

## Rule 41. Dismissal of actions.

### (a) Voluntary dismissal; effect.

#### ~~(a)~~(1) By the plaintiff.

~~(a)(1)~~(A) Subject to Rule [23\(e\)](#) and any applicable statute, the plaintiff may dismiss an action, a claim, or a party without a court order by filing:

~~(a)(1)(A)~~(i) a notice of dismissal before ~~the~~ any opposing party serves an answer or a motion for summary judgment; or

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

~~(a)(1)~~(B) 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.

~~(a)~~(2) **By court order.** Except as provided in paragraph (a)(1), an action, a claim, or a party may be dismissed at the plaintiff's request by court order only on terms 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 by the court. Unless the order states otherwise, a dismissal under this paragraph is without prejudice.

**(b) Involuntary dismissal; effect.** If the plaintiff fails to prosecute or to comply with these rules or any court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order otherwise states, a dismissal under this paragraph and any dismissal not under this rule, other than a dismissal for lack of jurisdiction, improper venue, or failure to join a party under Rule [19](#), operates as an adjudication on the merits.

**(c) Dismissal of counterclaim, crossclaim, or third-party claim.** This rule applies to the dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under paragraph (a)(1) must be made before a responsive pleading is served or, if there is no responsive pleading, before evidence is introduced at a trial or hearing.

**(d) Costs of 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 may order the plaintiff to pay all or part of the costs of the previous action and may stay the proceedings until the plaintiff has complied.

**(e) Bond or undertaking to be delivered to opposing party.** If a party dismisses a complaint, counterclaim, crossclaim, or third-party claim, under paragraph (a)(1) after a provisional remedy has been allowed the party, the bond or undertaking filed in support of the provisional remedy must be delivered to the party against whom the provisional remedy was obtained.

#### Advisory Committee Note

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

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