

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

Proposed Recommendation No. 261

**Proposed Amendment of Rule 1026 Governing
Time for Filing and Notice to Plead**

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 1026 governing time for filing and notice to plead be amended as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent no later than **October 3, 2014** to:

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Rule 1026. Time for Filing. Notice to Plead

(a)(1) Except as provided by Rule 1042.4 or by subdivision ~~[(b)](a)(2)~~ of this rule, every pleading subsequent to the complaint shall be filed within twenty days after service of the preceding pleading, but no pleading need be filed unless the preceding pleading contains a notice to defend or is endorsed with a notice to plead.

Note: For the form of notice to defend see Rule 1018.1 and for the form of notice to plead see Rule 1361.

Additional time within which to plead may be sought under Rule 248.

Rule 1042.4 governs actions in which a professional liability claim is asserted.

~~[(b)](2)~~ A defendant served outside the United States shall have sixty days from service of the complaint within which to plead.

(b) No pleading may be stricken for non-compliance with the time limits set forth in subdivision (a) unless the party seeking to strike the pleading demonstrates that it has been substantially prejudiced by the late pleading.

Explanatory Comment

Existing Rule 1026 is incomplete because it does not address the issue of the standard to be applied where a party, through preliminary objections raising a failure of a pleading to conform to rule of court, seeks to have a pleading stricken on the ground that it was filed outside the time limits of Rule 1026.

Most trial courts look to *Fisher v. Hill*, 81 A.2d 860, 866 (Pa. 1951), and its progeny. In *Fisher*, the Supreme Court ruled that the trial court did not abuse its discretion in refusing to strike the defendant's answer and new matter on the ground that the pleading was untimely filed.

In its opinion, the Court said that the word "shall," as used in Rule 1026 is not mandatory in the sense that it admits no exception. The Court based its ruling on Rule 126 which provides that the rules are to be liberally construed to secure the just, speedy, and inexpensive determination of any action or proceeding and that a court may disregard errors or defects of procedure which do not affect the substantial rights of the parties. As a result, the Court established the standard that "dilatory pleadings may be filed if the opposing party is not prejudiced and justice requires." *Fisher*, 81 A.2d at 866.

Notwithstanding this precedent, it has been reported to the Civil Procedural Rules Committee that there have been instances in which a trial court judge, in the exercise of his or her discretion, has stricken a pleading solely on a showing of non-compliance with Rule 1026 where no party has been prejudiced by the late filing.

The purpose of this amendment is to incorporate into Rule 1026 a standard that does not penalize a party for a late filing unless substantial prejudice is established. This approach is intended to ensure that errors and defects that do not affect the

substantial rights of the parties may be disregarded without impacting the just and prompt disposition of cases.

By the Civil Procedural
Rules Committee

Peter J. Hoffman
Chair