

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

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

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

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

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

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

10 ~~(a)(1)~~(B) Unless the notice or stipulation states otherwise, the dismissal is
11 without prejudice. But if the plaintiff previously dismissed any
12 federal- or state-court action based on or including the same claim, a notice of
13 dismissal operates as an adjudication on the merits.

14 ~~(a)~~**(2) By court order.** Except as provided in paragraph (a)(1), an action, [a claim,](#)
15 [or a party](#) may be dismissed at the plaintiff's request by court order only on
16 terms the court considers proper. If a defendant has pleaded a counterclaim
17 before being served with the plaintiff's motion to dismiss, the action may be
18 dismissed over the defendant's objection only if the counterclaim can remain
19 pending for independent adjudication by the court. Unless the order states
20 otherwise, a dismissal under this paragraph is without prejudice.

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

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

33 **(d) Costs of previously-dismissed action.** If a plaintiff who previously dismissed an
34 action in any court files an action based on or including the same claim against the
35 same defendant, the court may order the plaintiff to pay all or part of the costs of the
36 previous action and may stay the proceedings until the plaintiff has complied.

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

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43 Advisory Committee Note

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

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

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