

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
AMENDMENT OF RULE 41(E)
OF THE NEVADA RULES OF
CIVIL PROCEDURE

ADKT 0560

FILED

JUN 10 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*CORRECTED ORDER SCHEDULING PUBLIC HEARING AND
REQUESTING PUBLIC COMMENT*

On June 2, 2020, Chief Justice Kristina Pickering and Associate Chief Justice Mark Gibbons filed a petition seeking to amend the mandatory dismissal provisions in NRCP 41(e). The proposed amendments are attached as Exhibit A.

The Nevada Supreme Court will conduct a public hearing on the petition on June 29, 2020, at 1:30 p.m. The hearing will be conducted virtually, and may be viewed on the Supreme Court's website at www.nvcourts.gov/supreme. Persons interested in participating in the hearing may join the meeting at www.bluejeans.com. Click on join meeting; enter meeting ID 674 473 211; participant passcode 4635. For BlueJeans phone dial in, call 1-408-419-1715 or 1-408-915-6290; enter meeting ID 674 473 211; participant passcode 4635.

The Court invites written comment from the bench, bar, and public regarding the proposed amendments. Comments may be submitted electronically or in hard-copy format to: Elizabeth A. Brown, Clerk of the Supreme Court, 201 South Carson Street, Carson City, Nevada 89701 or nvscclerk@nvcourts.nv.gov by 5:00 p.m., June 25, 2020. Persons interested

in participating in the hearing must notify the Clerk no later than June 25, 2020.

Hearing date: June 29, 2020, at 1:30 p.m.

Comment deadline: June 25, 2020, at 5:00 p.m.

Dated this 10th day of June, 2020.

Pickering, C. J.
Pickering

cc: Paul Matteoni, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
All District Court Judges
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Elko County Bar Association
Douglas County Bar Association
Administrative Office of the Courts

EXHIBIT A

AMENDMENT OF NEVADA RULE OF CIVIL PROCEDURE 41

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal: Effect Thereof.

(1) By the Plaintiff.

(A) Without a Court Order. Subject to Rules 23(f), 23.1, 23.2, 66, 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 federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(C) Filing Fees. Unless otherwise stipulated, the plaintiff must repay the defendant's filing fees.

(2) By Order of Court; Effect. Except as provided in Rule 41(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 Rule 41(a)(2) is without prejudice.

(b) Involuntary Dismissal: Effect. If the plaintiff fails to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against the defendant. Unless the dismissal order or an applicable statute provides otherwise, a dismissal under Rule 41(b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, 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 for Want of Prosecution.

(1) Procedure. When the applicable time ~~[periods]~~ period in subsection 2 of this rule ~~[have]~~ has expired:

- (A) any party may move to dismiss an action for lack of prosecution; or
- (B) the court may, on its own, issue an order to show cause why an action should not be dismissed for lack of prosecution. After briefing,

the court may hold a hearing or take the matter under submission, as provided by local rules on motion practice.

(2) Dismissing an Action ~~[Before Trial.]~~ for Want of Prosecution.

~~[—————(A)]~~ The court may dismiss an action for want of prosecution if a plaintiff ~~[fails]~~ has failed to bring the action to trial within 2 years after ~~(a) the action was [filed.] filed; (b) the entry of an order in the district court granting a new trial; or (c) an order for a new trial has been filed in an appellate court and the appellate court's remittitur has been filed in the district court.~~

~~[(B) The court must dismiss an action for want of prosecution if a plaintiff fails to bring the action to trial within 5 years after the action was filed.~~

~~(3) Dismissing an Action After a New Trial is Granted. The court must dismiss an action for want of prosecution if a plaintiff fails to bring the action to trial within 3 years after the entry of an order granting a new trial.~~

~~(4) Dismissing an Action After an Appeal.~~

~~(A) If a party appeals an order granting a new trial and the order is affirmed, the court must dismiss the action for want of prosecution if a plaintiff fails to bring the action to trial within 3 years after the remittitur was filed in the trial court.~~

~~(B) If a party appeals a judgment and the judgment is reversed on appeal and remanded for a new trial, the court must dismiss the action for want of prosecution if a plaintiff fails to bring the action to trial within 3 years after the remittitur was filed in the trial court.~~

~~{5}~~ (3) **Extending Time; Computing Time.** The parties may stipulate in writing to extend the time in which to prosecute an action. ~~[If two time periods requiring mandatory dismissal apply, the longer time period controls.]~~

~~{6}~~ (4) **Dismissal ~~[With]~~ Without Prejudice.** A dismissal under Rule 41(e) is not a bar to another action upon the same claim for relief against the same ~~[defendants]~~ defendant(s) unless the court ~~[provides]~~ states otherwise in its order dismissing the action.