when the plaintiff later locates an unserved defendant and requests reinstatement of the complaint pursuant to Rule 314E. The rule does not address how to handle this scenario, and reinstating an adjudicated case to proceed against the previously unserved defendants raises concerns with maintaining the integrity of the court’s original judgment, including the appeal period applicable to the parties.

The Committee discussed the inquiry, and agreed that it would be appropriate to amend the procedures set forth in Rule 314E to distinguish between scenarios when the complaint has been dismissed as to all defendants and when the complaint has been dismissed as to less than all defendants.

##### **III. Proposed Changes**

The Committee plans to propose the amendment of Rule 314 by expanding Rule 314E to contain two subparagraphs. Subparagraph E(1) provides that when the complaint is dismissed without prejudice as to all defendants for failure to make timely service, the complaint may be reinstated. Subparagraph E(2), in contrast, provides that

when the complaint has been dismissed without prejudice for failure to make timely service as to less than all defendants, any further action against an unserved defendant must be initiated by filing a new complaint. The Official Note provides that the new action in subparagraph E(2) is subject to all applicable fees and costs for a new filing.

The Committee also proposes minor stylistic changes throughout Rule 314.