

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

Proposed Recommendation No. 231

New Rule 1036.1 Governing

Reinstatement of Claim Dismissed Upon Affidavit of Noninvolvement

The Civil Procedural Rules Committee proposes that new Rule of Civil Procedure 1036.1 governing reinstatement of a claim dismissed upon an affidavit of noninvolvement be promulgated 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 **May 23, 2008** to:

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**or E-Mail to
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The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

Rule 1036.1. Reinstatement of Claim Dismissed upon Affidavit of Noninvolvement

(a) As used in this rule, “action” shall have the meaning as provided in Rule 1036(a).

(b) If a party has been dismissed from an action upon an affidavit of noninvolvement pursuant to Rule 1036, any other party may file a motion to reinstate the dismissed party setting forth facts showing that statements made in the affidavit of noninvolvement were false or inaccurate.

(c) Any party opposing the motion may file a response.

(d) Upon reviewing the motion and any response thereto and determining the existence of a *prima facie* case of involvement of the dismissed party, the court shall enter an order

(1) allowing any party opposing the motion

(i) to conduct limited discovery directed solely to the issue of the involvement of the party which was dismissed.

(ii) prior to the disposition of the motion, to file affidavits, depositions and such other evidentiary materials as would permit a jury to find that any party which was dismissed was involved in any activities upon which the claim is based, and

(2) scheduling an argument to decide the motion.

(e) The argument shall be limited to the sole issue of whether the moving party has produced evidence which, when considered in a light most favorable to that party, would require the issue of the involvement of any party which was dismissed to be submitted to the jury.

Explanatory Comment

Reinstatement of a claim dismissed upon an affidavit of noninvolvement is required by two statutes: Section 7502 of the Judicial Code, 42 Pa.C.S. §7502, relating to construction design professionals and Section 506 of the MCARE Act, 40 P.S. §1303.506, relating to healthcare providers. Currently, the rules of civil procedure are silent as to reinstatement. Proposed new Rule 1036.1 is intended to supply this need.

The proposed new rule sets forth a procedure that requires the party seeking reinstatement to file a motion setting forth facts which show that statements made in the affidavit of noninvolvement were false or inaccurate. Upon initially reviewing the motion, if the court determines that the party seeking reinstatement has established a prima facie case, that party may conduct discovery limited to the issue of the involvement of the dismissed party. At final argument on the matter, the court makes a determination as to whether the party seeking reinstatement has produced enough evidence to require submission of the issue of the involvement of the dismissed party to the jury.