

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal.

(1) By the Plaintiff.

(A) Without a Court Order. Subject to Rules 23(e), 23.2, 56.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) By Court Order; Effect. Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

(b) Involuntary Dismissal; Effect.

(1) Actions on the Customs Case Management Calendar or the Suspension Disposition Calendar are subject to dismissal for lack of prosecution at the expiration of the applicable period of time as prescribed by Rules 83 and 85.

(2) Actions commenced pursuant to 28 U.S.C. § 1581(c) by the filing of a summons only are subject to dismissal for failure to file a complaint at the expiration of the applicable period of time prescribed by 19 U.S.C. § 1516a.

(3) When it appears that there is a failure of the plaintiff to prosecute, the court may on its own after notice, or on motion of a defendant, order the action or any claim dismissed for lack of prosecution. No notice or motion is required when subparagraphs (1) or (2) apply.

(4) For failure of the plaintiff to comply with these rules or with any order of the court, a defendant may move that the action or any claim against the defendant be dismissed.

(5) Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, operates as an adjudication on the merits.

(c) Dismissing a Counterclaim, Crossclaim, or Third-Party Claim. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) Costs of a Previously Dismissed Action. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

PRACTICE COMMENT: Rule 41(a)(1)(A) may be used to dismiss fewer than all plaintiffs or defendants from an action. There is no standard form for this purpose. Plaintiffs should construct an appropriate notice or stipulation identifying the case and the party to be dismissed. In cases of misjoined parties, Rule 21 is applicable. Following the dismissal of a party, the court may, either on its own initiative or on a motion of a party, conform the caption of the case to reflect the actual parties remaining.

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