

Trial Law TIPS

Roy D. Wasson's
TIP #62

ROY D. WASSON is board certified in Appellate Practice with extensive courtroom experience in more than 750 appeals and thousands of trial court cases, civil, criminal, family and commercial. AV-rated.

Don't Voluntarily "Dismiss" a Defendant; File a "Notice of Dropping Party" Instead

If you decide to proceed to trial without one of the defendants you named in the Complaint, but to keep the lawsuit alive against other defendants, do not file a "Notice of Voluntary Dismissal" as to that party. "Typically, *only an entire action may be dismissed voluntarily* under Fla. R. Civ. P. 1.420(a)(1)." *Guess v. City of Miramar*, 889 So. 2d 840, 848 (Fla. 4th DCA 2004)(emphasis added). Instead, file a "Notice of Dropping Party," pursuant to Fla. R. Civ. P. 1.250(b). "Actions are dismissed; parties are simply dropped." *McGrail v. Rosas*, 697 So. 2d 1016, 1016 @n.1 (Fla. 4th DCA 1997).

You would not like to face the argument that the entire case has been dismissed based on your mistaken reliance on

the procedure under Rule 1.420. The remaining defendants may seek dismissal of the case against them, in reliance on language like this:

In cases such as this, where a plaintiff intends to dismiss only one of several parties, rule 1.250(b) is the appropriate vehicle for dropping a party. *See Biggers v. Town of Davie*, 674 So. 2d 938, 939 (Fla. 4th DCA 1996). If, however, there is only one defendant or if the plaintiff intends to dismiss the action as to all defendants, Rule 1.420(a)(1) is the operative rule. *Bay View Inn, Inc. v. Friedman*, 545 So. 2d 417, 418 (Fla. 3d DCA 1989). Thus, ***“an essential distinction between a notice of dropping a party and a voluntary dismissal is that the former concludes the action as to the dropped party while the latter is generally utilized to conclude the action in its entirety.”*** *Carter v. Lake County*, 840 So. 2d 1153, 1155 (Fla. 5th DCA 2003).

National Bank of Commerce v. Jupiter Mortgage Corp., 890 So. 2d 553, 555-56 (Fla. 2d DCA 2005)(emphasis added).

Finally, a bit of strategic advice: When and if you have given up on the idea of recovering against one of the defendants, think about calling defense counsel to offer a settlement term whereby you drop that defendant in exchange for an agreement that the dropped defendant refrain from seeking to tax costs against the plaintiff. Without such an agreement, your Notice of Dropping Party will likely make that defendant a prevailing party entitled to an award of taxable costs against your client. *See Bay View Inn, Inc. v. Friedman*, 545 So. 2d 417, 419 (Fla. 3d DCA 1989).

Counsel for the defendant you are seeking to drop may equivocate at first about whether he or she can get authority to waive that cost claim. Eventually, however, that defendant is

likely to be glad to get out of the case and waive costs, so if at first you don't succeed, just

Keep Tryin!

Roy