

1 Rule 41. Dismissal of actions.

2 (a) Voluntary dismissal; effect thereof.

3 (a)(1) By plaintiff. Subject to the provisions of Rule 23(e), ~~of Rule 66(i)~~, and of any
4 applicable statute, an action may be dismissed by the plaintiff without order of court by
5 filing a notice of dismissal at any time before service by the adverse party of an answer
6 or other response to the complaint permitted under these rules. Unless otherwise stated
7 in the notice of dismissal, the dismissal is without prejudice, except that a notice of
8 dismissal operates as an adjudication upon the merits when filed by a plaintiff who has
9 once dismissed in any court of the United States or of any state an action based on or
10 including the same claim.

11 (a)(2) By order of court. Unless the plaintiff timely files a notice of dismissal under
12 paragraph (1) of this subdivision of this rule, an action may only be dismissed at the
13 request of the plaintiff on order of the court based either on:

14 (a)(2)(i) a stipulation of all of the parties who have appeared in the action; or

15 (a)(2)(ii) upon such terms and conditions as the court deems proper. If a
16 counterclaim has been pleaded by a defendant prior to the service upon him of the
17 plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's
18 objection unless the counterclaim can remain pending for independent adjudication by
19 the court. Unless otherwise specified in the order, a dismissal under this paragraph is
20 without prejudice.

21 (b) Involuntary dismissal; effect thereof. For failure of the plaintiff to prosecute or to
22 comply with these rules or any order of court, a defendant may move for dismissal of an
23 action or of any claim against him. After the plaintiff, in an action tried by the court
24 without a jury, has completed the presentation of his evidence the defendant, without
25 waiving his right to offer evidence in the event the motion is not granted, may move for a
26 dismissal on the ground that upon the facts and the law the plaintiff has shown no right
27 to relief. The court as trier of the facts may then determine them and render judgment
28 against the plaintiff or may decline to render any judgment until the close of all the
29 evidence. If the court renders judgment on the merits against the plaintiff, the court shall
30 make findings as provided in Rule 52(a). Unless the court in its order for dismissal
31 otherwise specifies, a dismissal under this subdivision and any dismissal not provided

32 for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for
33 lack of an indispensable party, operates as an adjudication upon the merits.

34 (c) Dismissal of counterclaim, cross-claim, or third-party claim. The provisions of this
35 rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A
36 voluntary dismissal by the claimant alone pursuant to Paragraph (1) of Subdivision (a)
37 of this rule shall be made before a responsive pleading is served or, if there is none,
38 before the introduction of evidence at the trial or hearing.

39 (d) Costs of previously-dismissed action. If a plaintiff who has once dismissed an
40 action in any court commences an action based upon or including the same claim
41 against the same defendant, the court may make such order for the payment of costs of
42 the action previously dismissed as it may deem proper and may stay the proceedings in
43 the action until the plaintiff has complied with the order.

44 (e) Bond or undertaking to be delivered to adverse party. Should a party dismiss his
45 complaint, counterclaim, cross-claim, or third-party claim, pursuant to Subdivision
46 (a)(1)(i) above, after a provisional remedy has been allowed such party, the bond or
47 undertaking filed in support of such provisional remedy must thereupon be delivered by
48 the court to the adverse party against whom such provisional remedy was obtained.

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