

CAO CvPi INSTRUCTION 6-1
VOLUNTARY DISMISSALS
INSTRUCTIONS FOR THE VOLUNTARY DISMISSAL OF A CIVIL CASE BY THE PLAINTIFF
UNDER RULE 41(A)(1) OF THE IDAHO RULES OF CIVIL PROCEDURE

If you have filed a petition or complaint in a civil proceeding which you no longer wish to pursue, Rule 41(a)(1) of the Idaho Rules of Civil Procedure explains how you can voluntarily dismiss the case.

Rule 41(a)(1). Dismissal of actions - Voluntary dismissal - Effect thereof - By plaintiff - By stipulation. Subject to the provisions of Rule 23(e), of Rule 73, and of any statute of the state of Idaho an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever occurs first, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this state, of the United States, or of any state an action based on or including the same claim. (Amended March 26, 1992, effective July 1, 1992.)

Voluntary Dismissal Using a Notice of Dismissal

If the defendant has not filed an answer or a motion for summary judgment on your complaint or petition, you may voluntarily dismiss your case by giving the court and the defendant written notice that you are dismissing your case. The steps you need to take are:

- Complete form CAO Cv 6-3 Notice of Dismissal
- Serve all parties in your case with a copy of the Notice of Dismissal and complete the Certificate of Service indicating how each party was served
- File the Notice of Dismissal with the Clerk of the Court

Note: When you are allowed to dismiss your case with a Notice of Dismissal, no order of dismissal from the judge is required.

Voluntary Dismissal by Stipulation

Once parties have responding to your claim you may still voluntarily dismiss your case if those parties are willing to agree and will sign a stipulation of dismissal. The steps you need to take to dismiss you case by stipulation are:

- Complete form CAO Cv 6-14 Stipulation for Order of Dismissal. Both you and the defendant must sign this document.
- Fill out form CAO Cv 6-15 Order of Dismissal. Leave the date and signature line for the judge to complete.
- File the Stipulation for Order of Dismissal with the Clerk of the Court along with the proposed Order of Dismissal for the judge to sign.
- Provide the clerk a stamped, addressed envelop for you and all other parties in the case.
- The clerk will mail out copies of the Order of Dismissal once it is signed by the judge.

Warning: Read Rule 41(a)(1) carefully to fully understand the legal consequences of voluntarily dismissing your case. As stated in the Rule, a voluntary dismissal is “without prejudice” unless the same claim was previously voluntarily dismissed in a different court. If you have filed this claim before, it is strongly recommended that you speak with an attorney to fully understand how your legal rights will be affected if you voluntarily dismiss your claim.