

A woman brought a federal diversity action against a doctor and a hospital for medical malpractice. After both defendants answered, the doctor filed a motion for summary judgment, attaching numerous exhibits that contradicted the facts alleged in the complaint.

The woman has decided that she is not ready to proceed with the action. She would like to dismiss the action, with the intent to refile at a later date.

Which option best achieves the woman's goal?

- A. File a motion for voluntary dismissal without prejudice. (67%)
- B. File a notice of dismissal without prejudice. (9%)
- C. Obtain a stipulation of dismissal without prejudice from the doctor. (20%)
- D. Submit an affidavit that she cannot yet present facts essential to her claim. (2%)

Correct

67% Answered correctly

47 secs Time Spent

2023 Version

## Explanation:

### Voluntary v. Involuntary dismissal

(FRCP 41)

	Process	Effect
<b>Voluntary dismissal</b>	$\pi$ may dismiss suit without court order when:  notice of dismissal filed before $\Delta$ serves answer or summary judgment motion <i>or</i> all parties sign stipulation of dismissal $\pi$ may request court order to dismiss suit unless:  $\Delta$ 's counterclaim cannot be independently adjudicated	Dismissal <i>without</i> prejudice unless:  $\pi$ previously dismissed federal or state action based on same claim <i>or</i> notice or stipulation states otherwise
<b>Involuntary dismissal</b>	$\Delta$ may move to dismiss suit if $\pi$ failed to:  prosecute own action <i>or</i> comply with rules or court order $\Delta$ may move to dismiss suit via:  pre-answer motion judgment on the pleadings <i>or</i> summary judgment	Dismissal <i>with</i> prejudice unless:  court order states otherwise <i>or</i> based on lack of jurisdiction, improper venue, or failure to join required party

**FRCP** = Federal Rule of Civil Procedure;  $\pi$  = plaintiff;  $\Delta$  = defendant.

FRCP 41 allows a **plaintiff** to voluntarily dismiss a suit for any reason. A **voluntary dismissal** is generally **without prejudice**, which allows the plaintiff to sue the defendant again on the same claim in the future. A voluntary dismissal **without a court order** is permitted when:

all the **parties** who have appeared in the action **sign a stipulation of dismissal** *or*

the **plaintiff** unilaterally **files a notice of dismissal before** the defendant serves an **answer** or a **motion for summary judgment**.

If neither of these occur, then the only way that the plaintiff can voluntarily dismiss a suit is **with a court order**. This can be obtained when the **plaintiff files a motion to dismiss the case without prejudice**.

Here, the woman wants to dismiss her action against the doctor and the hospital, with the intent to refile it later. The woman cannot voluntarily dismiss the action by obtaining a stipulation of dismissal from only the doctor because both defendants need to sign it **(Choice C)**. The woman also cannot voluntarily dismiss the action by filing a notice of dismissal because both defendants have answered **(Choice B)**. Therefore, the option that best achieves the woman's goal is to file a motion for voluntary dismissal without prejudice.

**(Choice D)** The woman could request that the court postpone consideration of the doctor's [motion for summary judgment](#) by submitting an affidavit that she cannot yet present facts essential to her claim. However, this submission would not achieve her goal to dismiss the action and refile it.

#### **Educational objective:**

A voluntary dismissal is permitted when (1) all the parties who have appeared sign a stipulation of dismissal or (2) the plaintiff files a notice of dismissal before the defendant serves an answer or a summary-judgment motion. Otherwise, the plaintiff must obtain a court order by moving to dismiss the case without prejudice.

#### **References**

Fed. R. Civ. P. 41(a) (explaining how a plaintiff can obtain a voluntary dismissal).

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