

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1000]

Order Amending Rule 1033 of the Pennsylvania Rules of Civil Procedure; No. 756 Civil Procedural Rules Docket

Order

Per Curiam

And Now, this 6th day of September, 2024, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been published for public comment at 52 Pa.B. 5118 (August 20, 2022):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1033 of the Pennsylvania Rules of Civil Procedure is amended in the attached form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 2025.

Additions to the rule are shown in bold and are underlined.

Deletions from the rule are shown in bold and brackets.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS

Subchapter A. CIVIL ACTION

PLEADINGS

(Editor's Note: Rule 1033 as printed in 231 Pa. Code does not contain Explanatory Comments—2013 and 2017.)

Rule 1033. Amendment.

(a) ***General Rule.*** A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, add a person as a party, correct the name of a party, or otherwise amend the pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence offered or admitted.

(b) ***Relation Back.*** An amendment correcting the name of a party against whom a claim has been asserted in the original pleading relates back to the date of the commencement of the action if, within 90 days after the period provided by law for commencing the action, the party received notice of the institution of the action such that it will not be prejudiced in maintaining a defense on the merits and the party knew or should have known that the action would have been brought against the party but for a mistake concerning the identity of the proper party.

(c) ***John Doe Defendants.*** An amendment substituting the actual name of a defendant for a Doe designation

as provided in Rule 2005 relates back to the date of the commencement of the action if, within the time provided by Rule 401 for service, the defendant named by the amendment has received actual or constructive notice of the commencement of the action such that it will not be prejudiced in maintaining a defense on the merits and the defendant knew or should have known that the action would have been brought against it but for lack of knowledge of the defendant's actual name.

(d) Highlighting of Amendments.

(1) A party filing a motion to amend a pleading shall attach:

(i) a clean copy of the proposed amended pleading; and

(ii) a comparison copy of the proposed amended pleading identifying the changes by striking through the material to be deleted and underlining the material to be added.

(2) If there is a discrepancy between the clean copy and the comparison copy of the proposed amended pleading, the clean copy shall be the controlling document.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

Explanatory Comment—2013

Rule 1033 has been amended to specifically state that an amendment may add a person as a party. It is the practice of litigants and trial courts to refer to Rule 1033 when a party seeks to amend a pleading to add another party. The purpose of this amendment is to eliminate any uncertainty as to whether a motion to amend a pleading to add an additional party is governed by Rule 1033. There is no conflict between this proposed amendment and Rule 2232(c) because the latter addresses the question of when a court may order the joinder of any additional person.

Subdivision (b) of Rule 2232 addressing the joinder of an additional party is being rescinded. The provision is unnecessary because if a party has been misjoined or no claim for relief is asserted, a dismissal should be sought through the rules governing preliminary objections, judgment on the pleadings, and summary judgment. If a plaintiff wants to drop a defendant, he or she should use the rules governing the discontinuance of an action.

Explanatory Comment—2017

Currently, the Rules of Civil Procedure do not expressly permit an amendment correcting the name of a party against whom a claim is asserted to relate back without a showing of concealment when the statute of limitations has expired and the effect of that correction operates to add another party. However, case law has interpreted the Rules to permit such an amendment within the statute of limitations. Rule 1033 has been amended to expressly permit amendments correcting the name of the party against whom a claim is asserted to relate back to the date of the commencement of the action if within ninety days after the period provided by law for commencing the

action, the party to be brought in by the amendment has received notice of the commencement of the action such that it will not be prejudiced in obtaining a defense on the merits, and the party knew or should have known that the action would have been brought against the party but for a mistake concerning the identity of the proper party.

Consider the following example: Harry Roberts, who resides at 949 Alcoma Street, Pittsburgh, PA, was the driver of an automobile which struck the plaintiff when he was crossing the intersection at Grant and Forbes Street, Pittsburgh, PA, at approximately 11:00 a.m. on October 11, 2013. The plaintiff's complaint, filed on October 2, 2015, mistakenly identifies the driver as Henry Rosen. He is the only named defendant in the complaint.

On October 7, 2015, the Sheriff made service by serving Mary Roberts at 949 Alcoma Street, Pittsburgh, PA. She is described in the Sheriff's Return as the wife of the defendant. On January 2, 2016, the complaint is amended to correct "Henry Rosen" to "Harry Roberts."

