

# THE COURTS

## Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 19]

## Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

### Proposed Recommendation No. 177; Proposed New Rule 230.2 Governing Termination of Inactive Cases

The Civil Procedural Rules Committee proposes that new Rule of Civil Procedure 230.2 governing termination of inactive cases be promulgated 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 not later than March 1, 2002 to:

Harold K. Don, Jr., Esquire  
Counsel  
Civil Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, Pennsylvania 17055

or E-Mail to  
civil.rules@supreme.court.state.pa.us

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

*(Editor's Note: The following section is new and is printed in regular type to enhance readability.)*

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 200. BUSINESS OF COURTS

#### Rule 230.2. Termination of Inactive Cases.

(a) The court may initiate proceedings to terminate a case in which there has been no activity of record for two years or more by serving a notice of proposed dismissal of court case.

**Official Note:** This rule provides an administrative method for the termination of inactive cases.

(b)(1) The court shall serve the notice on counsel of record, and on the parties if not represented, sixty days prior to the date of the proposed termination. The notice shall contain the date of the proposed termination, a brief identification of the matter to be terminated and the procedure to avoid termination.

(2) The notice shall be served by mail pursuant to Rule 440. If the mailed notice is returned, the notice shall be

served by advertising it in the legal publication, if any, designated by the court for the publication of legal notices or in one newspaper of general circulation within the county.

**Official Note:** If the notice mailed to an attorney is returned by the postal service, the prothonotary should check a legal directory or contact the Administrative Office of Pennsylvania Courts for a current address. Otherwise, publication in the legal newspaper or a newspaper of general circulation within the county is required under this rule if the mailed notice is returned.

See subdivision (e) for the form of notice.

(c) If no statement of intention to proceed is filed prior to the entry of the order of termination on the docket, the prothonotary shall enter an order as of course terminating the matter with prejudice for failure to prosecute.

**Official Note:** A court officer may certify to the prothonotary those matters which have been inactive and in which no statement of intention to proceed has been filed.

(d)(1) If an action has been terminated pursuant to this rule, an aggrieved party may petition the court to reinstate the action.

(2) If the petition is filed within thirty days after the entry of the order of termination on the docket, the court shall grant the petition and reinstate the action.

**Official Note:** The provision under subdivision (d)(2) for filing a petition within thirty days is not intended to set a standard for timeliness in proceedings outside this rule.

(3) If the petition is filed more than thirty days after the entry of the order of termination on the docket, the court shall grant the petition and reinstate the action upon a showing that

(i) the petition was timely filed following the entry of the order for termination and

(ii) there is a reasonable explanation or a legitimate excuse for the failure to file both

(A) the statement of intention to proceed prior to the entry of the order of termination on the docket and,

(B) the petition to reinstate the action within thirty days after the entry of the order of termination on the docket.

**Official Note:** The provision under subdivision (d)(2) for filing a petition within thirty days of the entry of the order of termination on the docket is not a standard of timeliness. Rather, the filing of the petition during that time period eliminates the need to make the showing otherwise required by subdivision (d)(3).

(e) The notice required by subdivision (b) shall be in the following form:

(Caption)

#### NOTICE OF PROPOSED TERMINATION OF COURT CASE

The court intends to terminate this case without further notice because the docket shows no activity in the case for at least two years.

You may stop the court from terminating the case by filing a Statement of Intention to Proceed. The Statement

of Intention to Proceed should be filed with the Prothonotary of the Court at \_\_\_\_\_ Address

on or before \_\_\_\_\_ Date

IF YOU FAIL TO FILE THE REQUIRED STATEMENT OF INTENTION TO PROCEED, THE CASE WILL BE TERMINATED.

BY THE COURT;

\_\_\_\_\_  
Date of this Notice Officer

(f) The Statement of Intention to Proceed shall be in the following form:

(Caption)

Statement of Intention to Proceed

To the Court:

\_\_\_\_\_ intends to proceed with the above captioned matter.

Date: \_\_\_\_\_ Attorney for \_\_\_\_\_

TITLE 201. RULES OF JUDICIAL ADMINISTRATION

CHAPTER 19. MISCELLANEOUS ADMINISTRATIVE PROVISIONS

MISCELLANEOUS ADMINISTRATIVE PROVISIONS

Rule 1901. Prompt disposition of matters; termination of inactive cases.

