

Rule 320. Request to Withdraw Complaint; Settlement

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 (except for a consolidated hearing on a cross-complaint pursuant to Rule 315B), and notify the parties in writing that the complaint has been withdrawn.

(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 of the complaint with the magisterial district court at any time prior to the entry of judgment. Upon receipt of such notice, the magisterial district court shall note the case settled on the docket, cancel any scheduled hearing (except for a consolidated hearing on a cross-complaint pursuant to Rule 315B), and notify the parties in writing that the complaint has been marked settled.

(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.

C (1) The withdrawal or settlement of the plaintiff's complaint shall not affect the right of the defendant to proceed with a cross-complaint filed pursuant to Rule 315A.

(2) The defendant may file a written notice of withdrawal of the cross-complaint in the manner set forth in subdivision A.

(3) The parties may file a written notice of settlement of the cross-complaint in the manner set forth in subdivision B.

Official 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 fees and costs for filing and service of a complaint. Compare with Rule 314E, 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 cross-complaint. Moreover, a cross-complaint will survive the withdrawal or settlement of the corresponding complaint.

Prior Rule 320, addressing continuances, was rescinded by Order of December 16, 2004, effective July 1, 2005, and its provisions were added to Rule 209.