



## **I.R.C.P. 41. Dismissal of Actions**

### **Idaho Rules of Civil Procedure Rule 41. Dismissal of Actions.**

#### **(a) Voluntary Dismissal.**

##### **(1) *By the Plaintiff.***

(A) Without a Court Order. Subject to Rules 73, and 77(e) and any applicable statute, the plaintiff may dismiss an action without a court order by filing:

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

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

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

(2) *By Court Order; Effect.* Except as provided in subsection (a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that 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. Unless the order states otherwise, a dismissal under this subsection (2) is without prejudice.

#### **(b) Involuntary Dismissal; Effect.**

(1) *Failure to Prosecute or Comply With Rules.* If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.

(2) *Dismissal in Court Trial.* In an action tried without a jury, after presentation of plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the



ground that upon the facts and the law the plaintiff has shown no right to relief. The court may then determine the facts and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court must make findings as provided in Rule 52.

(3) *Effect of Dismissal.* Unless the dismissal order states otherwise, a dismissal under this subsection (b) and any dismissal not under this rule, except one for lack of jurisdiction or failure to join a party under Rule 19, operates as an adjudication on the merits.

**(c) Dismissing a Counterclaim, Crossclaim, or Third-Party Claim.** This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

**(d) Costs of a 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:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

**(e) Dismissal of Inactive Cases.** Any action, appeal or proceeding, except for guardianships, conservatorships, and probate proceedings, in which no action has been taken for a period of 90 days may be dismissed unless there is a showing of good cause for retention.

(1) Dismissal pursuant to this rule is with prejudice in the case of appeals and without prejudice as to all other matters.

(2) At least 14 days prior to such dismissal, the clerk must give notice of the pending dismissal to all parties or their attorneys of record.



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