

## **RULE 4:37. Dismissal Of Actions**

### **4:37-1. Voluntary Dismissal; Effect Thereof**

- **(a) By Plaintiff; By Stipulation.** Subject to the provisions of R. 4:32-2(e) (class actions), R. 4:53-1 (receivership actions) and R. 4:60-18 (attachment actions), an action may be dismissed by the plaintiff without court order 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 first occurs; or by filing a stipulation of dismissal specifying the claim or claims being dismissed, signed by all parties who have appeared in the action. Unless otherwise stated in the notice or stipulation, the dismissal is without prejudice.
- **(b) By Order of Court.** Except as provided by paragraph (a) hereof, an action shall be dismissed at the plaintiff's instance only by leave of court and upon such terms and conditions as the court deems appropriate. If a counterclaim has been filed and served by a defendant prior to being served with plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

Note: Source -- R.R. 4:42-1(a)(b); paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended August 1, 2006 to be effective September 1, 2006.

### **4:37-2. Involuntary Dismissal; Effect Thereof**

- **(a) For Failure to Comply With Rule or Order.** For failure of the plaintiff to cause a summons to issue within 15 days from the date of the Track Assignment Notice or to comply with these rules or any order of court, the court in its discretion may on defendant's motion dismiss an action or any claim against the defendant. Such a dismissal shall be without prejudice unless otherwise specified in the order.
- **(b) At Trial-Generally.** After having completed the presentation of the evidence on all matters other than the matter of damages (if that is an issue), the plaintiff shall so announce to the court, and thereupon the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal of the action or of any claim on the ground that upon the facts and upon the law the plaintiff has shown no right to relief. Whether the action is tried with or without a jury, such motion shall be denied if the evidence, together with the legitimate inferences therefrom, could sustain a judgment in plaintiff's favor.
- **(c) At Trial-Claim for Contribution.** When a claim for contribution has been asserted pursuant to R. 4:7-5, a motion for dismissal as to any defendant against whom such claim has been asserted shall be held in abeyance until the close of all the evidence, and at that time the granting of the motion shall constitute an adjudication upon the merits of the claim for contribution. If the motion is denied, the claim for contribution need not be separately submitted to the jury but the verdict as to the liability of each defendant shall determine which of the parties are joint tortfeasors. If the amount of the contribution of each defendant may be determined as a matter of law, the judge shall enter judgment thereon at the request of any party. If any party asserts any settlement or part payment or other matter not determined in the negligence action which may affect the amount of the contribution, and there is a dispute as to any material fact, a separate trial shall be held to determine the same.
- **(d) Dismissal With Prejudice; Exceptions.** Unless the order of dismissal otherwise specifies, a dismissal under R. 4:37-2(b) or (c) and any dismissal not specifically provided for by R. 4:37, other than a dismissal for lack of jurisdiction, operates as an adjudication on the merits.

- **(e) Continued Participation in Subsequent Proceedings.** If a claim is dismissed as to a defendant before final judgment as to all issues and all parties, that defendant shall have notice of and the right to participate in any subsequent proceedings in the case.

**Note:** Source-R.R. 4:12-2(a)(b) (first four sentences), 4:13-6(b)(2); paragraph (c) caption and text amended January 16, 1975 to be effective April 1, 1975; paragraph (e) adopted July 17, 1975 to be effective September 8, 1975; paragraphs (a), (b) and (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended November 1, 2002 to be effective immediately.

### **4:37-3. Dismissal of Counterclaim, Cross-Claim or Third-Party Claim**

The provisions of R. 4:37-1 and 4:37-2(a), (b) apply to the dismissal of any counterclaim, cross-claim or third-party claim. A voluntary dismissal by the claimant alone pursuant to R. 4:37-1(a) shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

**Note:** Source-R.R. 4:42-3.

### **4:37-4. Costs of Previously Dismissed Action**

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court, on motion of said defendant made before service of the answer, may make such order for the payment of costs of the action previously dismissed as it deems appropriate and may stay the proceedings in the action until the plaintiff has complied therewith.

**Note:** Source-R.R. 4:42-4; amended July 13, 1994 to be effective September 1, 1994.