

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

NOTICE OF PROPOSED RULEMAKING

Proposed Reinstatement and Amendment of Pa.R.C.P. No. 230.2

The Civil Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the reinstatement and amendment of Pa.R.C.P. No. 230.2 governing termination of inactive cases, 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 **May 29, 2015**. 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,

Peter J. Hoffman
Chair

Rule 230.2. Termination of Inactive Cases

(a) **At least once a year, [T]the court [may] shall** initiate proceedings to terminate **[a] cases** in which there has been no activity of record for two years or more **[by serving a notice of proposed dismissal of court case], and shall report such information to the Court Administrator of Pennsylvania on a form supplied by the Administrative Office of Pennsylvania Courts or in such format as requested from time to time by the Administrative Office of Pennsylvania Courts.**

Note: This rule provides an administrative method for the termination of inactive cases.

(b)(1) **For each case identified pursuant to subdivision (a), [T]the court shall serve [the] a notice of proposed termination** on counsel of record, and on the parties if not represented, **[sixty] thirty** days prior to the date of the proposed termination. The notice shall contain the date of the proposed termination and the procedure to avoid termination.

(2) The notice shall be served **electronically pursuant to Rule 205.4(g)(1), or [by mail] pursuant to Rule 440 on counsel of record and on the parties, if not represented, at the last address of record.** [If the mailed notice is returned, the notice shall be served by advertising it in the legal publication, if any, designated by the court for the publication of legal notices or in one newspaper of general circulation within the county.]

Note: If the notice mailed to an attorney is returned by the postal service, the prothonotary should check **[a legal directory or contact the Administrative Office of Pennsylvania Courts] the website of the Disciplinary Board of the Supreme Court of Pennsylvania, www.padisciplinaryboard.org,** for a current address. **[Otherwise, publication in the legal newspaper or a newspaper of general circulation within the county is required under this rule if the mailed notice is returned.]**

See subdivision ~~[(e)]~~ (f) for the form of notice.

(c) If no statement of intention to proceed has been filed on or before the date of the proposed termination, the prothonotary shall enter an order as of course terminating the matter [with prejudice] for failure to prosecute.

Note: The prothonotary may not enter an order terminating the action until more than ~~[sixty]~~ thirty days after service of the notice of proposed termination.

A court officer may certify to the prothonotary those matters which have been inactive and in which no statement of intention to proceed has been filed.

(d)(1) If an action has been terminated pursuant to this rule, an aggrieved party may petition the court to reinstate the action.

(2) If the petition is filed within ~~[thirty]~~ sixty days after the entry of the order of termination on the docket, the court shall grant the petition and reinstate the action.

Note: The provision under subdivision (d)(2) for filing a petition within ~~[thirty]~~ sixty days is not intended to set a standard for timeliness in proceedings outside this rule.

(3) If the petition is filed more than ~~[thirty]~~ sixty days after the entry of the order of termination on the docket, the court shall grant the petition and reinstate the action upon a showing that

(i) the petition was timely filed following the entry of the order for termination and

(ii) there is a reasonable explanation or a legitimate excuse for the failure to file both

(A) the statement of intention to proceed prior to the entry of the order of termination on the docket and,

(B) the petition to reinstate the action within **[thirty] sixty** days after the entry of the order of termination on the docket.

Note: The provision under subdivision (d)(2) for filing a petition within **[thirty] sixty** days of the entry of the order of termination on the docket is not a standard of timeliness. Rather, the filing of the petition during that time period eliminates the need to make the showing otherwise required by subdivision (d)(3).

(e) Any case which is reinstated pursuant to subdivision (d) shall be subject to termination with prejudice upon a subsequent termination pursuant to subdivision (a). No subsequent reinstatements will be granted.

[(e)] (f) The notice required by subdivision (b) shall be in the following form:

(Caption)

NOTICE OF PROPOSED TERMINATION OF COURT CASE

The court intends to terminate this case without further notice because the docket shows no activity in the case for at least two years.

You may stop the court from terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed should be filed with the Prothonotary of the Court at _____

Address

on or before _____.

