Rule 229.1. Settlement Funds. Failure to Deliver. Sanctions

(a) As used in this rule,

"defendant" means a party released from a claim of liability pursuant to an agreement of settlement;

"plaintiff" means a party who, by execution of a release pursuant to an agreement of settlement, has agreed to forego a claim of liability against a defendant. The term includes a defendant who asserts a counterclaim;

"settlement funds" means any form of monetary exchange to a plaintiff pursuant to an agreement of settlement, but not including the annuity or future installment portion of a structured settlement.

(b) The parties may agree in writing to modify or waive any of the provisions of this rule.

(c) If a plaintiff and a defendant have entered into an agreement of settlement, the defendant shall deliver the settlement funds to the attorney for the plaintiff, or to the plaintiff if unrepresented, within twenty calendar days from receipt of an executed release.

> NOTE: If court approval of the settlement is required, Rule 229.1 is not operative until the settlement is so approved.
>
> Upon receipt of the settlement funds, the plaintiff shall file a discontinuance or deliver a discontinuance to the defendant.

(d) If settlement funds are not delivered to the plaintiff within the time required by subdivision (c), the plaintiff may seek to

(1) invalidate the agreement of settlement as permitted by law, or

(2) impose sanctions on the defendant as provided in subdivision (e) of this rule.

(e) A plaintiff seeking to impose sanctions on the defendant shall file an affidavit with the court attesting to non-payment. The affidavit shall be executed by the plaintiff's attorney and be accompanied by

(1) a copy of any document evidencing the terms of the settlement agreement,

(2) a copy of the executed release,

(3) a copy of a receipt reflecting delivery of the executed release more than twenty days prior to the date of filing of the affidavit,

(4) a certification by the attorney of the applicable interest rate,

(5) the form of order prescribed by subdivision (h), and

(6) a certification by the attorney that the affidavit and accompanying documents have been served on the attorneys for all interested parties.

(f) Upon receipt of the affidavit and supporting documentation required by subdivision (e), the defendant shall have twenty days to file a response.

(g) If the court finds that the defendant violated subdivision (c) of this rule and that there is no material dispute as to the terms of the settlement or the terms of the release, the court shall impose sanctions in the form of interest calculated at the rate equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the interest is awarded, plus one percent, not compounded, running from the twenty-first day to the date of delivery of the settlement funds, together with reasonable attorneys' fees incurred in the preparation of the affidavit.

(h) The affidavit shall be accompanied by an order in substantially the following form:

(Caption)

ORDER

AND NOW, _____, upon consideration of the affidavit of _____, attorney for _____, and the exhibits thereto, and upon a finding that
(Plaintiff)

payment was not made within twenty days of receipt of the executed release in the above captioned action, it is ORDERED that, in addition to the settlement funds of $_____, _____ pay forthwith interest at the rate of ____ % on the aforementioned
(Defendant)

settlement funds from the twenty-first day to the date of delivery of the settlement funds, together with $ _____ in attorneys' fees.

_____
Judge

NOTE: The interest rate is determined in accordance with subdivision (g) of this rule.

The defendant is the party who has failed to deliver settlement funds as required by this rule. The plaintiff is the party who is seeking to impose sanctions on the defendant for that failure.

Explanatory Comment

New Rule 229.1 governs sanctions for failure to deliver settlement funds. The new rule provides a straightforward procedure of an affidavit filed by the plaintiff, a response filed by the defendant and a decision entered by the court.

Three points should be noted. First, while the rule establishes a standard with respect to the delivery of settlement funds, the "parties may agree in writing to modify or waive any of the provisions of this rule." Thus, where the standard cannot be met because of the particular type of party involved, industry practice or custom, or other consideration, the parties may agree not to be bound by the rule.

Second, subdivision (a) defines the terms "defendant", "plaintiff" and "settlement funds". The plaintiff is the party seeking the imposition of sanctions, whether that party is plaintiff or defendant in the action. Similarly, the defendant is the party against whom sanctions are sought, whether that party is plaintiff or defendant in the action.

Finally, the sanction imposed includes an award of interest on the settlement funds for the period during which the defendant has failed to deliver the funds to the plaintiff as required by the rule. The calculation of the rate of interest is identical to the manner of calculating damages for delay pursuant to Rule 238.

By the Civil Procedural
Rules Committee

R. Stanton Wettick, Jr.
Chair