

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

Proposed Recommendation No. 253

**Proposed Amendment of Rule 3051 Governing
Relief from Judgment of Non Pros**

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 3051 governing relief from judgment of non pros 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 **November 4, 2011** to:

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Rule 3051. Relief from Judgment of Non Pros

(a) Relief from a judgment of non pros shall be sought by petition. All grounds for relief, whether to strike off the judgment or to open it, must be asserted in a single petition.

(b) **Except as provided in subdivision (c), [If] if** the relief sought includes the opening of the judgment, the petition shall allege facts showing that

(1) the petition is timely filed,

(2) there is a reasonable explanation or legitimate excuse for the inactivity or delay, and

(3) there is a meritorious cause of action.

Note: See Rule 237.2 for special provisions relating to relief from a judgment of non pros entered pursuant to Rule 1037(a).

(c)(1) This subdivision governs relief from a judgment of non pros dismissing a case for inactivity based on case law allowing a defendant to obtain a judgment of non pros where (i) there has been a lack of due diligence on the part of the plaintiff for failure to proceed with reasonable promptitude, (ii) the plaintiff has failed to show a compelling reason for the delay, and (iii) the delay has caused actual prejudice to the defendant.

Note: See *Jacobs v. Halloran*, 551 Pa. 350, 358, 710 A.2d 1098, 1103 (1998), for the requirements for a trial court to enter a judgment of non pros for inactivity.

(2) If the relief sought includes the opening of the judgment of non pros for inactivity, the petition shall allege facts showing that

(i) the petition is timely filed,

(ii) there is a meritorious cause of action, and

(iii) the record of the proceedings granting the judgment of non pros does not support a finding that each of the three requirements for entry of a

judgment non pros for inactivity as set forth in subdivision (c)(1) has been satisfied.

Explanatory Comment

The Civil Procedural Rules Committee is proposing the amendment of Rule 3051 governing relief from a judgment of non pros to clarify the requirements for opening a judgment of non pros entered for inactivity. In *Madrid v. Alpine Mountain Corp.*, 2011 WL 2163777(6/3/11), the Superior Court of Pennsylvania ruled that under the current language of Rule 3051(b) it was compelled to conclude that a plaintiff is not entitled to relief from a judgment of non pros for inactivity without a showing that there was a reasonable explanation or legitimate excuse for the inactivity. Under this interpretation of Rule 3051(b), a judgment of non pros for inactivity cannot be opened even if the record did not establish actual prejudice unless the plaintiff could also show a reasonable explanation or legitimate excuse for the delay. Thus, while the defendant was required to show that the delay caused actual prejudice in order to obtain a judgment of non pros for inactivity, the plaintiff who cannot show a reasonable excuse for the delay may not challenge the entry of the judgment of non pros on the ground that the record failed to establish actual prejudice.

New subdivision (c) is intended to alter the ruling in *Madrid* by providing for the opening of a judgment of non pros dismissing a case for inactivity upon a showing that the defendant did not meet each of the three requirements for the entry of a judgment of non pros.

By the Civil Procedural
Rules Committee

Diane W. Perer
Chair