

1 **NRCP 41 Alt 2 – Proposed**
2 **(Adopt Federal Rule including the federal failure to**
3 **prosecute provisions)**

4 **Rule 41. Dismissal of Actions**

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

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

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

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

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

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

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

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

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) Want of Prosecution.** The court may in its discretion dismiss any action~~
23 ~~for want of prosecution on motion of any party or on the court’s own motion and after~~
24 ~~due notice to the parties, whenever plaintiff has failed for 2 years after action is filed~~

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

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20 **Advisory Committee Note—2018 Amendment**

21 NRCPC 41 largely conforms to its federal counterpart, including adopting the
22 federal rule on failure to prosecute. The rule retains the Nevada-specific provisions
23 in Rule 41(a)(1)(C).