The amendment of Rule 1033 expressly permits the plaintiff to amend the complaint to correct the name of the defendant to Harry Roberts, because it is clear from the body of the complaint that the plaintiff was suing the driver of the automobile which struck the plaintiff and service of the complaint furnished sufficient notice to Harry Roberts that a lawsuit has been initiated against him for actions he is liable for even though the defendant is identified on the complaint as Henry Rosen. This is consistent with existing case law and codifies current practice.

The Federal Rules of Civil Procedure and a majority of states have rules of procedure governing the relation back of amendments, which are similar to this amendment. The interests of justice are served by a rule of civil procedure permitting a party to correct a complaint that provides an incorrect name of a party when there is no prejudice to the party brought in by the amendment.

The amendment of Rule 1033 does not alter the concealment doctrine and the discovery rule. The amendment is intended to cover situations in which neither the concealment doctrine nor the discovery rule apply.

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

ADOPTION REPORT

Amendment of Pa.R.Civ.P. 1033

On September 6, 2024, the Supreme Court of Pennsylvania amended to Pennsylvania Rule of Civil Procedure 1033 relating to the amendment of pleadings. The Civil Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, cmt. The statements contained herein are those of the Committee, not the Court.

The Committee received a request to consider amending Pa.R.Civ.P. 1033 to require the attachment of the proposed amended pleading to a motion to amend. The requester suggested such a requirement would curb a problem encountered with opposing counsel, who had asked for the requester's consent to an amendment of a complaint, but refused to provide any substantive infor-

mation about the amendment. In turn, the attorney seeking the amendment would file a motion to amend that likewise did not provide any information on the specific amendment nor was the proposed amended pleading attached to the motion because Pa.R.Civ.P. 1033 does not expressly so require.

The Committee initially observed that Pa.R.Civ.P. 1033 does not address the content for a motion to amend a pleading. Pa.R.Civ.P. 208.2 generally governs the content of motions, but does not specifically require the attachment of documents in support of the motion.

Noting the silence of requirements in the Rules of Civil Procedure, the Committee then examined local rules addressing the amendment of pleadings. Research revealed a handful of local rules governing amendments. These rules focused on the filing of amended pleadings, rather than the content of the motion to amend. McKean County Local Rule 1033 and Potter County Local Rule 1033 both require "[t]he amendment pleading [to] clearly indicate that it is an amended pleading, the paragraphs [to] be renumbered, and the new portion [to] be underlined." Clarion County Local Rule 1033, Franklin/Fulton Counties Local Rule 39-1033.1, Jefferson County Local Rule 1033, Mercer County Local Rule 1033, and Schuylkill County Local Rule 1033 are similar to the McKean and Potter County Local Rules except they do not require the underlining of the new portion of the pleading.

The Committee also examined procedural rules from other jurisdictions. Research revealed a relative dearth of procedural rules governing the requirements for the content of a motion to amend. New Jersey, Utah, and Puerto Rico all require the proposed amended pleading to be attached to the motion to amend. See N.J.R. 4:9-1 ("A motion for leave to amend shall have annexed thereto a copy of the proposed amended pleading."); U.R.C.P. Rule 15(a)(2) ("The party must attach its proposed amended pleading to the motion to permit an amended pleading."); P.R.R.C.P. 13.1 ("The entire amended pleading shall be attached to the motion for leave to amend the pleadings."). New York is the most comprehensive in that it requires the proposed amended pleading to accompany the motion to amend and to show the changes to be made to the pleading. See N.Y.C.P.L.R. 3025(b) ("Any motion to amend. . . pleadings shall be accompanied by the proposed amended. . . pleading clearly showing the changes or additions to be made to the pleading.")

The Committee also examined rules from Delaware and Maryland. Del.Sup.Ct.R. 15(aa) is similar to the McKean and Potter County Local Rules described above in that it applies to the filing of amended pleadings and requires the amended pleading to indicate how it differs from the original pleading. Md.R.C.P. 2-341(e) also applies to the filing of amended pleadings and requires the filing of the amended pleading together with a comparison copy showing through specified textual indicators the text to be deleted and the text to be added.

