

INTRODUCTION

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt an entirely new Rule 326, as well as revisions to Rules 324 and 514 of the Pennsylvania Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges. The Committee has not yet submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the Committee's Notes to the rules. The Supreme Court does not adopt the Committee's Notes or the contents of the explanatory reports.

We request that interested persons submit written suggestions, comments, or objections concerning this proposal to the Committee through counsel,

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Minor Court Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
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no later than November 12, 2010.

October 2, 2010

BY THE MINOR COURT RULES COMMITTEE:

Mark A. Bruno, Chair

*Pamela S. Walker
Counsel*

REPORT

Proposed New Rule 326 and Revisions to Rules 324 and 514 of the Pennsylvania Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

WITHDRAWAL OF COMPLAINT BY PLAINTIFF AND SETTLEMENT BETWEEN THE PARTIES

I. **Background**

As part of its long term planning process, the Minor Court Rules Committee (“the Committee”) discussed the need for a rule based practice in the magisterial district courts for withdrawal of the complaint and settlement of the action. It was noted that the Pennsylvania Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges (“the Rules”) do not provide for such actions, resulting in inconsistent statewide practice, and uncertainty for litigants. Moreover, the Committee wished to distinguish civil actions resulting in withdrawals and settlements from complaints dismissed without prejudice, which is limited in the Rules to the circumstances of failure of service under Rule 314(D). Finally, the Committee noted the use of the term “dismissal” in Rules 324 and 514 was misleading, as a judgment for either party is the outcome of a hearing in magisterial district court.

II. **Discussion and Proposed Rule Changes**

The Committee identified the need for two procedures addressing withdrawal of complaints and settlement of actions. First, the Committee addressed the situation where a plaintiff seeks to withdraw a complaint prior to the start of the hearing. The Committee proposes a new rule establishing that a plaintiff may withdraw a complaint prior to the start of the hearing upon written notice to the magisterial district court. Following receipt of such notice, the court would note the withdrawal on the docket, cancel any scheduled hearing, and notify the parties. With respect to the future rights of the parties, the Committee proposes that a withdrawal of the complaint would be deemed to be without prejudice, and a plaintiff may file a new complaint on the same cause of action upon payment of all applicable fees and costs. Under no circumstances would a new complaint filed pursuant to this rule be handled as a reinstatement, which is limited to the circumstances set forth in Rule 314 (failure to make timely service).

Second, the Committee addressed the situation where the parties seek to settle the action prior to the entry of judgment. As with a withdrawal, the court would note the settlement on the docket, cancel any scheduled hearings, and notify the parties. If a subsequent breach of the settlement agreement should occur, it would be necessary for a party to file a new complaint citing breach of the settlement agreement as the cause of

action, subject to all applicable fees and costs, and would not be handled as a reinstatement of the original case.

The Committee also intends that proposed Rule 326 would also apply to the withdrawal or settlement of a counterclaim.

Finally, in reviewing other rules that use the term “dismissed,” the Committee noted that the outcome of a hearing in the magisterial district courts is a judgment for the plaintiff or defendant, not a dismissal of the action. Accordingly, the Committee recommends deleting references to “dismissals” as used in Rules 324 and 514.

Rule 324. Notice of Judgment **[or Dismissal]** and the Right to Appeal.

A. Upon the entry of the judgment, the magisterial district court shall promptly give or mail to the parties written notice of judgment**[or dismissal]**.

B. The written notice of judgment**[or dismissal]** shall contain:

...

Adopted Oct. 15, 1969, effective Jan. 1, 1970. Amended Feb. 1, 1973, imd. effective; Oct. 17, 1975, effective in 90 days; April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; Dec. 1, 1983, imd. effective; March 27, 1992, effective June 25, 1992; April 5, 2002, effective Jan. 1, 2003; Jan. 6, 2005, effective Jan. 29, 2005; June 1, 2006, effective Oct. 1, 2006; **amended** **,** **effective**
_____.

Rule 326. Plaintiff Request to Withdraw Complaint; Settlement (NEW)

A.(1) A plaintiff may withdraw the complaint prior to the commencement of the hearing by filing a written notice of withdrawal with the magisterial district court. Upon receipt of such notice, the magisterial district court shall note the withdrawal of the complaint on the docket, cancel any scheduled hearing, and notify the parties.

(2) A withdrawal of the complaint filed prior to the commencement of the hearing shall be deemed to be without prejudice. The plaintiff may file a new complaint on the same cause of action upon payment of all applicable fees and costs.

B.(1) The parties may file a written notice of settlement with the magisterial district court at any time prior to the entry of judgment. Upon receipt of such request, the magisterial district court shall note the case settled on the docket, cancel any scheduled hearings, and notify the parties.

(2) Where the parties have filed a notice of settlement with the magisterial district court and a subsequent breach of the settlement agreement occurs, a party may file a new complaint citing breach of the settlement agreement as the cause of action.

Note: A complaint filed pursuant to subparagraph A(2) or B(2) shall not be treated as a “reinstatement” of the underlying action, and is subject to all prescribed costs for filing and service of a complaint. *Compare with* Rule 314, which provides for reinstatement of the complaint under the limited circumstance of failure to make timely service.

This rule also applies to the withdrawal or settlement of a counterclaim.

Rule 514. Judgment; Notice of Judgment **[or Dismissal]** and the Right to Appeal.

...

C. (1) Judgment shall be given at the conclusion of the hearing or within three days thereafter.

(2) Upon the entry of the judgment, the magisterial district court shall promptly give or mail to the parties written notice of judgment**[or dismissal]**.

D. The written notice of judgment**[or dismissal]** shall contain:

...

Adopted Oct. 15, 1969, effective Jan. 1, 1970. Amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; Dec. 1, 1983, imd. effective; March 27, 1992, effective June 25, 1992; March 28, 1996, effective March 29, 1996; April 5, 2002, effective Jan. 1, 2003; Nov. 25, 2002, eff. July 1, 2003; Jan. 6, 2005, effective Jan. 29, 2005; June 1, 2006, effective Oct. 1, 2006; **amended _____,**
effective _____.