



IRFLP 119 Dismissal of Actions

Idaho Rules of Family Law Procedure Rule 119. Dismissal of Actions.

(a) Voluntary Dismissal..

(1) By Moving Party.

(A) **Without Court Order.** Subject to any applicable statute, a moving party may dismiss an action without order of the court:

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

(ii) if no responsive pleading, before the introduction of evidence at hearing or trial; or

(iii) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

(B) **Effect.** Unless the notice of dismissal or stipulation states otherwise, the dismissal is without prejudice.

(2) **By Court Order, Effect.** Except as provided in subsection (a)(1), an action may be dismissed at the moving party's request only by court order, on terms that the court considers proper. If a responding party has pleaded a counterclaim before being served with the moving party's motion to dismiss, the action may be dismissed over responding party'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.



(1) **Failure to Prosecute or Comply with Rules.** If the moving party fails to prosecute or to comply with these rules or court order, a responding party may move for dismissal of an action or of any claim against it.

(2) **Dismissal in Court Trial.** After the moving party has completed the presentation of the moving party's evidence, the responding party, or the court on its own motion, 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 moving party has shown no right to relief. The court as the trier of the facts may then determine the facts and render judgment against the moving party or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the moving party, the court must make findings as provided in Rule 801.

(3) **Effect of Dismissal.** Unless the order states otherwise, a dismissal under this rule and any dismissal not provided for in this rule, except for one for lack of jurisdiction or failure to join a party under Rule 211, operates as an adjudication on the merits.

(c) **Dismissing a Counterclaim, Cross-claim, or Third-Party Claim.** This rule applies to a dismissal of any counterclaim, cross-claim, or third-party claim. The moving party's voluntary dismissal under Rule 119(a)(1)(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 trial or hearing.

(d) **Costs of Previously Dismissed Action.** If a moving party who has once dismissed an action in any court commences an action based on or including the same claim against the same responding party, the court:

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

(2) may stay the proceedings until the moving party has complied.

(e) **Dismissal of Inactive Cases.** Any action or proceeding 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.



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(1) Dismissal pursuant to this rule is 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.

(Adopted March 29, 2021, effective July 1, 2021.)

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