

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

NOTICE OF PROPOSED RULEMAKING

**Proposed Amendment of Pa.R.C.P. Nos. 1018 and 1033, and
Proposed Adoption of Pa.R.C.P. No. 2005**

The Civil Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. Nos. 1018 and 1033, and the adoption of new Pa.R.C.P. No. 2005 governing the designation of an unknown defendant by a fictitious name 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 **August 4, 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 Civil Procedural Rules Committee,
William Shaw Stickman, IV
Chair

Rule 1018. Caption

Every pleading shall contain a caption setting forth the name of the court, the number of the action and the name of the pleading. The caption of a complaint shall set forth the form of the action and the names of all the parties, **including a fictitious name for an unknown defendant as provided in Rule 2005**, but in other pleadings it is sufficient to state the name of the first party on each side in the complaint with an appropriate indication of other parties.

Note: Civil Actions and proceedings shall be captioned “Court of Common Pleas of _____ County -- Civil Action” or other appropriate form of action.

The caption of all legal papers filed in a medical professional liability action must contain the designation “Civil Action -- Medical Professional Liability Action.” See Rule 1042.16.

Rule 1033. Amendment.

(a) 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) 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 ninety 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) An amendment seeking to substitute the actual name of a defendant for a fictitious name 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 to be named by the amendment has received actual or constructive notice of the institution 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.

[This is an entirely new rule.]

Rule 2005. Unknown Defendant. Fictitious Name.

(a) The plaintiff or joining party may designate an unknown defendant by a fictitious name in a complaint filed to commence an action provided that:

- (1) a defendant's actual name is unknown to the plaintiff or joining party after having conducted a reasonable search with due diligence;
- (2) the fictitious name is averred to be fictitious;
- (3) a factual description of the unknown defendant is averred with sufficient particularity for identification in all but the defendant's actual name; and
- (4) the plaintiff or joining party avers that a reasonable search to determine the actual name has been conducted.

Note: This rule does not authorize use of a fictitious name in an action commenced by a writ of summons.

(b) Within twenty days after the actual name of the defendant has been identified, the plaintiff or joining party shall file a motion to amend the complaint

pursuant to this rule and Rule 1033 by replacing the fictitious name with the defendant's actual name. An affidavit shall be attached to the motion describing the nature and extent of the investigation that was made to determine the identity of the defendant, and the date upon and the manner in which the defendant's actual name was identified.

Note: Rules 1033 and this rule govern the requirements for amending a complaint to replace a fictitious name with the actual name of a defendant.

(c) A defendant introduced to an action by its actual name in an amended complaint, after the filing of a motion pursuant to subdivision (b) and the court's ruling, may respond by preliminary objection challenging compliance with this rule, asserting prejudice or any other ground set forth in Rule 1028.

(d) The court shall grant a motion to amend filed pursuant to subdivision (b), unless the court finds that the party seeking the amendment failed to exercise due diligence in identifying the actual name of the defendant.

(e) No subpoena in aid of discovery relating to a defendant identified by a fictitious name may be issued or be served without leave of court upon motion stating with particularity from whom information is sought and how the discovery will aid in identification of the unknown defendant. In deciding the motion, the court shall weigh the importance of the discovery sought against unreasonable annoyance, embarrassment, oppression, burden, or expense to any person or party from whom the discovery is sought, and prejudice to any person or entity suspect of being the unknown defendant. Leave to serve a subpoena in aid of discovery does not preclude a challenge to the subpoena by the person or entity served.

(f) No final judgment may be entered against a defendant designated by a fictitious name.

Explanatory Comment

The Civil Procedural Rules Committee is proposing new Rule 2005 governing the naming of unknown, or John/Jane Doe, defendants in a complaint. Currently, the Rules of Civil Procedure are silent as to the use of Doe defendants in litigation; however, case law shows that the naming of Doe defendants has occurred. Proposed Rule 2005 is intended to fill this gap by standardizing the procedure in which to assert a cause of action against a Doe defendant.

The proposed rule would require a complaint using a John/Jane Doe or similar designation to describe the defendant and its liability producing conduct with sufficient specificity so as to permit identification in all but the unknown defendant's actual name. The rule imposes a duty on the plaintiff or joining party to exercise due diligence in identifying the actual name of the defendant both before and after the complaint is filed. While a sufficient description of an unknown defendant is typically fact specific to a particular case, it may include the physical characteristics of the unknown defendant, the position or title of the job performed by the unknown defendant, the alleged conduct of the unknown defendant, and how the unknown defendant is connected to the action.

Once served, the previously designated Doe defendant may challenge the filing party's due diligence by filing preliminary objections, asserting prejudice or any other ground set forth in Rule 1028. A defendant originally named by a fictitious name is not precluded from asserting nor is the grant of a motion to amend determinative of a defense based on a statute of limitations or repose.

It is important to note that designating a Doe defendant as a mere placeholder or as use as a class of defendants, e.g., John Doe Defendants 1-10, is not a valid use of Rule 2005. The rule is not intended to create a practice of naming Doe defendants as a catch-all category in the event a probable defendant is not named in a complaint. Rule

2005 requires the information in the complaint concerning the Doe defendant to sufficiently describe that defendant for all intents and purposes except by its actual name.

Rule 2005 is not intended to affect the substantive rights of any litigant. The ability to substitute the actual name of the Doe defendant after the expiration of the statute of limitations does not impermissibly extend it. Rule 2005 does not extend the time for filing an action as prescribed by the applicable statute of limitations.

The proposed rule is intended solely to provide a procedural mechanism to substitute the actual name of a Doe-designated defendant where the action has been filed within the limitations period and the defendant has been adequately described in the complaint to demonstrate that it was *that defendant* against whom the action was asserted.

By the Civil Procedural
Rules Committee

William Shaw Stickman IV
Chair