

## County of Berks

# PRAECIPE TO WITHDRAW / DISCONTINUE FORMS AND INSTRUCTIONS

### WARNING

Civil litigation is a very serious matter. It is highly recommended that you hire an attorney to represent you in any action. If you would like information about hiring an attorney, please call the Berks County Bar Association Lawyer Referral Service at 610-375-4591. If you choose not to hire an attorney, you may lose rights important to you. The court will expect you to follow the rules of procedure the same as though you had an attorney representing you. You should not use the information contained in this packet as a substitute for professional legal advice.

#### **Disclaimer**

Court staff is not able to give you legal advice or help you fill out/complete these forms. The information in this packet is not a substitute for professional legal advice. The Court, the Berks County Bar Association and the Self-Represented Litigants Task Force assume no responsibility and accept no liability for actions taken by users of these documents, including reliance on their contents.

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## I. General Information

### A. Introduction

This packet of information has been created by members of the Berks County Self-Represented Litigants Task Force. These materials are intended to assist individuals involved in a civil action by providing general information and legal forms. IT IS HIGHLY RECOMMENDED THAT YOU HIRE AN ATTORNEY TO REPRESENT YOU IN ANY LEGAL ACTION. The information contained in this packet is not to be used as a substitute for professional legal advice. Even if you do not hire an attorney to begin your action, you can change your mind and choose to hire an attorney at any time. If you need help finding an attorney, you can contact the Berks County Bar Association Lawyer Referral Service by calling 610-375-4591.

### B. Legal Definitions

1. Praecepte in a civil case is a document requesting that the Prothonotary's Office does what is being requested.
2. Withdraw in the case of a "Praecepte to Withdraw", means to un-do the filing of a pleading (document) as if it was never filed.
3. Discontinue means to terminate or end the specific action (case) that you started.

### C. Rules of Court

You can find a copy of the Berks County Local Rules of Civil Procedure and the Pennsylvania Rules of Civil Procedure at the law library located on the 10<sup>th</sup> Floor of the Courthouse or on the Court's website, [www.countyofberks.com](http://www.countyofberks.com) . **Pennsylvania Rule of Civil Procedure 1915.3-1 gives specific direction on how to withdraw a child custody action.**

### D. Basic Procedure

This packet contains forms and instructions on how to withdraw a specific action (discontinue, terminate or end a civil case that you started). If you later want to restart the specific action, you would need to begin again. **There are separate packets for a Custody Order, Modification of a Custody Order, Custody Agreements, Custody Exceptions, Emergency Petition for Custody, Enforcing a Custody Order, and Custody Relocation.**

## **II. Instructions**

(If you have not already done so, prior to beginning this Section, please detach the Forms at the end of this packet. Please note that the Forms at the end of the packet are in the same order as these instructions. You **MUST** use Forms 1 and 2.)

- A. Instructions for Completing the Praecept to Withdraw/Discontinue (FORM 1)
- B. Instructions for Completing the Certificate of Service (FORM 2)

### **A. Instructions for Completing the Praecept to Withdraw/Discontinue – (FORM 1)**

The Praecept to Withdraw/Discontinue is used by the individual who filed a specific action to withdraw or discontinue the action. **If you are not the party who filed the action, you cannot withdraw it.**

**IMPORTANT NOTE FOR CUSTODY CASES: YOU CAN ONLY FILE THIS PRAECIPE IF YOU HAVE NOT SERVED THE CUSTODY COMPLAINT OR IF THE OTHER PARTY AGREES.** If the other party does not agree to the withdrawal or discontinuance of the action, you may need to get permission from the Court. These Instructions do not have the documents you need to file to get permission from the Court. If you need to get permission from the Court to withdraw or discontinue a custody action, you are strongly encouraged to hire a lawyer to advise you and prepare the necessary documents.

#### Caption:

- Neatly print or type the name of the person or persons who are listed as the “Plaintiff(s)” (this may be you or the other Party – look at your existing court documents to be sure).
- Neatly print or type the name of the person or persons who are listed as the “Defendant(s)” (this may be you or the other Party – look at your existing court documents to be sure).
- Fill in the Docket number next to “No.” on the right side of the caption – look at your existing court documents to get this number.
- Fill in the name of the Assigned Judge after “Assigned to” and before “,J.” – look at your existing court documents to get the Judge’s name.
- Fill in the specific type of pleading or action that you are withdrawing/discontinuing on the blank after “PRAECIPE TO WITHDRAW/DISCONTINUE”. Some examples of types of actions include: Custody Complaint; Petition to Modify Custody; Petition for Emergency Relief; Petition for Special Relief; Petition for Contempt; Custody Relocation Petition; Custody Exceptions; Counter-Claim; and Divorce Complaint.

#### Praecept to Withdraw/Discontinue

Neatly print or type the following information:

- The name of the pleading or type of action that you are withdrawing or discontinuing above the line “Pleading or Type of Action Being Withdrawn/Discontinued”. (Use the same title as on the document you originally filed to start the action. Some examples

include: Custody Complaint; Petition to Modify Custody; Petition for Emergency Relief; Petition for Special Relief; Petition for Contempt; Custody Relocation Petition; Custody Exceptions; Counter-Claim; and Divorce Complaint.)

- The date that the original action was filed above the line "Date". (Your copy of the originally filed document should have a time-stamp on it that indicates the date it was filed. If you no longer have the document or there is no time stamp, you can obtain the date information by going to the Prothonotary's Office on the 2<sup>nd</sup> Floor of the Courthouse and using their public use computers.)
- If the action that you are withdrawing or discontinuing is a custody action, and the custody complaint or petition to modify that you filed has already been served on the other party, you must have your signature and the other party's signature or their attorney's signature on this form above the lines "Signature of Plaintiff or Plaintiff's Attorney" and "Signature of Defendant or Defendant's Attorney". If you are not withdrawing/discontinuing a custody action, leave these lines blank.
- Print your full name above the line "Printed Name".
- Sign your full name above the line "Signature".
- Put today's date to the right of the word "Date" at the bottom of the form.

