

Rule 41. Dismissal of Actions

(a) VOLUNTARY DISMISSAL.

(1) *By the Plaintiff.*

(A) *Without a Court Order.* Subject to Rule 66 and any applicable 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.

(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 Rule 41(a)(2) is without prejudice.

(b) INVOLUNTARY DISMISSAL; EFFECT.

(1) *By the Court.*

(A) *In General.* If the plaintiff fails to prosecute or to comply with these rules or a court order:

(i) a defendant may move to dismiss the action or any claim against it; or

(ii) the court may, on its own initiative, enter an order dismissing the action or any claim.

(B) *Result of Dismissal.* An order dismissing a claim for failure to prosecute must specify that the dismissal is without prejudice, unless the court determines that the delay in prosecution of the claim has resulted in prejudice to an opposing party. Unless the dismissal order states otherwise or as provided elsewhere in these rules, a dismissal by the court—except one for lack of jurisdiction or failure to join a party under Rule 19--operates as an adjudication on the merits.

(2) *By the Clerk.*

(A) *Failure to File Proof of Service.* In accordance with Rule 4(i), the clerk may, on his or her own initiative, and with written notice to the parties:

(i) in a case where there is only one defendant, dismiss the case for failure to file proof of service;

(ii) in a case where there are multiple defendants, dismiss any individual defendant for whom no proof of service has been filed;

(iii) dismiss a case for failure to comply with a court order requiring the filing of supplemental proof of service by a date certain, unless the court has ordered otherwise; and

(iv) require a supplementation, for the judge or magistrate judge to consider, of any proof of service that is incomplete, unclear, or does not on its face adequately explain why the person allegedly served was authorized to accept service on behalf of the defendant.

(B) *Delinquency and Notice to Delinquent Party.* A party seeking affirmative relief is delinquent if he or she 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 must mail to the delinquent party a notice indicating that the claim will be dismissed if the party fails to comply with this rule. The clerk must enter the date of mailing on the docket. A party who does not receive this notice is not relieved from the operation of this rule.

(C) *Dismissal for Delinquency.* If the party remains delinquent for 30 days after the notice is mailed by the clerk, the clerk must dismiss the delinquent party's complaint or counterclaim. The time in which the delinquent party may take appropriate action to reinstate under Rule 60(b) will start to run from the entry of dismissal by the clerk or, upon appropriate motions by the court, and the clerk in either case must serve notice by mail upon every party not in default for failure to appear. The clerk must enter the date of mailing on the docket.

(D) *Result of Dismissal.* Unless a court order specifies otherwise, a dismissal by the clerk is without prejudice.

(3) *Effect.* Any order of dismissal entered by the court or the clerk under this rule does not take effect until 14 days after the date on which it is docketed and must be vacated upon the granting of a motion filed by the plaintiff within the 14-day period showing good cause why the case should not be dismissed.

(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.

COMMENT TO 2018 AMENDMENTS

The rule has been amended to conform to Civil Rule 41.

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.