

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.C.P. No. 1035.3

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 1035.3 for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. 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 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 **September 30, 2021**. 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,

John J. Hare
Chair

PUBLICATION REPORT

The Civil Procedural Rules Committee is considering proposing to the Supreme Court an amendment to Pa.R.C.P. No. 1035.3 governing summary judgment to permit a party to request the trial court to provide on the record the reasons for the denial of summary judgment.

This proposal arose from a request of a state association seeking a procedural requirement for a court, upon motion, to state the reasons for granting or denying a motion for summary judgment. In support of its request, the association contended:

In Common Pleas courts, decisions granting and denying critical and often complex motions for summary judgment are sometimes issued by way of orders with no opinion explaining the basis for the decision. Orders without any stated reasons for the decision appear to be more common in some counties and less common in others.

When these important motions are decided without opinion, the parties are left without knowledge of what issues have been decided and how they were decided, often making it difficult to know how to proceed further with the case in regard to issues for trial and whether to attempt to settle. Often later judges in the same case, or in a subsequent case where the decision becomes pertinent, are in the dark as to the meaning of the decision.

The association noted that the present practice varies among judicial districts with some providing the rationale and others not at all. A rule would provide some level of statewide consistency. It also recognized the tension between the benefit of the parties receiving reasons and the anticipated burden on the judges who currently do not provide reasons.

Upon review of the proposal, the Committee agreed there is a benefit to the parties in understanding the rationale for the decision insofar as it better informs the parties as to which outstanding questions of material facts may exist, the applicability of the law to those facts, and whether a right of appeal may exist. This information may result in more productive settlement discussions, pretrial conferences, and trial of contested matters especially when the parties' stipulations and admission do not facilitate identification of material items of dispute.

In the absence of data to indicate the precise scope of present judicial practice of providing rationale, the Committee is unable to determine the extent of the burden such a requirement may place on judges who currently do not provide reasons. To lessen any burden, the Committee agreed that a statement of reasons should not be tantamount to a full opinion; rather, the reasons may be set forth in a brief written opinion, a written note appended to or footnoted in an order, or, as stated previously, orally on the transcribed

record. Further, the Committee revised the proposal to remove any requirement for reasons for granting a motion for summary judgment. That rationale would be forthcoming in the form of a Pa.R.A.P. 1925 opinion if and when an appeal is taken from a final order. Moreover, the Committee believed that any procedural mechanism for requesting a statement of reasons should not result in the possibility of prolonging litigation or create more work than is necessary for the judge. Therefore, the Committee added to the rule that judicial non-compliance should neither be an appealable order nor serve as a basis for seeking judicial relief. As for the timing element, the Committee did not believe that 15 days was overly burdensome on a judge to disclose reasons for a recent decision. This deadline was intended to be directory, not mandatory.

In sum, the proposal would amend Rule 1035.3 to add subdivision (f) to permit a party to request the trial court to provide its reason for denying a motion for summary judgment and for the judge to provide the same within 15 days of the request. This new subdivision may change the present practice for some judges and the Committee specifically seeks input from those jurists. There may be a day when subdivision (f) becomes unnecessary when all judges, as a matter of course, provide their reasoning contemporaneous with an order denying a motion for summary judgement.

The Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.

Rule 1035.3. Response. Judgment for Failure to Respond.

(a) Except as provided in subdivision (e), the adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response within **[thirty]** **30** days after service of the motion identifying

(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or

Note: If the moving party has supported the motion with oral testimony only, the response may raise the defense that there is a genuine issue of material fact because the cause of action is dependent upon the credibility and demeanor of the witnesses who will testify at trial. **[See] See** *Nanty-Glo v. American Surety Co.*, 309 Pa. 236, 163 A. 523 (1932); *Penn Center House, Inc. v. Hoffman*, 520 Pa. 171, 553 A.2d 900 (1989).

(2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.

(b) An adverse party may supplement the record or set forth the reasons why the party cannot present evidence essential to justify opposition to the motion and any action proposed to be taken by the party to present such evidence.

(c) The court may rule upon the motion for judgment or permit affidavits to be obtained, depositions to be taken or other discovery to be had or make such other order as is just.

(d) Summary judgment may be entered against a party who does not respond.

Note: Procedural requirements with respect to argument and briefs are governed by local rule.

In certain counties, the failure to respond to a motion may result in the motion being deemed uncontested and the entry of the judgment sought.

[See] See Rule 1035.2 providing for the entry of judgment in whole or in part.

(e)(1) Nothing in this rule is intended to prohibit a court, at any time prior to trial, from ruling upon a motion for summary judgment without written responses or briefs if no

party is prejudiced. A party is prejudiced if he or she is not given a full and fair opportunity to supplement the record and to oppose the motion.

(2) A court granting a motion under subdivision (e)(1) shall state the reasons for its decision in a written opinion or on the record.

Note: Subdivision (e) does not abrogate the requirement that a motion for summary judgment be timely filed pursuant to Rule 1035.2 or case management order.

If a motion is not timely filed, subdivision (e) provides the court with the discretion as to the manner of proceeding, including whether to consider the motion at all. The court should not consider the motion except in the interests of justice.

(f) If the reasons for the order denying summary judgment do not appear of record, any party may, within ten days of the order, request the trial court to provide the reasons for such ruling, either in writing or orally, on the record within 15 days of the request. The failure of the trial court to provide such reasons pursuant to this subdivision shall not be immediately appealable nor an independent basis for judicial relief.