



**JOHN AND JANE DOE DEFENDANTS**

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It is fairly common for us to receive a lawsuit that names John and Jane Doe as Defendants. Since these are not real people and because they have not been served, these Defendants remain in the caption until either the Plaintiff moves to amend the Complaint, or we seek to remove the John and Jane Doe parties as part of a summary judgment motion. Since we periodically receive questions regarding the John and Jane Doe pleading practice, we thought we would address some of those questions.

42 U.S.C. §1983, a federal statute, does not contain within its four corners a statute of limitations. By U.S. Supreme Court rule, the applicable statute of limitations is the analogous state personal injury statute. The Pennsylvania Statute of Limitations for personal injury actions is two years. 42 Pa. Cons. Stat. Ann. §5524(7). Most importantly, the naming of a John Doe Defendant in a Complaint does not stop the statute of limitations from running or toll the limitations period as to that Defendant. *Talbert v. Kelly*, 799 F.2d. 62, 66 n.1 (3d Cir. 1986).

Substituting the John or Jane Doe Defendant with the party's real name amounts to a change or naming of a party under Rule 15(c), Federal Rules of Civil Procedure. Therefore, the Amended Complaint will relate back to the date the original complaint was filed if the three conditions specified in Rule 15(c) are satisfied. Rule 15(c) states, in pertinent part:

- (c) Relation back of amendments – an amendment to a pleading relates back to the date of the original pleading when...

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or current set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (a) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (b) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party. The parties to be brought in by amendment must have received notice of the institution of the action within one hundred twenty (120) days following the filing of the action, the period provided for service of the complaint by Rule 4(m) of the Federal Rules of Civil Procedure. If the amendment relates back to the date of the filing of the original Complaint, the Amended Complaint is treated, for statute of limitations purposes, as if it had been filed at that time. The relation back provision of Rule 15(c) aims to ameliorate the harsh result of the strict application of the statute of limitations. Of course, an Amended Complaint will not relate back if the Plaintiff had been aware of the identity of the newly named parties when he or she filed her original complaint and simply chose not to sue them at that time.

Let's take an example. A person who was allegedly subjected to excessive force by police officers might not have seen the officers' name tags, and hence, would likely need discovery to determine the names of his attackers (although he cannot get discovery until he files a § 1983 complaint). If this person was prevented from having his complaint relate back to when he sought to replace a John Doe or "unknown police officers" in his complaint, with the real names of his assailants, then he would have to file his complaint substantially before the running of the statute of limitations on his claim to avoid having his claim end up being barred. This would render the §1983 statute of limitations much shorter for this person than it would for another complainant who knows his assailant's names. However, there must be a balance between these concerns with the requirement that in order to permit relation back under Rule 15(c) the party to be added "will not be prejudice in maintaining a defense on the merits." Fed. R. Civ. P. 15(c)(3)(a). The prejudice to which the rule refers is that suffered by one who, for lack of timely notice of

a suit that has been initiated, must begin assembling evidence in constructing a defense when the case is already stale.

Often, a plaintiff's attorney receives Rule 26 disclosures which correctly identify the John or Jane Doe or unknown officers who are potential defendants. The 120 day period could arguably begin to run from the date that information is provided. Another scenario exists in which actual depositions of some of the officers take place well within the two year statute of limitations. It is possible that 120 or more days will have passed since the depositions of those officers were taken. The Court would most likely dismiss the John Doe Defendants if presented with a statute of limitations argument in a motion for summary judgment.

There are however two possible methods by which the Court could impute notice under Rule 15(c)(3). The first is the "shared attorney" method, which is based on the notion that when the original party and the party sought to be added are represented by the same attorney, that "the attorney is likely to have communicated to the latter party that he may very well be joined in the action." *Singletary*, 266 F.3d at 196. The second is the "identity of interest" method, which is related to the shared attorney method. "Identity of interest generally means that the parties are so closely related in their business operations or other activities that the institution of an action against one serves to provide notice of litigation to the other." *Id.* at 197.

In analyzing the shared attorney method of imputed notice, "the relevant inquiry under this method is whether notice of the institution of this action can be imputed to [the defendant sought to be named] within the relevant 120 day period...by virtue of representation [he] shared with a defendant originally named in a lawsuit." *Id.* at 196. The applicable test is not whether new defendants will be represented by the same attorney, but rather whether the new defendants are already being represented by the same attorney. Since clearly an attorney may represent an individual without appearing for him or her in a pending lawsuit, there can be, in certain cases, a factual inquiry that might be necessary to determine whether the attorney who represents a named party was also representing an unnamed party during the time in question. The shared attorney concept would be defeated absent evidence of such shared representation during the 120 day period or anytime thereafter.

A court will also impute notice if the parties are so closely related in their business operations or other activities that filing suit against one serves to provide notice to the other. However, individual police officers, sought to be added to a typical action as non-managerial employees, might not be on notice. In as much as they don't share a sufficient nexus of interest with their employer, a city, the district court will likely hold that it could not impute notice for purposes of Rule 15(c)(3)(a) under the identity of interest method.

As you can see from this brief review, the question of what happens to the John Doe Defendants cannot be instantly answered. A good working rule, but not necessarily an exhaustive one, is to add 120 days to the date when you know that the plaintiff's attorney had notice of the identity of the John or Jane Doe or unknown officer Defendants.