

1 **NRCP 41 Alt 1– Proposed**  
2 **(Adopt Federal Rule, and Retain NV Rule 41(e) with edits)**

---

3 **Rule 41. Dismissal of Actions**

4 **(a) Voluntary Dismissal: Effect Thereof.**

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

6 **(A) Without a Court Order.** Subject to Rules 23(e), 23.1(c), 23.2,  
7 and 66 and any applicable ~~federal~~ statute, the plaintiff may dismiss an action  
8 without a court order by filing:

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

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

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

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

19 **(2) By Order of Court; Effect.** Except as provided in Rule 41(a)(1), an  
20 action may be dismissed at the plaintiff's request only by court order, on terms that  
21 the court considers proper. If a defendant has pleaded a counterclaim before being  
22 served with the plaintiff's motion to dismiss, the action may be dismissed over the  
23 defendant's objection only if the counterclaim can remain pending for independent  
24

1 adjudication. Unless the order states otherwise, a dismissal under this paragraph (2)  
2 is without prejudice.

3 **(b) Involuntary Dismissal: Effect.** If the plaintiff fails to ~~prosecute or to~~  
4 comply with these rules or a court order, a defendant may move to dismiss the action  
5 or any claim against ~~it~~the defendant. Unless the dismissal order or an applicable  
6 statute provides states otherwise, a dismissal under this subdivision (b) and any  
7 dismissal not under this rule—except one for lack of jurisdiction, improper venue, or  
8 failure to join a party under Rule 19—operates as an adjudication on the merits.

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

13 (1) before a responsive pleading is served; or

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

16 **(d) Costs of a Previously Dismissed Action.** If a plaintiff who previously  
17 dismissed an action in any court files an action based on or including the same claim  
18 against the same defendant, the court:

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

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

22 **(e) Dismissal for Want of Prosecution.**

23 (1) Procedure. When the time periods in this rule have expired:

1 (A) any party may move to dismiss an action for lack of  
2 prosecution; or

3 (B) a district court may, on its own, issue an order to show cause  
4 why an action should not be dismissed for lack of prosecution. The district court  
5 shall give the parties notice and an opportunity to brief the issues, and may also hold  
6 a hearing, according to local rules on motion practice.

7 **(2) Dismissing an Action Prior to Trial.**

8 (A) A district court may dismiss an action for want of prosecution  
9 if a plaintiff fails to bring an action to trial within two years after the action was  
10 filed~~The court may in its discretion dismiss any action for want of prosecution on~~  
11 ~~motion of any party or on the court's own motion and after due notice to the parties,~~  
12 ~~whenever plaintiff has failed for 2 years after action is filed to bring such action to~~  
13 ~~trial.~~

14 (B) A district court shall dismiss an action for want of prosecution  
15 if a plaintiff has failed to bring the action to trial within five years after the action  
16 was filed.

17 **(3) Dismissing an Action After a New Trial is Granted.** A district  
18 court shall dismiss an action for want of prosecution if a plaintiff fails to bring an  
19 action to trial within three years after the entry of an order granting a new trial.

20 **(4) Dismissing an Action After an Appeal.**

21 (A) If a party appealed an order granting a new trial and the order  
22 is affirmed, a district court shall dismiss an action for want of prosecution if the  
23 plaintiff failed to bring the action to trial within three years after the remittitur was  
24 filed in the trial court.

1 (C) If a party appealed a judgment and the judgment was reversed  
2 on appeal and remanded for a new trial, a district court shall dismiss an action for  
3 want of prosecution if the plaintiff fails to bring the action to trial within three years  
4 after the remittitur was filed in the trial court.

5 ~~Any action heretofore or hereafter commenced shall be dismissed by the court in~~  
6 ~~which the same shall have been commenced or to which it may be transferred on~~  
7 ~~motion of any party, or on the court's own motion, after due notice to the parties,~~  
8 ~~unless such action is brought to trial within 5 years after the plaintiff has filed the~~  
9 ~~action, except where the parties have stipulated in writing that the time may be~~  
10 ~~extended. When, in any action after judgment, a motion for a new trial has been~~  
11 ~~made and a new trial granted, such action shall be dismissed on motion of any party~~  
12 ~~after due notice to the parties, or by the court of its own motion, if no appeal has been~~  
13 ~~taken, unless such action is brought to trial within 3 years after the entry of the order~~  
14 ~~granting a new trial, except when the parties have stipulated in writing that the time~~  
15 ~~may be extended. When in an action after judgment, an appeal has been taken and~~  
16 ~~judgment reversed with cause remanded for a new trial (or when an appeal has been~~  
17 ~~taken from an order granting a new trial and such order is affirmed on appeal), the~~  
18 ~~action must be dismissed by the trial court on motion of any party after due notice to~~  
19 ~~the parties, or of its own motion, unless brought to trial within 3 years from the date~~  
20 ~~upon which remittitur is filed by the clerk of the trial court.~~

21 (4) **Time Extension.** The parties may stipulate in writing that the time  
22 in which to prosecute an action may be extended. If two time periods requiring  
23 mandatory dismissal apply, the longer time period [controls](#).

1 (5) Dismissal with Prejudice. A dismissal under ~~this subdivision~~  
2 Rule 41(e) is a bar to another action upon the same claim for relief against the same  
3 defendants unless the court ~~otherwise~~ provides otherwise in its order dismissing the  
4 action.

5  
6 **Advisory Committee Note—2018 Amendment**

7 NRCP 41 largely conforms to its federal counterpart, but the rule retains the  
8 Nevada-specific provisions in Rule 41(a)(1)(C) and Rule 41(e). The reorganization of  
9 NRCP 41(e) is stylistic and not intended to abrogate existing case law interpreting  
10 it. Rule 41(e)(4) clarifies that if two time periods requiring mandatory dismissal  
11 apply, the longer time period applies.

12  
13 **Drafter’s Note—2004 Amendment**

14  
15 Subdivision (b) is amended to conform to the 1963 and 1991 amendments to  
16 the federal rule by removing the second sentence, which authorized the defendant to  
17 file a motion for involuntary dismissal at the close of the plaintiff’s evidence in jury  
18 and nonjury cases when the plaintiff had “failed to prove a sufficient case for the  
19 court or jury.” For a nonjury case, the device is replaced by the new provisions of Rule  
20 52(c), which authorize the court to enter judgment on partial findings against the  
21 plaintiff as well as the defendant. For a jury case, the correct motion is the motion  
22 for judgment as a matter of law under amended Rule 50.

1           Subdivision (b) is further amended to conform to the federal rule by adding  
2 “improper venue” as a ground for dismissal under the rule that does not act as an  
3 adjudication upon the merits.

4           The current language in subdivision (a)(1) on repayment of filing fees and  
5 subdivision (e) on failure to prosecute is retained.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24