In developing the amendment to Pa.R.Civ.P. 1033, the Committee favored the approach taken by New York to require the attachment of the proposed amended pleading the motion to amend and for the proposed amended pleading to explicitly show the changes to be made. This will ensure that both parties and the court will be certain of the exact text being amended in a pleading. In addition, the Committee modified this language slightly

to include explicit provisions, as found in the Maryland rule, to specify that the proposed amended pleading show through textual indicators, either by striking through or bracketing deletions, or by underlining or bolding additions, the text to be amended.

The Committee published the proposal for comment, *see* 52 Pa.B. 5118 (August 20, 2022), and received two comments in support of the proposal as drafted.

Subsequent to publication, the amendment to Pa.R.Civ.P. 1033 was further refined. First, it was reconsidered whether a party filing the motion to amend should also file a copy of the proposed amended pleading without textual indicators, *i.e.*, a “clean” copy. The requirement of a clean copy would remove any burden on the trial court and the opposing party from having to resolve the amended notations to determine the final version of the text.

In developing this requirement, it was recognized that requiring both the attachment of a clean copy and a comparison copy may lead to discrepancies between those two documents, and that the rule would benefit with an express requirement establishing the controlling document. It was reasoned that the clean copy is the document formally replacing the prior pleading, whereas the comparison copy is operating as an aid to the parties and the court in determining the motion to amend. As a result, the rule was modified to provide that the clean copy is the controlling document in the event there are discrepancies between the two documents.

Second, the requirement in the proposed rule permitting various format options to show additions and deletions in the comparison copy of the amended pleading was reconsidered. A single, uniform format would provide consistency in practice and procedure throughout the Commonwealth. As a result, the amendment was modified to require a single, uniform format for showing additions and deletions in the comparison copy: deletions must be shown by striking through the material to be deleted and additions must be shown by underlining the material to be added.

The amendment becomes effective January 1, 2025.
[Pa.B. Doc. No. 24-1331. Filed for public inspection September 20, 2024, 9:00 a.m.]

Title 25—LOCAL COURT RULES

BUTLER COUNTY

Use of Generative Artificial Intelligence; MsD No. 2024-40258

Administrative Order of Court

And Now, this 10th day of September, 2024, it is hereby *Ordered* that Attorneys and/or pro se litigants (a party representing himself or herself) shall disclose any use of generative Artificial Intelligence (“AI”) in the preparation of any complaint, answer, motion, brief, or other pleading and/or filing submitted to the court. Counsel and/or any pro se litigant is to attach to each such filing the following Affidavit Regarding Generative Artificial Intelligence attesting that generative AI has not been utilized in any way in the preparation of the filing, or, if generative AI has been used in the preparation of the filing, that each and every citation to the law or the record in the filing has been verified by a human being as authentic and accurate. This Order is effective thirty (30) days after the publication of the rule in the *Pennsylvania Bulletin*.

In accordance with Pa.R.J.A. 103, the District Court Administrator is *Ordered* and *Directed* to:

1. File one (1) copy of this Administrative Order of Court with the Administrative Office of the Pennsylvania Courts.
2. File two (2) certified copies of this Administrative Order of Court with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. Forward one (1) copy of this Administrative Order of Court to the Administrative Office of the *Butler County Legal Journal* for publication as that organization deems appropriate.
4. Distribute a copy of this Administrative Order of Court to the Judges of the Court of Common Pleas of Butler County, Pennsylvania.
5. Forward one (1) copy of this Administrative Order of Court to the Butler County Law Library and publish on the Court’s website.
6. Keep continuously available for public inspection copies of this Administrative Order of Court in the Office of the Prothonotary of Butler County, Pennsylvania.

By the Court

S. MICHAEL YEAGER,
President Judge

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

	:	CASE NUMBER
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
	:	
Defendant.	:	

AFFIDAVIT REGARDING GENERATIVE ARTIFICIAL INTELLIGENCE

I, the signatory, hereby attest that no portion of this filing has been drafted by generative Artificial Intelligence, or, that any language drafted by generative Artificial Intelligence, including quotations, citations, paraphrased assertions, and

legal analysis, has been checked for accuracy by a human being prior to its submission to the court. I understand that as the attorney signing this filing, I will be held responsible for the contents thereof according to the applicable rules of attorney discipline, regardless of whether generative Artificial Intelligence drafted any portion of this filing.

