

Rule 41. Dismissal of Actions

(a) VOLUNTARY DISMISSAL.

(1) By the Plaintiff.

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 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. 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 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 a dismissal for lack of jurisdiction or for failure to join a party under Rule 19—operates as an adjudication on the merits.

(2) By the Clerk.

(A) *In General.* 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;

(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; and

(v) dismiss a case when otherwise authorized by these rules or by a court order.

(B) *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 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 41*, as amended in 2007, but maintains the following local distinctions: 1) in subsection (a)(1)(A), "applicable statute" was substituted for "federal statute"; 2) subsection (b)(1) includes language from United States District Court for the District of Columbia Local Civil Rule 83.23, which specifies that the court may dismiss a case on its own initiative and that an order of dismissal must state that it is without prejudice unless the opposing party would suffer prejudice from the delay; 3) subsection (b)(1)(B) includes the phrase "or as provided elsewhere in these rules" to clarify that where dismissal under a rule other than Rule 41 is required to be without prejudice (such as Rule 4(m)), a dismissal under that other rule does not operate as an adjudication on the merits; 4) the reference to dismissal for "improper venue" is omitted from subsection (b)(1)(B); and 5) subsection (b)(2) allows the clerk to dismiss an action without prejudice in certain situations—a deviation which is necessary because of the significantly higher volume of annual filings in the Superior Court compared to the federal district courts.

COMMENT

SCR Civil 41 is identical to *Federal Rule of Civil Procedure 41* except for the substitution of "applicable statute" for "statute of the United States" in section (a) and deletion of venue reference in section (b). Language has also been added to paragraph (b) of this Rule making it clear that the Court or Clerk may, sua sponte, dismiss an action when a plaintiff fails to prosecute or to comply with the Rules or any order of Court.