

**IN THE
SUPREME COURT OF PENNSYLVANIA**

IN RE: Promulgation of New Rule of	:	
	:	NO. 344
Civil Procedure 1036 Governing	:	
	:	CIVIL PROCEDURAL RULES
Dismissal Upon Affidavit of	:	
	:	DOCKET NO. 5
Noninvolvement	:	

ORDER

PER CURIAM:

AND NOW, this 11th day of December, 2000, new Pennsylvania Rule of Civil Procedure 1036 is promulgated to read as attached hereto.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 1, 2001.

Rule 1036. Dismissal Upon Affidavit of Noninvolvement

(a) As used in this rule, “action” means an action subject to an Act of Assembly which provides for dismissal of the action as to a party based upon an affidavit of noninvolvement.

NOTE: Actions pursuant to the following Acts of Assembly are within the scope of this rule: Section 7502 of the Judicial Code, 42 Pa.C.S. § 7502, an action for negligence against a construction design professional and Section 827-A of the Health Care Services Malpractice Act, 40 P.S. § 1301.827-A, a medical malpractice action naming a health care provider as a defendant.

(b) Any party seeking dismissal of the action shall file a motion to dismiss which shall have attached thereto the affidavit of noninvolvement.

(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 for dismissal of the action as to a 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 involvement of any party seeking dismissal and

(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 seeking dismissal 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 any party opposing the motion has produced evidence which, when considered in a light most favorable to that party, would require the issue of the involvement of any party seeking dismissal to be submitted to a jury.

Explanatory Comment

New Rule 1036 sets forth a procedure to govern dismissal of an action pursuant to an affidavit of noninvolvement. Two statutes, cited in the note to subdivision (a), presently provide for such an affidavit: Section 7502 of the Judicial Code¹ relating to construction design professionals and Section 827-A of the Health Care Services Malpractice Act² relating to health care providers.

These statutes speak of having "the action against such construction design professional dismissed upon the filing of an affidavit of noninvolvement"³ and of causing an action against a health care provider "to be dismissed upon the filing of an affidavit of noninvolvement with the court."⁴ The role of the court in these procedures, not specified by the statutes, is supplied by the new rule.

By the Civil Procedural
Rules Committee

Rea Boylan Thomas
Chair

¹ 42 Pa.C.S. § 7502.

² 40 P.S. § 1301.827-A.

³ 42 Pa.C.S. § 7502(a).

⁴ 40 P.S. § 1301.827-A(a).