

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

Proposed Recommendation No. 257

Proposed Amendment of Rule 229

Governing Discontinuances

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 229 governing discontinuances 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 **February 28, 2014** to:

**Karla M. Shultz
Counsel
Civil Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
P.O. Box 62635
Harrisburg PA 17106-2635
FAX 717-231-9526
civilrules@pacourts.us**

Rule 229. Discontinuance

(a) A discontinuance shall be the exclusive method of voluntary termination of an action, in whole or in part, by the plaintiff before commencement of the trial.

(b)(1) Except as otherwise provided in subdivision (b)(2), a discontinuance may not be entered as to less than all defendants except upon the written consent of all parties, or leave of court **upon motion of any plaintiff or any defendant for whom plaintiff has stipulated in writing to the discontinuance [after notice to all parties].**

(2) In an action governed by Rule 1042.3, a plaintiff may enter a discontinuance as to a defendant if a certificate of merit as to that defendant has not been filed.

Note: Rule 1042.3 requires the filing of a certificate of merit as to a defendant against whom a professional liability claim is asserted.

(c) The court, upon petition and after notice, may strike off a discontinuance in order to protect the rights of any party from unreasonable inconvenience, vexation, harassment, expense, or prejudice.

Note: Court approval of a discontinuance must be obtained in any action in which a minor is a party, Rule 2039(a), an action for wrongful death in which a minor is beneficially interested, Rule 2206(a), an action in which an incapacitated person is a party, Rule 2064, and a class action, Rule 1714.

A plaintiff who asserts a cause of action ex contractu and joins as defendants persons liable to the plaintiff in different capacities may not discontinue as to a defendant primarily liable without discontinuing as to all defendants secondarily liable. Rule 2231(e).

Explanatory Comment

Current Rule 229 provides that a discontinuance is the sole method by which a plaintiff can terminate an action before trial. A discontinuance as to less than all defendants requires written consent of all parties to the action or leave of court. This current rule is incomplete because it does not describe which parties may seek leave of court to enter a discontinuance as to less than all defendants. Under the proposed amendment, leave of court may be sought by any plaintiff or any defendant for whom the plaintiff has stipulated in writing to the discontinuance.

By the Civil Procedural
Rules Committee

Diane W. Perer
Chair