\* \* \* \* \*

(b) Primary responsibility for implementation of policy.—

(1) [ Each ] Except as provided by paragraph (3), each court of common pleas is primarily responsible for the implementation of the policy expressed in subdivision (a) of this rule and is directed to make local rules of court for such purposes applicable to the court and to the community court or district justices of the peace of the judicial district.

\* \* \* \* \*

(3) The policy set forth in subdivision (a) of this rule shall be implemented in the civil trial division of the courts of common pleas pursuant to Rule of Civil Procedure 230.2.

\* \* \* \* \*

Explanatory Comment

Recommendation No. 177 proposes the promulgation of new Rule of Civil Procedure 230.2 governing the termination of inactive cases. Two aspects of the recommendation merit comment.

I. Rule of Civil Procedure

The termination of inactive cases is presently the subject of Rule of Judicial Administration 1901. It is proposed that there be a rule of civil procedure to govern matters within the scope of the civil trial division of the courts of common pleas. Proposed Rule 230.2 is tailored to the needs of the civil trial division.

Rule of Judicial Administration 1901 is not self-executing but rather calls upon the courts of common pleas to promulgate local rules. In contrast, proposed Rule 230.2 provides a complete procedure and a uniform

statewide practice. Local rules should not be required to implement the statewide rule.

A conforming amendment to Pa.R.J.A. 1901(b) is proposed to accommodate the new rule of civil procedure.

II. Inactive Cases

The purpose of the rule is to eliminate inactive cases from the judicial system. The process is initiated by the court. After giving notice of intent to terminate an action for inactivity, the course of the procedure is with the parties. If the parties do not wish to pursue the case, they will take no action and "the prothonotary shall enter an order as of course terminating the matter with prejudice for failure to prosecute." If a party wishes to pursue the matter, he or she will file a notice of intention to proceed and the action shall continue. If no notice of intention to proceed is filed, the court on its own will eventually terminate the action.

The procedure is one that does not involve legal issues, briefs or hearings. The matter is perfunctory. If a party files a statement of intention to proceed, the matter will proceed.

a. Where the action has been terminated

If the action is terminated when a party believes that it should not have been terminated, that party may proceed under Rule 230(d) for relief from the order of termination. An example of such an occurrence might be the termination of a viable action when the aggrieved party did not receive the notice of intent to terminate and thus did not timely file the notice of intention to proceed.

The timing of the filing of the petition to reinstate the action is important. If the petition is filed within thirty days of the entry of the order of termination on the docket, subdivision (d)(2) provides that the court must grant the petition and reinstate the action. If the petition is filed later than the thirty-day period, subdivision (d)(3) requires that the plaintiff must make a showing to the court that the petition was promptly filed and that there is a reasonable explanation or legitimate excuse both for the failure to file the notice of intention to proceed prior to the entry of the order of termination on the docket and for the failure to file the petition within the thirty-day period under subdivision (d)(2).

Subdivision (d)(2) eases the burden of a party against whom an order of termination has been entered and who moves promptly for relief from that order. However, as stated in the note, the thirty-day period specified in that subdivision is not intended to set a standard for timeliness in circumstances outside that rule.

b. Where the action has not been terminated

An action which has not been terminated but which continues upon the filing of a notice of intention to proceed may have been the subject of inordinate delay. In such an instance, the aggrieved party may pursue the remedy of a common law non pros which exists independently of termination under proposed Rule 230.2. In contrast to Rule 230.2, the procedure for a common law non pros is subject to the stringent requirements imposed by case law.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr., Chair

[Pa.B. Doc. No. 02-34. Filed for public inspection January 11, 2002, 9:00 a.m.]

**PART I. GENERAL**  
**[231 PA. CODE CH. 200]**

**Proposed Recommendation No. 175; Proposed  
Amendment to Rule 230 Governing Voluntary  
Nonsuit**

The Civil Procedural Rules Committee proposes that new Rule of Civil Procedure 230 governing involuntary nonsuit be promulgated 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 not later than March 1, 2002 to:

Harold K. Don, Jr., Esquire  
Counsel  
Civil Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, Pennsylvania 17055

or E-Mail to  
civil.rules@supreme.court.state.pa.us

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

**Annex A**

**TITLE 231. RULES OF CIVIL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 200. BUSINESS OF COURTS**

**Rule 230. Voluntary Nonsuit.**

(a) A voluntary nonsuit shall be the exclusive method of voluntary termination of an action [ , ] in whole or in part by the plaintiff during the trial.

