

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

NOTICE OF PROPOSED RULEMAKING

**Proposed Amendment of Pa.R.Civ.P. 2005
with Corollary Amendments to Pa.R.A.P. 1007 and 1018**

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.Civ.P. 2005 with corollary amendments to Pa.R.A.P. 1007 and 1018 for the reasons set forth in the accompanying publication 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 report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be 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:

**Karla M. Shultz, Counsel
Civil Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9526
civilrules@pacourts.us**

All communications in reference to the proposal should be received by **November 4, 2022**. 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,

Kathleen D. Bruder
Chair

Rule 2005. [Unknown] Known, but Unnamed Defendant. Doe Designation.

- [(a) This rule shall only apply to *in personam* actions.**
- (b) The plaintiff or joining party may designate an unknown defendant by a Doe designation in a complaint 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 Doe designation is averred to be fictitious;**
 - (3) a factual description of the unknown defendant is averred with sufficient particularity for identification; 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 Doe designation in an action commenced by a writ of summons.

The unknown defendant should be designated by a Doe designation such as John Doe or Jane Doe.

- (c) Within 20 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 Doe designation 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: Rule 1033 and this rule govern the requirements for amending a complaint to replace a Doe designation with the actual name of a defendant.

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

- (e) A defendant introduced to an action by its actual name in an amended complaint, after the filing of a motion pursuant to subdivision (c) 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.
- (f) No subpoena in aid of discovery relating to a defendant identified by a Doe designation 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 suspected 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.
- (g) No final judgment may be entered against a defendant designated by a Doe designation.]

[EXPLANATORY COMMENT

The Supreme Court of Pennsylvania has adopted 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. 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 rule requires a complaint using a John/Jane Doe or similar designation to describe the defendant with sufficient particularity for identification. 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 Doe

designation 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 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.]

(This is entirely new text.)

- (a) **Scope.** This rule shall only apply to *in personam* actions.
- (b) **Doe Designation.** The plaintiff or joining party may designate a known, but unnamed defendant with a Doe designation, such as John Doe, Jane Doe, or ABC Corporation.
- (c) **Content of Complaint.**
 - (1) The complaint shall aver:
 - (i) the plaintiff or joining party is unable to ascertain a known, but unnamed defendant's actual name after having conducted a reasonable search with due diligence;
 - (ii) the Doe designation is fictitious;
 - (iii) a detailed description of the reasonable search with due diligence for the known, but unnamed defendant's actual name;

- (iv) a factual description of the known, but unnamed defendant with sufficient particularity for identification; and
 - (v) the plaintiff or joining party conducted a reasonable search to determine the actual name of the defendant.
 - (2) The plaintiff or joining party shall not designate a class of known, but unidentified defendants, *e.g.*, John Doe 1-10, as a placeholder in the complaint. The court may impose sanctions for such a designation.
- (d) **Motion to Amend Complaint.**
- (1) Within 20 days after the actual name of the Doe-designated defendant has been ascertained, the plaintiff or joining party shall file a motion to amend the complaint pursuant to this rule and Rule 1033 by replacing the Doe designation with the defendant's actual name. An affidavit shall be attached to the motion setting forth the nature and extent of the investigation that was made to ascertain the name of the defendant, and the date upon and the manner in which the defendant's actual name was ascertained.
 - (2) The plaintiff or joining party shall serve the motion to amend on the named defendant pursuant to Rules 400 *et seq.*
 - (3) A Doe-designated defendant to be named in a complaint may file and serve an answer to the motion and contest the adequacy of the description of the Doe-designated defendant within the complaint, whether the plaintiff or joining party has conducted a reasonable search with due diligence to ascertain the name of the defendant, and the timeliness of the motion.
- (e) **Trial Court Determination on Motion to Amend.** The court shall grant a motion to amend filed pursuant to subdivision (d) if the court determines the allegations in the motion and the complaint support a finding that the party seeking the amendment failed to exercise due diligence in identifying the actual name of the defendant.
- (f) **Preliminary Objection.** A defendant introduced to an action by its actual name in an amended complaint, after the filing of a motion pursuant to subdivision (d) 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.

- (g) **Subpoenas.** No subpoena in aid of discovery relating to a Doe-designated defendant may be issued or 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 Doe-designated 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 suspected of being the Doe-designated defendant. Leave to serve a subpoena in aid of discovery does not preclude a challenge to the subpoena by the person or entity served.
- (h) **No Entry of Final Judgment Permitted.** No final judgment may be entered against a Doe-designated defendant.

Comment: This rule authorizes the use of a Doe designation in an action commenced by a complaint. It does not authorize use of a Doe designation in an action commenced by a writ of summons. The rule requires a complaint using a John/Jane Doe, ABC Corporation, or a similar designation to describe the defendant with sufficient particularity for identification. 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 a known, but unnamed defendant is typically fact specific to a particular case, it may include the physical characteristics of the known, but unnamed defendant, the position or title of the job performed by the known, but unnamed defendant, the alleged conduct of known, but unnamed defendant, and how the known, but unnamed defendant is connected to the action.

It is important to note that designating a Doe defendant as a mere placeholder or 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 designating known, but unnamed defendants as a catch-all category in the event a probable defendant is not named in a complaint. Designating known, but unnamed defendants in this manner may lead to sanctions. Rule 2005 requires the information in the complaint concerning the known, but unnamed defendant to sufficiently describe that defendant for all intents and purposes except by its actual name.

