



## PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

[www.palmbeachbar.org](http://www.palmbeachbar.org)

September 2011



Past PBCBA President Scott G. Hawkins was recently sworn in as president of The Florida Bar as his wife Lisa holds the Bible and his daughter Allison looks on. Mark your calendar for November 14 for a membership luncheon where Scott will address the membership about important Florida Bar issues.

### Mark your calendar for upcoming Membership Events

#### Membership Kickoff: Inaugural Speed Networking & Cocktail Reception

September 21  
BB King's at City Place

#### Lawyers Have Heart Run

October 1

#### Diversity Luncheon

October 14  
Marriott West Palm Beach

#### Family Picnic

October 22  
Dreher Park

#### Membership Luncheon

November 14  
Marriott West Palm Beach  
Speaker: FL Bar President Scott G. Hawkins

#### Annual Holiday Party & Silent Auction

December 1  
Frenchman's Reserve, Palm Beach Gardens

#### Third Annual Lawyer Variety Show

January 21, 2012  
Eissey Theatre, Palm Beach State College

#### Bench Bar Conference

March 9  
Palm Beach County Convention Center

#### Annual Judicial Reception

May 1  
The Harriet at City Place

#### Annual Installation Banquet

June 2  
The Breakers Hotel, Palm Beach

### Bar to Host Second Biennial Diversity Summit October 14

The Palm Beach County Bar Association's Committee for Diversity and Inclusion will hold its Second Biennial Diversity Summit on Friday, October 14, 2011. The purpose of the summit is to promote dialogue between managing and hiring partners, government and agency heads, associates and Judges on ways to improve the diversity in our legal community. The event will be a ½ day program, featuring a luncheon with a prominent speaker, followed immediately by roundtable discussions over dessert and coffee. During the luncheon, Palm Beach County Bar President John Howe will present the "diversity statistics," highlighting both areas of success and areas needing improvement. The statistics, together with the relative experiences of those attending the luncheon, will serve as the starting point for the roundtable discussions. The discussions are intended to generate ideas, goals and unique means of tackling this complex issue. Finally, the event will feature a panel discussion, and include prominent local and national leaders, including Daryl Parks, President-Elect of the National Bar Association, Michael McAuliffe, 15th Judicial Circuit State Attorney, and many more. The event will conclude with a happy hour. Please save the date on your calendars for this exciting and important event.

### Third Annual Lawyer Variety Show – Talent Search

Can you do impersonations? How about sing, dance, play a musical instrument or make people laugh? Auditions for our Third Annual Lawyer Variety will be held on Wednesday, October 12 from 5:30 pm to 7:30 pm at the Eissey Theatre in Palm Beach Gardens. If you're interested in auditioning, please contact Lynne Poirier at the Bar Office at 687-2800 or email [lpoirier@palmbeachbar.org](mailto:lpoirier@palmbeachbar.org)

The show will be held on Saturday, January 21, 2012 beginning with a cocktail reception. Tickets go on sale November 1.

Mark your calendar and join us for this fun night out.

### Membership Kickoff: Inaugural Speed Networking & Cocktail Reception

The Membership Committee will be hosting its first Membership Kickoff event on Wednesday, September 21 from 5:30 pm to 7:00 pm at BB Kings in West Palm Beach.

Join us and see how many new members you can meet within 45 minutes!

Cocktails begin at 5:30 pm followed by Speed Networking from 6:15 pm – 7:00 pm.

Sponsors to date include Esquire Deposition Services, Intelligent Office, Visual Evidence and PNC Bank.

The cost will be FREE for new members (as of July 2011) \$20.00 for renewing members and judges are complimentary.

Register on-line at [www.palmbeachbar.org](http://www.palmbeachbar.org)

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## Rules of Civil Procedure Corner

### Amended Rule 1.420: Partial Voluntary Dismissal

By Matt Triggs and Jonathan Galler

It is often said that a plaintiff is the master of his or her own complaint. That may be true in many respects, but until the most recent amendments to Florida Rule of Civil Procedure 1.420, a plaintiff's control over his or her own complaint was limited in at least one significant respect: a plaintiff could not voluntarily dismiss a portion of the complaint without dismissing the entire action. Indeed, any notice of voluntary dismissal purporting to dismiss less than the complete action was said to be a nullity.<sup>1</sup> Amended Rule 1.420(a) now permits a plaintiff to voluntarily dismiss an action, a claim, or any part of an action or claim, without court order.

#### Pre-Amendment Florida Rule 1.420(a)

Prior to last year's amendments to the Florida Rules of Civil Procedure (effective January 1, 2011), Rule 1.420(a)(1) provided that "an action may be dismissed by plaintiff without order of court" at any point before the hearing on a motion for summary judgment or, if no such motion is served or if the motion is denied, at any point before retirement of the jury or submission of the case to the court for decision.

