

2020-005

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To: RulesComment
Subject: Comment re proposed amendment to Rule 41

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To the Rules Committee:

I am responding to the proposed change to Superior Court Rule 41 announced in the Committee's June 4 public hearing notice.

I have no objection to the general concept of conforming the rule to mirror the federal rules. However, I believe Rule 41(a)(2) could be read as imposing a substantive change New Hampshire law regarding the voluntary dismissal of claims. New Hampshire has a substantial body of law on the notion of voluntary non-suits. The general rule is that a "plaintiff may take a voluntary nonsuit as a matter of right at any time prior to opening the case at a trial or final hearing unless the plaintiff has so far committed to the case by actions or agreements that discontinuance of the suit at that time would be unjust to the defendant or third parties." 5 N.H. CIVIL PRACTICE AND PROCEDURE § 32.07 (2020). While I agree that a motion for voluntary nonsuit after the filing of an Answer should require leave of the Court, traditionally the standard in New Hampshire has been extremely permissive towards granting such a motion. In my opinion, the proposed rule could be read to modify that permissive standard, and to that extent I believe the committee should include a clarifying language or comment stating that the intent is not to modify existing NH common law or this point.

Thank you
Israel

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