

1 **Rule 41. Dismissal of actions.**

2 **(a) Voluntary dismissal; effect thereof.**

3 **(a)(1) By the plaintiff.**

4 ~~(a)(1)(A) Subject to the provisions of Rule 23(e) and of any applicable statute, the plaintiff~~
 5 ~~may dismiss an action may be dismissed by the plaintiff without a court order of court by filing;~~

6 ~~(a)(1)(A)(i) a notice of dismissal at any time before service by the adverse before the~~
 7 ~~opposing party of serves an answer or other response to the complaint permitted under these~~
 8 ~~rules a motion for summary judgment; or~~

9 ~~(a)(1)(A)(ii) a stipulation of dismissal signed by all parties who have appeared.~~

10 ~~(a)(1)(B) Unless the notice or stipulation states otherwise stated in the notice of dismissal, the~~
 11 ~~dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon~~
 12 ~~the merits when filed by a. But if the plaintiff who has once previously dismissed in any federal- or~~
 13 ~~state court of the United States or of any state an action based on or including the same claim, a~~
 14 ~~notice of dismissal operates as an adjudication on the merits.~~

15 **(a)(2) By court order of court.** ~~Unless the plaintiff timely files a notice of dismissal under Except~~
 16 ~~as provided in paragraph (a)(1) of this subdivision of this rule, an action may only be dismissed at the~~
 17 ~~plaintiff's request of the plaintiff on by court order of the court based either on:~~

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

19 ~~(a)(2)(ii) upon such terms and conditions as the court deems considers proper. If a defendant~~
 20 ~~has pleaded a counterclaim has been pleaded by a defendant prior to the service upon him of~~
 21 ~~before being served with the plaintiff's motion to dismiss, the action shall not may be dismissed~~
 22 ~~against over the defendant's objection unless only if the counterclaim can remain pending for~~
 23 ~~independent adjudication by the court. Unless the order states otherwise specified in the order, a~~
 24 ~~dismissal under this paragraph is without prejudice.~~

25 **(b) Involuntary dismissal; effect thereof.** ~~For failure of If the plaintiff fails to prosecute or to comply~~
 26 ~~with these rules or any court order of court, a defendant may move for dismissal of an to dismiss the~~
 27 ~~action or of any claim against him it. After the plaintiff, in an action tried by the court without a jury, has~~
 28 ~~completed the presentation of his evidence the defendant, without waiving his right to offer evidence in~~
 29 ~~the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the~~
 30 ~~law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and~~
 31 ~~render judgment against the plaintiff or may decline to render any judgment until the close of all the~~
 32 ~~evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as~~
 33 ~~provided in Rule 52(a). Unless the court in its order for dismissal order otherwise specifies states, a~~
 34 ~~dismissal under this subdivision paragraph and any dismissal not provided for in under this rule, other~~
 35 ~~than a dismissal for lack of jurisdiction, or for improper venue, or for lack of an indispensable failure to join~~
 36 ~~a party under Rule 19, operates as an adjudication upon the merits.~~

37 **(c) Dismissal of counterclaim, cross-claim, or third-party claim.** ~~The provisions of this rule apply~~
38 This rule applies to the dismissal of any counterclaim, cross-claim, or third-party claim. A claimant's
39 voluntary dismissal by the claimant alone pursuant to Paragraph under paragraph (a)(1) of Subdivision
40 (a) of this rule shall must be made before a responsive pleading is served or, if there is ~~none~~ no
41 responsive pleading, before ~~the introduction of evidence~~ is introduced at ~~the a~~ trial or hearing.

42 **(d) Costs of previously-dismissed action.** If a plaintiff who ~~has once previously~~ dismissed an action
43 in any court ~~commences~~ files an action based upon or including the same claim against the same
44 defendant, the court may ~~make such order for the payment~~ the plaintiff to pay all or part of the costs of the
45 previous action ~~previously dismissed as it may deem proper~~ and may stay the proceedings ~~in the action~~
46 until the plaintiff has complied ~~with the order~~.

47 **(e) Bond or undertaking to be delivered to adverse-opposing party.** ~~Should~~ If a party dismisses
48 ~~his a~~ complaint, counterclaim, cross-claim, or third-party claim, ~~pursuant to Subdivision under paragraph~~
49 ~~(a)(1)(i) above~~, after a provisional remedy has been allowed ~~such the~~ party, the bond or undertaking filed
50 in support of ~~such the~~ provisional remedy must ~~thereupon~~ be delivered by the court to the ~~adverse~~ party
51 against whom ~~such the~~ provisional remedy was obtained.

52 **Advisory Committee Note**

53 The 2016 amendments adopt the plain-language style of Federal Rule of Civil Procedure 41. And, like
54 the federal rule, the 2016 amendments move a central provision of paragraph (b) from this rule to Rule
55 52(e). Formerly, if a plaintiff had presented its case and the evidence did not support the claim, the
56 court—in a trial by the court—could find for the defendant without having to hear the defendant's
57 evidence. The equivalent provision now found in Rule 52(e) extends that principle to claims other than the
58 plaintiff's and, if a party's evidence on any particular element of the cause of action is complete but
59 insufficient, allows the court to make findings and conclusions and enter judgment accordingly.

60 In these circumstances the court's action goes beyond simple dismissal; the court is finding for a
61 party on the merits. This principle more properly belongs in the rule on findings and conclusions than in
62 the rule on dismissing an action.

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