Once the actual name of Doe-designated defendant has been identified, a plaintiff or joining party must file a motion to amend pursuant to the requirements of subdivision (d) of this rule and Rule 1033. The trial court will grant a motion to amend unless the allegations in the motion and the complaint support a finding that the party seeking the amendment failed to exercise due diligence in ascertaining the actual name of the defendant.

Once served the complaint, the previously Doe-designated defendant may challenge the plaintiff or joining party's due diligence by filing preliminary objections, asserting prejudice or any other ground set forth in Rule 1028. A defendant originally designated as a Doe 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.

Rule 2005 is not intended to affect the substantive rights of any litigant. The ability to substitute the actual name of the Doe-designated 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 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.

Rule 1007. Commencement of Action.

An action may be commenced by filing with the prothonotary:

- (1) a *praecipe* for a writ of summons^[,]; or
- (2) a complaint.

[Note] Comment:

For the form of the writ of summons, see Rule 1351.

See Rule 205.5 governing the requirement for filing a cover sheet with the pleading commencing the action.

Rule 2005(b) does not authorize the filing of a *praecipe* for a writ of summons if **[an unknown] a known, but unnamed** defendant is to be identified by a Doe designation.

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 Doe designation for **[an unknown] a known, but unnamed** 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] Comment: 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.

The caption of all legal papers filed in a civil action by and against a minor must designate the minor by the initials of his or her first and last name. See Rule 2028.

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

PUBLICATION REPORT

**Proposed Amendment of Pa.R.Civ.P. 2005
with Corollary Amendments to Pa.R.A.P. 1007 and 1018**

The Civil Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pennsylvania Rule of Civil Procedure 2005 governing the naming of unknown defendants in a complaint with a Doe designation.

The Committee considered a request to clarify Rule 2005 because John Doe complaints were not being filed in compliance with the rule. Adopted in 2019, Rule 2005 was intended to standardize the procedure for naming a Doe defendant. It requires a plaintiff using a Doe designation to describe that defendant with sufficient particularity for identification and to exercise due diligence in identifying the Doe defendant both before and after the filing of the complaint. Once the actual name of the Doe defendant is identified, the plaintiff must then file a motion to replace the Doe designation with the defendant's actual name.

The requester indicated that, in practice, some John Doe complaints routinely provide a minimal description in the averments as to the due diligence of the plaintiff to determine the name of the defendant. Absent this information, the trial court is unable to determine the nature of the plaintiff's search to determine the actual name of the defendant. In addition, the requester noted that some complaints have used John Doe as a placeholder in the event the plaintiff discovers additional defendants who may be liable in contravention to the intent of the rule.

To address the first concern, the Committee is proposing modification of the current rule in two respects. Current subdivision (b) would retain language authorizing the use of John Doe defendants. Current subdivisions (b)(1)-(4) would be placed in a new subdivision (c) setting forth the requirements of the complaint. Included in new subdivision (c) would be a requirement for an averment in the complaint describing the steps taken by plaintiff in its reasonable search to determine the defendant's actual name.

For the second concern, the Committee considered the commentary that accompanied the adoption of the rule in 2019. The rule had never been contemplated as creating a mechanism for plaintiffs to designate a placeholder for any possible future defendants who may not have been discovered or known at the time of the filing of the complaint. To obviate any question as to the use of "John Doe" pursuant to the rule, the Committee proposes adding this commentary into the rule text as subdivision (c)(2). As a result, the rule would expressly prohibit this use. Further, the proposed amendment

would permit the trial court to sanction a litigant who insists on using a Doe designation as a placeholder.

In addition, the Committee also identified other portions of the rule worthy of clarification. First, the proposal would add additional procedures regarding the motion to amend when replacing the Doe designation with the defendant's actual name. New subdivision (d)(1) would retain the requirement of the current rule to file the motion to amend within 20 days of ascertaining the actual name of the defendant and to attach to the motion an affidavit describing the steps taken to ascertain the name of the defendant. New subdivisions (d)(2)-(3) would add a requirement for service of the motion on the to-be-named defendant and give that defendant the opportunity to contest the adequacy of the description of the Doe defendant in the complaint, whether a reasonable search was conducted with due diligence to ascertain the name of the defendant, and the timeliness of the motion.

Second, the Committee observed that the current rule requires the trial court to grant the motion unless the court finds that the party seeking the amendment failed to exercise due diligence. The proposed change in new subdivision (e) would clarify that the trial court does not make findings as to the party's due diligence; rather, the trial court determines whether to grant the motion to amend based on whether the allegations in the motion and the complaint support a finding that the party exercised due diligence in determining the actual name of the defendant.

Finally, the Committee is proposing changing the term "unknown defendant" to "known, but unnamed defendant" throughout the rule. An "unknown defendant" suggests a defendant that is not known at all and will be identified in the future. In contrast, a "known, but unnamed defendant" is intended to clarify that the plaintiff may use Doe designation because it has identified a defendant exists, but has not yet been able to ascertain the name of that defendant.

Given the affect of these amendments, the Committee proposes replacing the entirety of the text and commentary to Rule 2005. Corollary amendments to Rule 1007 and Rule 1018 reflect the change to the description of the Doe designation.

The Committee invites all comments, concerns, and suggestions.