**Official Note:** A plaintiff who asserts a cause of action ex contractu and joins as defendants persons liable to the plaintiff in different capacities may not [ **suffer** ] **obtain** a voluntary nonsuit as to a defendant primarily liable without [ **suffering** ] **obtaining** a voluntary nonsuit as to all defendants secondarily liable. Rule 2231(e).

(b) A plaintiff [ **who has rested the case in chief** ] may not [ **suffer** ] **obtain** a voluntary nonsuit without leave of court **upon good cause shown** and cannot do so after the close of all the evidence.

**Explanatory Comment**

Rule 230 presently permits a plaintiff to "suffer" a nonsuit at his or her whim. It is suggested that the exercise of this right for no good reason, e.g., simply because the plaintiff is not satisfied with the progress of the trial, is unfair to other parties to the action and a waste of judicial time and resources. It is proposed,

therefore, that the right of a plaintiff to "obtain" a voluntary nonsuit be made subject to the approval of the court "upon good cause shown".

*By the Civil Procedural Rules Committee*

R. STANTON WETTICK, Jr.,  
*Chair*

[Pa.B. Doc. No. 02-35. Filed for public inspection January 11, 2002, 9:00 a.m.]

**PART I. GENERAL**  
**[231 PA. CODE CH. 200]**

**Proposed Recommendation No. 176; Proposed  
New Rule 212.4 Governing Pre-Trial Procedure in  
Appeals Pursuant to the Eminent Domain Code**

The Civil Procedural Rules Committee proposes that new Rule of Civil Procedure 212.4 governing pretrial procedure in appeals pursuant to the Eminent Domain Code be promulgated 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.

All communications in reference to the proposed recommendation should be sent not later than March 1, 2002 to:

Harold K. Don, Jr., Esquire  
Counsel  
Civil Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, Pennsylvania 17055

or E-Mail to  
civil.rules@supreme.court.state.pa.us

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

*(Editor's Note:* The following section is new and is printed in regular type to enhance readability.)

**Annex A**

**TITLE 231. RULES OF CIVIL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 200. BUSINESS OF COURTS**

**Rule 212.4. Applicability of Rules. Eminent Domain.**

(a) The name of a valuation expert and his or her statement of valuation required to be served on the opposing party by Section 703(2) of the Eminent Domain Code shall be served within the time provided for the filing of a pre-trial statement by Rule 212.1. A party failing to comply with this rule shall be subject to the sanctions set forth in Rule 212.2(c).

(b) Section 703(2) of the Eminent Domain Code, 26 P. S. § 1-703(2), is suspended only insofar as it provides for the name and report of the valuation expert to be served at least ten days before the commencement of the trial.

### Explanatory Comment

Section 1-703(2) of the Eminent Domain Code, 26 P. S. § 1-703(2),<sup>1</sup> requires that an expert report be filed at least 10 days prior to the commencement of the trial. At the time this requirement was enacted, very few courts required the filing of an expert report prior to trial. The ten-day requirement for exchanging reports now provides less notice of the proposed expert testimony than is provided in other civil actions.

Pa.R.C.P. 212.1<sup>2</sup> requires the filing of a pre-trial statement

(1) by the plaintiff not later than sixty days prior to the earliest trial date,

(2) by the defendant not later than thirty days prior to the earliest trial date, and

(3) by an additional defendant not later than fifteen days prior to the earliest trial date.

The pretrial statement pursuant to Rule 212.2(a)<sup>3</sup> is required to contain "a list of the names and addresses of all person who may be called as witnesses by the party filing the statement" and "a copy of the written report . . . containing the opinion and the basis for the opinion of any person who may be called as an expert witness"

<sup>1</sup> § 1-703. Trial in the court of common pleas on appeal  
At the trial in court on appeal:

(1) \* \* \*  
(2) If any valuation expert who has not previously testified before the viewers is to testify, the party calling him must disclose his name and serve a statement of his valuation of the property before and after the condemnation and his opinion of the highest and best use of the property before the condemnation and of any part thereof remaining after the condemnation, on the opposing party at least ten days before the commencement of the trial.

