

Rule 41. Dismissal of Actions

(a) Voluntary dismissal: Effect thereof.

(1) By plaintiff; by stipulation. Subject to the provisions of SCR-Dom Rel 66 and of any applicable statute, a claim or counterclaim may be dismissed by the claimant without order of Court (i) by filing a notice of dismissal at any time before service by the adverse party of a responsive pleading or of a motion for summary judgment, or before introduction of evidence at the trial or hearing, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice.

(2) By order of Court. Except as provided in subparagraph (a)(1) of this Rule, the claimant may not dismiss an action or counterclaim without order of the Court. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court. The dismissal shall be subject to such terms and conditions as ordered by the Court, and unless otherwise specified in the order, the dismissal shall be without prejudice.

(b) Involuntary dismissal: Effect thereof. A party may move for dismissal of an action or of any claim against the party, or the Court may, sua sponte, enter an order dismissing the action or any claim therein for failure of the claimant to prosecute or to comply with these Rules or any order of the Court. Any order of dismissal entered sua sponte, including a dismissal for failure to effect service within the time prescribed by SCR-Dom Rel 4(l), may be vacated for good cause shown upon motion filed within 14 days from the date the order was entered on the docket.

Unless the Court in its order for dismissal otherwise specifies, a dismissal under this paragraph and any dismissal not provided for in this Rule, other than a dismissal for lack of jurisdiction or for failure to join a party under Rule 19, operates as an adjudication on the merits.

(c) Warning to delinquent party: Dismissal without prejudice. If a party seeking affirmative relief fails for 150 days from the time action may be taken, to comply with any law, Rule, or order requisite to the prosecution of the claim, or to avail of any right arising through the default or failure of an adverse party, the Clerk shall warn the delinquent party by mail that the claim will be dismissed if the party fails to comply with this Rule, and shall make a note in the docket of the mailing. A party who does not receive this warning is not relieved from the operation of this Rule.

(d) Dismissal by Clerk. If the delinquency described in paragraph (c) continues for 180 days the complaint or counterclaim of said party, as the case may be, shall be dismissed without prejudice. The time in which the delinquent party may take appropriate action to reinstate under SCR-Dom Rel 60(b) shall start to run from the entry of dismissal by the Clerk or, upon appropriate motions by the Court, and the Clerk in either case shall serve notice thereon by mail upon every party not in default for failure to appear, of which mailing the Clerk shall make an entry in the docket.

COMMENT

Unlike SCR-Civil 41, this Rule does not operate to convert a voluntary dismissal into an adjudication on the merits where the claimant has dismissed a prior action based on or

including the claim in the instant case. An automatic adjudication on the merits is not appropriate due to the unique nature of domestic relations actions.

New SCR-Domestic Relations 10(b)(8) requires that related prior or pending actions be identified in the party's initial pleading. This information will assist the Court in evaluating the matter before it.