I declare under penalty of perjury pursuant to the law of the Commonwealth of Pennsylvania, 18 Pa.C.S.A. § 4904, Unsworn Falsification to Authorities, that the foregoing is true and correct.

ATTORNEY OR PRO SE LITIGANT

[Pa.B. Doc. No. 24-1332. Filed for public inspection September 20, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

HUNTINGDON COUNTY

Local Rules 5102 and 5103 Custody of Exhibits in Court Proceedings; No. CP-31-AO-3-2024; CP-31-MD-201-2024

Order

And Now, this 19th day of July 2024, it is hereby Ordered that, effective September 1, 2024, a Huntingdon County Local Rule is hereby established to implement Local Rule 5102-5103 regarding the Custody of Exhibits in Court Proceedings.

Pursuant to Pennsylvania Rules of Judicial Administration 103(d) and after review and subsequent approval from the Supreme Court Rules Committee,

The Huntingdon County District Court Administrator is Directed as follows:

(1) File one (1) copy of the Administrative Order with the Administrative Office of Pennsylvania Courts.

(2) File one (1) copy with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(3) One (1) copy shall be retained at the Huntingdon County Law Library.

(4) Publish a copy of the Administrative Order on the website of Huntingdon County.

(5) Thereafter, compile the Administrative Order within the complete set of local rules no later than thirty (30) days following the publication in the *Pennsylvania Bulletin*.

It is further Ordered that a copy shall be kept continuously available for public inspection and copying in the Office of the Prothonotary of Huntingdon County.

By the Court

GEORGE N. ZANIC,
President Judge

Local Rules 5102-5103

Custody of Exhibits in Court Proceedings

Rule 5102. Custody of Exhibits General Provisions.

A. The court reporter or court recorder shall be designated as the “Custodian,” as defined by Pa.R.J.A. 5101(a)(2), for all documentary exhibits, photographs, and photographs of non-documentary exhibits admitted or rejected during a court proceeding.

(1) If only one custodian is involved with a proceeding, they shall file with the Huntingdon County Prothonotary/Clerk of Courts office all admitted or rejected exhibits and an index of the exhibits within 5 business days of the conclusion of the proceeding.

(2) If multiple custodians are involved with a proceeding, the first custodian shall provide the subsequent custodian (and so on, if more than two custodians) with the admitted or rejected exhibits and index of exhibits. The custodian at the conclusion of the proceeding shall file with the Huntingdon County Prothonotary/Clerk of Courts office all admitted or rejected exhibits and an index of the exhibits within 5 business days of the conclusion of the proceeding.

Rule 5103. Custody of Exhibits. Special Provisions.

A. The proponent shall retain custody of admitted or rejected non-documentary exhibits (including, but not limited to weapons, cash, other items of value, drugs, or other dangerous materials) and bulky, oversized, or otherwise physically impractical exhibits at all times during and after a court proceeding.

(1) All non-documentary exhibits must be photographed by the proponent, converted to a letter sized document (8 1/2 × 11 inches), and appropriately marked and produced during the court proceeding for inclusion in the documentary record.

(2) Unless otherwise provided by the presiding judge, at the conclusion of the court proceeding, non-documentary evidence shall be returned to the proponent for safekeeping as required by any applicable retention schedule, statute, rule, regulation, or policy, or until further order of court.

(3) Unless otherwise ordered, the proponent or filing office shall maintain non-documentary exhibits for a minimum of following time periods:

a. *Non-criminal matters.* Retain exhibits until the later of the expiration of the appeal period or final disposition of the appeal if one is taken.

b. *Criminal matters.* Retain exhibits pursuant to the Supreme Court of Pennsylvania Administrative Office of Pennsylvania Courts Record Retention and Disposition Schedule with Guidelines.

(4) Any digital exhibit that cannot be printed (i.e., audio or video recording) shall be entered into the record on a Universal Serial Bus (USB) flash drive or other court approved format. If one party has multiple digital exhibits, they may be submitted together on one USB flash drive or other court approved format.

(5) Any exhibit containing confidential information or confidential documents as defined in the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania ("Policy") shall include a Confidential Infor-

mation Form or Confidential Document Form in compliance with the Policy.

[Pa.B. Doc. No. 24-1333. Filed for public inspection September 20, 2024, 9:00 a.m.]