## **B. Instructions for Completing the Certificate of Service (Form 2)**

When you file a Praecipe to Withdraw/Discontinue, you must notify all other parties to the action that you are withdrawing/discontinuing it. You must provide the Prothonotary's Office with a Certificate of Service document identifying how and when you did this.

### Caption:

- Neatly print or type the name of the person or persons who are listed as the "Plaintiff(s)" (this may be you or the other Party – look at your existing court documents to be sure).
- Neatly print or type the name of the person or persons who are listed as the "Defendant(s)" (this may be you or the other Party – look at your existing court documents to be sure).
- Fill in the Docket number next to "No." on the right side of the caption – look at your existing court documents to get this number.
- Fill in the name of the Assigned Judge after "Assigned to" and before ",J." – look at your existing court documents to get the Judge's name.

### Service By Mail:

If you are sending notice to some or all of the other parties by mail, please complete the "Service By Mail" section. **If you are not notifying any of the parties by mail, skip this section.**

- Put the name(s) and address(es) of all the Plaintiff(s) to the right of "Atty. for Plaintiff." If the party is acting as their own attorney and representing themselves, put a comma and the words "Pro se" after that party's name. If the party is represented by an attorney, the attorney's name and address goes here.
- Put the name(s) and address(es) of all the Defendant(s) to the right of "Atty. for Defendant." If the party is acting as their own attorney and representing themselves,

put a comma and the words “Pro se” after that party’s name. If the party is represented by an attorney, the attorney’s name and address goes here.

### Personal Service:

If you are giving notice to some or all of the other parties by handing a copy of the Praecepto to Withdraw to them, complete the “Personal Service” section. **If you are not notifying any of the parties by personal service, skip this section.**

- Put the name(s) of all the parties you handed a copy of the Praecepto to Withdraw/Discontinue to above “Name of Party/Parties”. If the party is represented by an attorney and you handed the attorney a copy of the Praecepto to Withdraw/Discontinue, the attorney’s name goes here.
- Put the date that you handed them the copy on the line above “Date”.

### Signature:

- Sign your name on the line above “Signature”.
- File this Form along with Form 1 in the Prothonotary’s Office. **You MUST file the Original and one (1) copy for the Prothonotary to send to the Custody Office. You SHOULD file the Original and two (2) copies so that you get a time-stamped copy back to keep for your records to prove that you filed the documents. As stated above, you need to mail a copy or personally serve a copy on all other parties.**

## **III. Forms**

- A. Praecepto to Withdraw/Discontinue (Form 1)
- B. Certificate of Service (Form 2)

PLEASE DETACH THE FOLLOWING FORMS AND FILL IN THE FORMS WHILE GOING THROUGH THE INSTRUCTIONS.

PLEASE NOTE THAT YOU NEED TO FILL IN AND USE BOTH OF THE FORMS THAT HAVE BEEN PROVIDED.

Plaintiff(s)	:	IN THE COURT OF COMMON PLEAS
	:	OF BERKS COUNTY, PENNSYLVANIA
	:	CIVIL ACTION – LAW
vs.	:	
	:	No.
	:	
Defendant(s)	:	Assigned to: _____, J.

**PRAECIPE TO WITHDRAW/DISCONTINUE \_\_\_\_\_**

To the Prothonotary:

Please withdraw/discontinue the \_\_\_\_\_  
Pleading or Type of Action Being Withdrawn/Discontinued

that I filed on \_\_\_\_\_.  
Date

I hereby certify that I filed the pleading or action and that I have the authority to withdraw/discontinue the pleading or action.

If a Custody action is being withdrawn/discontinued, I certify that:

1. The Custody Complaint or Petition to Modify has not been served on the other party;  
or
2. All parties agree to withdraw/discontinue as shown by their signatures below.

\_\_\_\_\_  
 Signature of Plaintiff or Plaintiff's Attorney

\_\_\_\_\_  
 Signature of Defendant or Defendant's Attorney

I understand that when I file this Praecipec to Withdraw/Discontinue, the Prothonotary's Office will consider the pleading as withdrawn and/or will mark the action that I originally filed as discontinued, terminated, or ended and that I will need to file the action again and pay all appropriate filing fees if I want the case to be active again.

I understand that I need to mail to or otherwise serve a copy of this Praecipec to Withdraw/Discontinue on all other parties and that I need to file a Certificate of Service listing those parties, their addresses and the method and date that they were given or mailed a copy of the Praecipec to Withdraw/Discontinue.

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Signature

Date: \_\_\_\_\_

Plaintiff(s) : IN THE COURT OF COMMON PLEAS  
: OF BERKS COUNTY, PENNSYLVANIA  
: CIVIL ACTION – LAW  
vs. :  
: No.  
: :  
Defendant(s) : Assigned to: , J.

**CERTIFICATE OF SERVICE**

Service by Mail:

I hereby certify that I mailed a copy of the Praecepto to Withdraw/Discontinue to the following parties at their addresses listed below on \_\_\_\_\_ by first class mail.  
Date

Atty. for Plaintiff:

Atty. for Defendant:

Personal Service:

I hereby certify that I personally handed a copy of the Praecepto to Withdraw/Discontinue to

\_\_\_\_\_ on \_\_\_\_\_  
Name of Party/Parties Date

\_\_\_\_\_  
Signature