(3) \* \* \*  
<sup>2</sup> Rule 212.1. Civil Actions to be Tried by Jury. Notice of Earliest Trial Date. Time for Completing Discovery and Filing Pre-Trial Statement

(a) In a civil action in which the damages sought exceed the jurisdictional limit for compulsory arbitration and which is to be tried by a jury, notice shall be given by the court of the earliest date on which the case may be tried. The notice should be given at least thirty days before the plaintiff's pre-trial statement is due to be filed. The notice may include a date by which discovery shall be completed.

Note: It is not intended by this rule to change the form and manner of notice of trial.

(b) A pre-trial statement shall be filed  
(1) by the plaintiff not later than sixty days prior to the earliest trial date,  
(2) by the defendant not later than thirty days prior to the earliest trial date, and  
(3) by an additional defendant not later than fifteen days prior to the earliest trial date.

Note: A copy of the pre-trial statement must be served upon every other party to the action. See Rule 440(a).

(c)(1) The times set forth in subdivision (b) may be made earlier by published local rule or by special order or as set forth in a trial list published in the county law journal or otherwise made available to the parties.

(2) The times set forth in subdivision (b) may be made later by published local rule or by special order in a particular case.

Note: In a county which requires that discovery be complete and expert reports be exchanged prior to listing a case for trial, the court by local rule may provide for the simultaneous filing of pre-trial statements.

The court by local rule may extend Rules 212.1 and 212.2 to apply to actions to be tried non-jury as well as by jury and to other forms of action in addition to civil actions.

<sup>3</sup> Rule 212.2. Civil Actions to be Tried by Jury. Pre-Trial Statement. Content. Sanctions

(a) A pre-trial statement shall contain  
(1) a brief narrative statement of the case;  
(2) a list of the types and amounts of all damages claimed;  
(3) a list of the names and addresses of all persons who may be called as witnesses by the party filing the statement, classifying them as liability or damage witnesses. A reference which does not state the name of the witness shall be permitted when the witness is described by title or representative capacity;

Note: A listing of "anyone named in discovery" is insufficient under this rule. A listing of a "records custodian" of a specific entity is a sufficient listing.

This rule does not contemplate that the pre-trial statement include a list of witnesses for use in rebuttal or for impeachment. These matters are governed by case law.

(4) a list of all exhibits which a party intends to use at trial;  
Note: This rule does not contemplate that the pre-trial statement include a list of exhibits for use in rebuttal or for impeachment. These matters are governed by case law.

(5) a copy of the written report, or answer to written interrogatory consistent with Rule 4003.5, containing the opinion and the basis for the opinion of any person who may be called as an expert witness;

Note: The notes or records of a physician may be supplied in lieu of written reports.

(6) stipulations of the parties, if any; and  
(7) such additional information as the court by local rule or special order may require.

\* \* \*

It is proposed that new Rule 212.4 be added to the rules of civil procedure to conform the time for serving the name of a valuation expert and his or her statement of valuation to that of Rule 212.1. This proposal will place eminent domain cases on a footing which corresponds to jury trials generally and fosters the salutary principles underlying the pre-trial rules.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,  
Chair

[Pa.B. Doc. No. 02-36. Filed for public inspection January 11, 2002, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### CARBON COUNTY

#### Urine Screens for Controlled Substances—Confirmation Testing; No. 120 MI 01

##### Administrative Order 28-2001

And Now, this 21st day of December, 2001, in order to access the costs of confirmation testing for urine screens of defendants who test positive, it is hereby

Ordered and Decreed that, effective thirty (30) days after publication in the *Pennsylvania Bulletin*, the Carbon County Court of Common Pleas *Establishes* the following procedure:

1. If a defendant tests positive for a controlled substance, the defendant *Shall* report to the Carbon-Monroe-Pike Drug & Alcohol Commission for a Gas Chromatography/Mass Spectrometry (GCMS) Confirmation Test.

2. If the GCMS Confirmation Test is positive, the cost of the test *Shall* be added to the record costs by the Clerk of Courts Office.

3. The Adult Probation Office *Shall* notify the Clerk of Courts Office of all positive GCMS Confirmation Tests.

The Carbon County District Court Administrator is *Ordered* and *Directed* to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the Criminal Procedural Rules Committee.

4. Forward one (1) copy for publication in the Carbon County Law Journal.

5. Forward one (1) copy to the Carbon County Law Library.

6. Keep continuously available for public inspection copies of the Order in the Clerk of Court's Office.

By the Court

RICHARD W. WEBB,  
President Judge

[Pa.B. Doc. No. 02-37. Filed for public inspection January 11, 2002, 9:00 a.m.]