

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 3000]

Proposed Amendment of Rule 3051 Governing Relief from Judgment of Non Pros; Proposed Recommendation No. 253

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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Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 3000. JUDGMENTS

Subchapter C. FORMS

Rule 3051. Relief from Judgment of Non Pros.

* * * * *

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

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(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.

Official 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

[Pa.B. Doc. No. 11-1638. Filed for public inspection September 23, 2011, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CH. 1]

Order Amending Rule 120 of the Rules of Juvenile Court Procedure; No. 543 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 7th day of September, 2011, upon the recommendation of the Juvenile Court Procedural Rules Committee, the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3); and an Explanatory Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rule 120 of the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective immediately.

Annex A
TITLE 237. JUVENILE RULES
PART I. RULES

Subpart A. DELINQUENCY MATTERS
CHAPTER 1. GENERAL PROVISIONS
PART A. BUSINESS OF COURTS

Rule 120. Definitions.

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JUVENILE is a person who has attained ten years of age and is not yet twenty-one years of age who is alleged to have, **upon or after the juvenile's tenth birthday**, committed a delinquent act before reaching eighteen years of age.

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Comment

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A "juvenile" must be at least ten years old and must not have reached the age of eighteen at the time of the commission of a delinquent act for a delinquency petition to be filed. If a child is under the age of ten at the time of the commission of a delinquent act, a dependency petition may be filed pursuant to Pa.R.J.C.P. 1100 *et seq.* and the Juvenile Act, 42 Pa. C.S. § 6301 *et seq.*

A "juvenile probation officer" is an officer of the court. "Properly commissioned" as used in the definition of a juvenile probation officer includes the swearing in under oath or affirmation and receipt of a document, certificate, or order of the court memorializing the authority conferred upon the juvenile probation officer by the court.

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Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 20, 2011, effective July 1, 2011. **Amended September 7, 2011, effective immediately.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 120 published with the Court's Order at 41 Pa.B. 5062 (September 24, 2011).

EXPLANATORY REPORT
September 2011

The Supreme Court of Pennsylvania has adopted the proposed changes to Rule 120 with this Recommendation. The changes are effective immediately.

Modifications to Rule 120 clarify that the juvenile must be at least ten years old at the time of the commission of a delinquent act for a delinquency petition to be filed. Under the prior version, it could be argued that a juvenile must be at least ten years old at the time of the allegation of the delinquent act.

This revised definition ensures juveniles are at least ten years old and have not reached eighteen years of age when the commission of delinquent acts occurs, rather than when allegations are made.

[Pa.B. Doc. No. 11-1639. Filed for public inspection September 23, 2011, 9:00 a.m.]

Title 255—LOCAL
COURT RULES

BLAIR COUNTY

Rules of Civil Procedure No. 235: Appeal from Board of Assessment

Administrative Order

And Now, this 8th day of September, 2011, it is hereby Ordered that the new Blair County Rule of Civil Procedure No. 235 is adopted as follows:

The Court Administrator is directed to:

1. File one (1) certified copy of this Order and Rule with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified paper copies and one (1) CD-ROM containing this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Civil Procedural Rules Committee.
4. Keep continuously available for public inspection copies of the Order and Rule in the Prothonotary and Clerk of Courts Office.

This Order shall become effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

JOLENE GRUBB KOPRIVA,
President Judge

Rule 235. Appeal from Board of Assessment.

Any appeal from the Board of Assessment shall be filed within 30 days of the date of the decision of the Board of Assessment pursuant to 53 P. S. § 8854(a)(1).

[Pa.B. Doc. No. 11-1640. Filed for public inspection September 23, 2011, 9:00 a.m.]

DISCIPLINARY BOARD OF
THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that James Earl Conley, III, having been disbarred from the practice of law in the State of Texas by Order of the Board of Disciplinary Appeals Appointed by the Supreme Court of Texas dated November 28, 2001, the Supreme Court of Pennsylvania issued an Order on September 8, 2011, disbaring James Earl Conley, III, from the Bar of this Commonwealth retroactive to November 28, 2001. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Secretary

The Disciplinary Board of the Supreme Court of Pennsylvania

[Pa.B. Doc. No. 11-1641. Filed for public inspection September 23, 2011, 9:00 a.m.]