DISMISSALS

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Most federal cases end with a dismissal. Shortly after a plaintiff sues, the parties settle—the case is dismissed. A plaintiff decides, for whatever reason, that a case is no longer worth litigating—the case is dismissed. A plaintiff files a defective complaint—the case is dismissed.

And yet, despite providing a familiar denouement for most civil litigation, dismissals are something of a procedural backwater. Their features are surprisingly understudied. Very little scholarship considers the basic law of dismissals—including when a case may be dismissed with prejudice, such that the dismissal is final and appealable, and when it must be dismissed without prejudice, such that the case may (at least in theory) be refiled. And no scholarship provides a robust empirical overview of dismissals in practice.

This Article provides the first sustained treatment of the law and practice of dismissals in federal civil actions. Focusing on dismissals stemming from judicial action, rather than party settlement, we show that abstraction and confusion reign supreme; key procedural concepts like finality and notice hinge on underspecified doctrines. From the pre-service dismissal of the complaint of an unrepresented incarcerated individual to the dismissal of a massive MDL involving (presumably) sophisticated counsel, the same broad rules formally govern when and whether judges should dismiss with or without prejudice and how much or what types of information judges are supposed to provide the litigants about their dismissals. As with much of the rest of our procedural system, the result is that, on paper, the regulation of dismissals is mostly a matter of judicial discretion.

This Article turns next to an original empirical analysis of dismissals as they play out in actual federal civil litigation. To understand the role of these dispositions in our civil justice system, we apply state-of-the-art natural language processing techniques to an original dataset of docket sheets representing nearly all civil actions filed in federal district courts over a ten-year period. We start with a modest hypothesis: if dismissals are as doctrinally and theoretically confused as we describe, then we expect to find substantial heterogeneity—verging on arbitrariness—across courts and

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judges in their issuance of dismissals without prejudice. We expect to find, for example, that even controlling for case composition and litigant characteristics, judges vary substantially in the shares of dismissals they issue with or without prejudice. From there, we explore what happens in our data after a judge issues a dismissal without prejudice. For example, how frequently do plaintiffs revive their claims with an amended complaint, and how likely is an amended complaint to get past the pleading stage? Does the answer depend upon case type or litigant characteristics, and might it even depend upon the court or the individual judge? Finally, we supplement our large-N analysis of docket sheets with a qualitative review of approximately one thousand randomly selected cases involving dismissals and dismissals without prejudice.

The interaction between the law of dismissals and dismissals in practice has deep implications for how we understand the workings of our system of adjudication. Our empirics challenge the bright line between final and non-final dismissals—resulting in something close to the "no-man's land" that the Supreme Court only this term insisted shouldn't exist. More importantly, the procedural rules that do govern dismissals likely regulate the wrong thing: The limited form they insist on is largely a crude mechanism of sorting and making legible dismissed cases for appellate purposes, not providing the parties with the information they need to litigate their cases in the here and now. Finally, and most fundamentally, focusing on dismissals allows us to consider the values of iteration and interaction—by which judges and parties learn about and refine claims through a dynamic process—versus finality and party-presentation in civil litigation and to ask how different possible ends of cases strike a balance between such competing values.