

## **Rule 10. Dismissal of Petition**

### **(a) VOLUNTARY DISMISSAL BY THE PETITIONER.**

(1) *Without Appearing in Court.* The petitioner may dismiss a petition by filing a notice of dismissal at any time before the court begins taking testimony at the civil protection order trial unless the petitioner has previously dismissed or otherwise failed to proceed on the same petition. If the petitioner properly files a notice of dismissal, the clerk may close the case and remove it from the court's calendar.

(2) *By the Court.* A petition may be dismissed at the petitioner's request only by the court if:

(A) the petitioner has previously dismissed or otherwise failed to proceed on the same petition;

(B) the petitioner's request is made in open court on the day of the civil protection order trial; or

(C) the court has begun taking testimony at the civil protection order trial.

### **(b) INVOLUNTARY DISMISSAL BY THE COURT.**

(1) *Failure to Proceed.* On motion or on its own initiative, the court may dismiss a petition if the petitioner fails to proceed with the case.

(2) *Failure to State a Claim or Lack of Jurisdiction.* At any time prior to entry of a civil protection order, the court, on motion or on its own initiative, may dismiss a petition for failure to state a claim or lack of jurisdiction. Before dismissing a petition for failure to state a claim or lack of jurisdiction, the court may give the petitioner an opportunity to amend or supplement the petition in accordance with Rule 2(b).

### **(c) TYPE OF DISMISSAL.**

(1) *Without Prejudice.* Unless otherwise stated by the court, a dismissal will be without prejudice.

(2) *With Prejudice.*

(A) *Previously Dismissed Petition.* After a petition has been dismissed once by the petitioner or for the petitioner's failure to proceed with the case, the court may dismiss the petition with prejudice. When dismissing with prejudice, the court may consider abuse of process or prejudice to the respondent.

(B) *After Testimony Begins.* After the court begins taking testimony at the civil protection order trial, if a petitioner requests dismissal or fails to proceed, the court may dismiss the petition with prejudice.

(C) *Effect on Future Claims.* The dismissal of a petition with prejudice bars a petitioner from obtaining a protection order based on the same incident(s).

(d) **EFFECT ON TEMPORARY PROTECTION ORDERS.** All temporary protection orders in a case become invalid when all petitions filed in the case are dismissed.

## **COMMENT TO 2017 AMENDMENTS**

This rule has been expanded to include more detailed procedures for dismissals. Rule 7(d) addresses motions to dismiss by respondents.