Date

IF YOU FAIL TO FILE THE REQUIRED STATEMENT OF INTENTION TO PROCEED, THE CASE WILL BE TERMINATED **BY THE PROTHONOTARY WITHOUT FURTHER NOTICE.**

BY THE COURT;

Date of this Notice

Officer

[(f)] (g) The **[S]**statement of **[I]**intention to **[P]**proceed shall be in the following form:

(Caption)

Statement of Intention to Proceed

To the Court:

_____ intends to proceed with the above captioned matter.

Date: _____

Attorney for _____

(h) Upon receipt of a statement of intention to proceed, the court may schedule a status conference and establish appropriate timelines to insure a timely and efficient disposition of the case.

Explanatory Comment

In 2014, the Supreme Court of Pennsylvania made efforts to reduce the inventory of civil cases on the dockets of the Courts of Common Pleas. To expedite that process, it suspended Rule 230.2 governing the termination of inactive cases. Originally adopted in 2003, Rule 230.2 implemented the general policy provisions of Rule of Judicial Administration 1901(a) governing the prompt disposition of matters and the termination of inactive cases. While Pa.R.J.A. No. 1901(a) provided general guidelines for conducting an administrative purge, Rule 230.2 set forth a procedural mechanism for a court to perform an administrative purge of cases that had remained on the civil docket for two or more years with no evidence of any activity.

The Civil Procedural Rules Committee has reviewed suspended Rule 230.2 and is proposing amendments intended to ensure that the civil dockets reflect the current inventory of active cases and to encourage attorneys to expeditiously litigate their cases. The proposed amendments will streamline the procedure for the trial court to conduct an administrative purge of inactive cases.

Several concerns with Rule 230.2 were identified. The rule did not specify how often a court should conduct an administrative purge; it only provided a procedure should a court decide to conduct an administrative purge. In order to ensure that the civil case inventory is accurate, the proposed amendment in subdivision (a) will require a court to conduct an administrative purge at least once a year. The court will also be required to report such information to the Court Administrator of Pennsylvania with a form supplied by the Administrative Office of Pennsylvania Courts.

A second problem identified with Rule 230.2 was the provision for service of the notice of proposed termination in subdivision (b). In subdivision (b)(1), the rule required service of the notice of proposed termination on counsel of record or unrepresented

parties at least sixty days prior to the date of termination. To expedite the process, the proposed amendment to subdivision (b)(1) will shorten that time frame and require the notice to be served to at least thirty days prior to the date of termination.

The suspended rule did not provide for modern, efficient methods for giving notice to counsel or unrepresented parties that cases were identified as having no activity on the docket for the previous two years. Subdivision (b)(2) provided for the notice to be served by mail pursuant to Rule 440 at the last address of record. In the event that the notice was returned, publication was required in the legal publication designated by the court for such notices. In conjunction with the shortened time frame in subdivision (b)(1), the proposed amendment of subdivision (b)(2) will update the method for giving notice by allowing the notice to be served electronically pursuant to Rule 205.4 governing electronic filing. The ability to serve notice by mail pursuant to Rule 440 is retained, but publication in the legal journal when a notice has been returned has been eliminated.

A third problem identified with Rule 230.2 was the filing of statements of intention to proceed in order to keep a case active, but then not requiring any further obligation on counsel or an unrepresented party to move the case forward to resolution. Subdivision (c) of the suspended rule required an attorney or unrepresented party to file a statement of intention to proceed before the termination date stated in the notice in order to prevent the purging of the case from the docket. If no statement of intention to proceed was filed, the prothonotary was directed to enter an order terminating the matter for failure to prosecute. In the proposal, this provision has been retained. However, new subdivision (h) will encourage the trial court to manage its cases by scheduling a status conference and establishing appropriate timelines to insure a timely and efficient disposition of the case.

Importantly, the proposed amendment of Rule 230.2 will retain its post-termination procedure set forth in subdivision (d), which allows a party to petition the court to reinstate the action. The suspended rule provided certain requirements for reinstatement depending whether the petition is filed within thirty days or beyond thirty days. While the requirements remain unchanged, subdivision (d) will be amended to provide for sixty days rather than thirty days. New subdivision (e), however, will limit reinstatements of a case. If any case, previously reinstated, is terminated pursuant to this rule it would be terminated with prejudice. No additional reinstatements would be granted. This provision is intended to encourage the efficient litigation of cases and not let them languish on the docket.

By the Civil Procedural
Rule Committee

Peter J. Hoffman
Chair