

60-241. Dismissal of actions. (a) *Voluntary dismissal.* (1) *By the plaintiff.* (A) *Without a court order.* Subject to subsection (e) of K.S.A. 60-223, K.S.A. 60-223a and K.S.A. 60-223b, and amendments thereto, and any applicable state 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. When the dismissal is by stipulation, the clerk of the court must enter an order of dismissal as a matter of course.

(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.

(2) *By court order; effect.* Except as provided in paragraph (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 paragraph is without prejudice.

(b) *Involuntary dismissal; effect; notice.* (1) If the plaintiff fails to prosecute or to comply with this chapter or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this paragraph and any dismissal not under this section, except one for lack of jurisdiction, improper venue or failure to join a party under K.S.A. 60-219, and amendments thereto, operates as an adjudication on the merits.

(2) On its own, the court may dismiss a case without prejudice for lack of prosecution, but only after notice to counsel of record, not less than 14 days prior to the intended dismissal, that an order of dismissal will be entered unless cause is shown for not doing so.

(c) *Dismissing a counterclaim, crossclaim or third-party claim.* This section applies to a dismissal of any counterclaim, crossclaim or third-party claim. A claimant's voluntary dismissal under subsection (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 proceedings until the plaintiff has complied.

History: L. 1963, ch. 303, 60-241; amended by Supreme Court order dated July 17, 1969; L. 1980, ch. 171, § 2; L. 1997, ch. 173, § 22; L. 2010, ch. 135, § 110; July 1.