Notably, the pre-amendment rule provided only for the voluntary dismissal of an action, not an individual claim. As the Fourth District Court of Appeal said in 1976 in what is still one of the most cited cases on this point, *Deseret Ranches*, "Only an entire action may be voluntarily dismissed under Fla. R. Civ. P. 1.420(a)(1); there can be no partial dismissal, no dismissal of less than all causes of action."<sup>2</sup>

Because a properly filed notice of voluntary dismissal automatically terminates the lawsuit and divests the court of jurisdiction, it was especially important to understand the impact of an attempted notice of "partial" voluntary dismissal under the pre-amendment rule. In *Deseret Ranches*, the Fourth District made clear that the attempted notice was to be deemed a nullity that dismisses nothing at all.<sup>3</sup>

That is not to say that a plaintiff could not revamp his lawsuit as desired. However, the only proper method for doing so prior to the rule's amendment was to seek leave to amend the complaint under Rule 1.190.

The pre-amendment rule also did not provide a mechanism for voluntarily dismissing or dropping fewer than all parties from a lawsuit. Here, too, however, a plaintiff was not without recourse; he or she could drop a particular defendant or defendants pursuant to Rule 1.250(b).

#### Federal Rule 41(a)

Florida's Rule 1.420(a) was derived from Federal Rule of Civil Procedure 41(a).<sup>4</sup> Federal Rule 41(a) provides that a plaintiff "may dismiss an action without a court order" by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.

One notable difference between the Federal Rule and Rule 1.420(a) (pre- and post-amendment) is that the Federal Rule provides far less time within which a plaintiff may file a notice of voluntary dismissal. Under Federal Rule 41(a), no such notice may be filed once the defendant has served an answer.

However, just like the pre-amendment Rule 1.420(a), the Federal Rule provides for the voluntary dismissal of an action, rather than an individual claim. And the Eleventh Circuit's interpretation of that language mirrors that of the Fourth District:

"Rule 41 allows a plaintiff to dismiss all of his claims against a particular defendant; its text does not permit plaintiffs to pick and choose, dismissing only particular claims within an action. A plaintiff wishing to eliminate particular claims or issues from the

action should amend the complaint under Rule 15(a) rather than dismiss under Rule 41(a)."<sup>5</sup>

It should be noted, though, that many federal district courts in other circuits have interpreted Rule 41(a)

less strictly. *See, e.g., Vail v. District of Columbia*, 1988 WL 63069, \*5 n.5 (D.D.C. June 2, 1988) ("The clear trend, and the majority rule, is that a plaintiff may use Rule 41(a) to dismiss particular claims.")<sup>6</sup>

#### Amended Rule 1.420(a)

Amended Rule 1.420(a) no longer precludes a plaintiff from making a partial voluntary dismissal. The amended rule provides that "an action, a claim or any part of an action or a claim may be dismissed by plaintiff without order of court" within the same time frames provided under the pre-amendment version of the rule. Fla. R. Civ. P. 1.420(a)(1).

While some trial courts may have permitted partial dismissals or "withdrawals" of claims even prior to the enactment of the amendment, the amended rule now expressly authorizes that practice, thereby restoring to the plaintiff an additional measure of mastery over his or her own claims. As previously noted above, even before Rule 1.420 was amended, a plaintiff could effectively dismiss particular claims or individual parties by seeking leave to amend the complaint. But leave to amend is sometimes denied, particularly as the trial approaches,<sup>7</sup> which is exactly when a plaintiff may very well be most inclined to examine and pare down his or her claims by way of voluntary dismissal.

Moreover, in contrast to the relatively simple voluntary dismissal of a particular claim, amending the complaint means that the action is no longer at issue, under Rule 1.440, and would likely result in the lawsuit's removal from the court's trial docket. Under the pre-amendment rule, therefore, a plaintiff may be forced to choose between losing his or her spot on a trial calendar, on the one hand, and prosecuting a claim that he or she no longer wishes to prosecute, on the other hand. For these reasons, the amended rule arguably promotes an efficiency and flexibility that otherwise appears to have been lacking.

In addition, because the amended rule effectively gives a plaintiff the ability in some cases to dismiss particular parties from the lawsuit by dismissing all claims naming them, an amendment to Rule 1.420(d) now also provides that a party may seek entry of a judgment for costs once the action is concluded as to that particular party.

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<sup>1</sup> *Deseret Ranches of Florida, Inc. v. Bowman*, 340 So. 2d 1232, 1233 (Fla. 4th DCA 1976).

<sup>2</sup> *Id. See also Browd v. Everclear Photocopy, Inc.*, 536 So. 2d 1083, 1084 (Fla. 4th DCA 1988) ("Clearly a plaintiff may not voluntarily dismiss only a portion of a claim.")

<sup>3</sup> *Deseret Ranches*, 340 So. 2d at 1233.

<sup>4</sup> 4 Fla. Prac., Civil Procedure R. 1.420 (2010-2011 ed.).

<sup>5</sup> *Campbell v. Altec Indus., Inc.*, 605 F.3d 839, 841 (11th Cir. 2010) (citing *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1106 (11th Cir 2004)).

<sup>6</sup> *See also Nationwide Mut. Ins. Co. v. Bridgestreet Corporate Housing LLC*, 2010 WL 2541634, \*3 (S.D. Ohio June 18, 2010); *Collier v. Batiste*, 2005 WL 3543824, \*3 (E.D. La. Oct. 21, 2005).

<sup>7</sup> *See, e.g., Liberty Transp., LLC v. Banyan Air Services, Inc.*, 982 So. 2d 1231, 1232 (Fla. 4th DCA 2008) (denying leave to amend counter claim when too close to trial).