

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.C.P. No. 237.3

The Civil Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. No. 237.3 governing relief from judgment of *non pros* for failure to file a complaint or by default for failure to plead, 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
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All communications in reference to the proposal should be received by **March 22, 2019**. 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 237.3. Relief from Judgment of *Non Pros* or by Default.

(a) A petition for relief from a judgment of *non pros* or **[of] by** default entered pursuant to Rule 237.1 shall have attached thereto a copy of the complaint, preliminary objections, **and/or** answer which the petitioner seeks leave to file. **All grounds for relief shall be raised in a single petition.**

(b)(1) If the petition is filed within ten days after the entry of a judgment of *non pros* on the docket, the court shall open the judgment if the proposed complaint states a meritorious cause of action.

(2) If the petition is filed within ten days after the entry of a default judgment on the docket, the court shall open the judgment if one or more of the proposed preliminary objections has merit or the proposed answer states a meritorious defense.

Note: Rule 236 requires the prothonotary to give notice of the entry of any judgment and to note in the docket the giving of the notice.

The petitioner must act with reasonable diligence to see that the petition is promptly presented to the court if required by local practice.

See *Schultz v. Erie Insurance Exchange*, 477 A.2d 471 (Pa. 1984) for the requirements for opening a judgment by default and Rule 3051 as to a judgment of *non pros*. Rule 237.3 does not change the law of opening judgments. Rather, the rule supplies two of the three requisites for opening such judgments by presupposing that a petition filed as provided by the rule is timely and with reasonable explanation or legitimate excuse for the inactivity or delay resulting in the entry of the judgment. The requirement of this rule for proceeding within ten days is not intended to set a standard for timeliness in circumstances outside this rule.

See Rules 206.1 through 206.7 governing petition practice.

Explanatory Comment

The Civil Procedural Rules Committee is proposing the amendment of Rule 237.3 governing relief from judgment of *non pros* for failure to file a complaint or by default for failure to plead. In 2016, Rule 237.3 was amended by adding preliminary objections as a type of pleading that may be attached to a petition for relief from default judgment. It has been reported to the Committee that litigants have interpreted this provision to permit the filing of a petition for relief with proposed preliminary objections attached, and then, when that petition is denied, to permit the filing of an additional petition for relief by attaching the proposed answer, notwithstanding the requirement for filing within 10 days of the entry of default judgment. To promote procedural efficiency, the proposed amendment would require a litigant to raise all grounds for relief in a single petition.

By the Civil Procedural
Rules Committee

David L. Kwass
Chair