

**EXHIBIT 2**

**RULE 40. Review of Cases; Dismissal; Rulings on Motions and Submitted Cases.**

**(A) Review; dismissal; rulings.**

(1) Each trial judge shall review, or cause to be reviewed, all cases assigned to the judge. Cases that have been on the docket for six months without any proceedings taken in the case, except cases awaiting trial assignment, shall be dismissed, after notice to counsel of record, for want of prosecution, unless good cause be shown to the contrary.

(2) All cases submitted for determination after a court trial shall be decided within ninety days from the date the case was submitted.

(3) All motions shall be ruled upon within one hundred twenty days from the date the motion was filed, except as otherwise noted on the report forms.

(4) All child support hearings involving an obligor or obligee called to active military service in the uniformed services, as defined in section 3119.77 of the Revised Code, shall be heard within thirty days from the date the court receives notice that the obligor or obligee has requested a hearing.

**(B) Reporting.**

(1) Each judge shall report to the administrative judge decisions that have not been ruled upon within the applicable time period. The administrative judge shall confer with the judge who has motions pending beyond the applicable time period and shall determine the reasons for the delay on the rulings. If the administrative judge determines that there is no just cause for the delay, the administrative judge shall seek to rectify the delay within sixty days. If the delay is not rectified within sixty days, the administrative judge shall report the delay to the Case Management Section of the Supreme Court.

(2) In a single-judge court, if the judge has not rectified the delay, the judge shall report the delay in the rulings to the Case Management Section within one hundred eighty days from the date of the filing of the overtime motion or the submission of the case.

(3) All reports submitted to the administrative judge and the Case Management Section under this rule shall be available for public access pursuant to Sup. R. 44 through 47.

**(C) Assigned judges.** The provisions of this rule apply to judges sitting by assignment of the Chief Justice of the Supreme Court.

**Commentary (July 1, 1997)**

Rule 40 is identical to former C.P. Sup. R. 6 and M.C. Sup. R. 6.

## **Rule 40(A) Review; dismissal; rulings**

Each trial judge is required to periodically review all cases assigned to the judge. This requirement applies to civil and criminal cases. The dismissal sanction does not apply in criminal cases because it is overridden by Rule 39 and by R.C. 2945.73, which contain specific provisions as to criminal cases. The review may be conducted personally or be done under the direction of the judge.

The purpose of the review of assigned cases is to: (1) identify and dismiss those cases that have been on the docket for six months without any activity or action being taken; (2) dismiss those inactive cases for want of prosecution; and (3) bring to the attention of each judge those matters which are pending and require decision.

"Been on the Docket" as used in the rule means pending, that is, being on the appearance docket. It does not refer to being on the trial docket for six months.

"Except cases awaiting trial assignment" does not refer to cases that are not yet placed on the trial docket by reason of the issues not being made up or that are awaiting the next establishment of the trial docket. It refers to those cases that are ready for trial but have not been tried because of the volume of cases in the court. The exception exists to prevent the dismissal of those cases where the delay is not the responsibility of the parties or their counsel.

"Without any proceedings taken in the case" means a case that has been totally inactive as revealed by the appearance docket and the case file. The absence of appearance docket entries over a six-month period indicates a case either is ready for trial or is an inactive case.

Dismissal is not summary; notice to the parties or counsel is a condition precedent. The notice is not limited to plaintiff's counsel, but must go to the counsel of record for all parties. Ordinary mail notice suffices under the rule. The return of ordinary mail notice should not be permitted to frustrate the action of the court.

Counsel is required to provide counsel's address with all pleadings and motions; Civ. R. 11. The address must be kept current so that the notice requirements of the Civil Rules function throughout the litigation. The requirement of notice to counsel is not a requirement for an oral hearing on the matter of dismissal. Such a requirement does not appear in the rule and does not appear in Civ. R. 41(B)(1) (dismissal for failure to prosecute). An oral hearing may be conducted. The notice issued by the court may set a time period within which counsel can show cause as to why the action should not be dismissed.

The control and supervision of the docket is the responsibility of the administrative judge. The administrative judge must rely on the individual judges in implementing this assignment. The review, with its sanction of dismissal, is a powerful tool in keeping cases moving and dockets current.

"For want of prosecution", as used in the rule, does not limit the dismissal of cases to those situations where the inactivity is directly attributable to the plaintiff. When a defendant fails to take a required step, the plaintiff, under the Civil Rules, has an available remedy. If the plaintiff files a complaint and the defendant does not answer, and the court finds no proceedings taken for six months, the court may dismiss the case for want of prosecution because the plaintiff could have prosecuted the case by seeking a default judgment. The rule is an example of the intent of the rules of superintendence to expedite the disposition of cases.

Each trial judge is required by the rule to review, or cause to be reviewed, all pending motions and cases that have been submitted to the judge for determination following court trial.

As to motions, the applicable time period begins to run on the day the motion is filed or made. As to cases submitted, the ninety days runs from the day the trial is ended or, if applicable, the day all post-trial pleadings have been filed.

#### **Rule 40 (B) Reporting**

Each trial judge is required to report to the administrative judge motions and submitted cases pending beyond the applicable time period. If the administrative judge is unable to resolve the delay, or, in a single judge court, the matter is referred to the Case Management Section for reporting to the Chief Justice for corrective action.

#### **Rule 40(C) Assigned judges**

Visiting judges and retired judges sitting by assignment of the Chief Justice are subject to the applicable time periods for disposition of motions and submitted cases, and to the reporting requirements of this rule.

#### **Commentary (July 4, 2005)**

The 2005 amendment to Rule 40(A) added an expedited process for hearings regarding child support orders for those called to active military service pursuant to Amended Substitute House Bill 149 (eff. 06/02/04).