

Rule 103. Alias Summons; Dismissal for Lack of Diligence

(a) Alias Summonses. On request of any party, the clerk shall issue successive alias summonses, regardless of the disposition of any summons or alias summons previously issued.

(b) Dismissal for Lack of Diligence. If the plaintiff fails to exercise reasonable diligence to obtain service on a defendant prior to the expiration of the applicable statute of limitations, the action as to that defendant may be dismissed without prejudice. If the failure to exercise reasonable diligence to obtain service on a defendant occurs after the expiration of the applicable statute of limitations, the dismissal shall be with prejudice as to that defendant only and shall not bar any claim against any other party based on vicarious liability for that dismissed defendant's conduct. The dismissal may be made on the application of any party or on the court's own motion. In considering the exercise of reasonable diligence, the court shall review the totality of the circumstances, including both lack of reasonable diligence in any previous case voluntarily dismissed or dismissed for want of prosecution, and the exercise of reasonable diligence in obtaining service in any case refiled under section 13-217 of the Code of Civil Procedure.

(c) Summonses for Additional Parties. On request, the clerk shall issue summonses for third-party defendants and for parties added as defendants by order of court or otherwise.

Amended October 21, 1969, effective January 1, 1970; amended May 28, 1982, effective July 1, 1982; amended May 20, 1997, effective July 1, 1997; [amended June 5, 2007, effective July 1, 2007](#).

Committee Comments

(June 5, 2007)

The 2007 amendment clarified that a Rule 103(b) dismissal which occurred after the expiration of the applicable statute of limitations shall be made with prejudice as to that defendant if the failure to exercise reasonable diligence to obtain service on the defendant occurred after the expiration of the applicable statute of limitations. However, even a dismissal with prejudice would not bar any claim against any other party based on vicarious liability for that dismissed defendant's conduct.

Further, the last sentence of Rule 103(b) addresses situations where the plaintiff has refiled a complaint under section 13-217 of the Code of Civil Procedure within one year of the case either being voluntarily dismissed pursuant to section 2-1009 or being dismissed for want of prosecution. If the statute of limitations has run prior to the plaintiff's refiled complaint, the trial court has the discretion to dismiss the refiled case if the plaintiff failed to exercise reasonable diligence in obtaining service. The 2007 amendment applies the holding in *Martinez v. Erickson*, 127 Ill. 2d 112, 121-22 (1989), requiring a trial judge "to consider service after refiled in the light of the entire history of the case" including reasonable diligence by plaintiff after refiled.

Because public policy favors the determination of controversies according to the substantive rights of the parties, Rule 103(b) should not be used by the trial courts to simply clear a crowded docket, nor should they delay ruling on a defendant's dismissal motion until after the statute of limitations has run. See *Kole v. Brubaker*, 325 Ill. App. 3d 944, 954 (2001).

Committee Comments
(Revised May 1997)

This rule, except for paragraph (b), is former Rule 4, as it existed prior to 1967.

Paragraph (b) was changed in the 1967 revision to provide that the dismissal may be with prejudice, and was further revised in 1969 to provide that a dismissal with prejudice shall be entered only when the failure to exercise due diligence to obtain service occurred after the expiration of the applicable statute of limitations. Prior to the expiration of the statute, a delay in service does not prejudice a defendant.

The 1997 amendment eliminates the power to dismiss an entire action based on a delay in serving some of the defendants if the plaintiff has exercised reasonable diligence with respect to other defendants. The amendment also eliminates the *res judicata* effect (but not the statute of limitation effect) of a Rule 103(b) dismissal. Rule 4(m) of the Federal Rules of Civil Procedure has similar provisions regarding dismissals for delay in serving process in federal court actions.

Because a Rule 103(b) dismissal will be “without prejudice” for *res judicata* purposes, the dismissal will not extinguish any claims that the plaintiff might have against an undismissed defendant. Whether the dismissal will extinguish the plaintiff’s claims against the dismissed defendant will depend on whether the dismissal occurs before or after the statute of limitation has run. If before, the plaintiff will be able to refile; if after, the plaintiff will be unable to refile because the claims will be time-barred.