

February 13, 2026

Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, DC 20544

RulesCommittee_Secretary@ao.uscourts.gov

Re: Proposed Amendments to Rule 41(a) Dismissal of Actions or Claims

Dear Members of the Committee on Rules of Practice and Procedure:

The American Association for Justice (“AAJ”) submits this comment regarding the proposed amendments to Rule 41(a) Dismissal of Actions or Claims by the Advisory Committee on Civil Rules (“Advisory Committee”). AAJ is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world’s largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury and wrongful death actions, employment rights cases, consumer cases, class actions, and other civil actions. AAJ supports the proposed amendments and believes that they will promote efficiency and predictability for courts and parties.

I. The Proposed Amendments Will Ensure an Operational Rule

It is not surprising that the text of Rule 41(a), which has provided for the “dismissal of actions” since its inception in 1937, needs some updating. While there is limited data available on voluntary dismissals specifically,¹ the rise of complex litigation has dramatically changed the litigation landscape and cases involving multiple claims are much more common today than they were 20 years ago.² Plaintiffs are continuing to seek judicial protections and remedies from

¹ Michael E. Solimine & Amy E. Lippert, 36 U. MICH. J. L. REFORM 367, 382 (2003) (“[T]here appears to be little hard data that can be brought to bear on the use of Rule 41 (a). Official statistics kept for the federal court keep track of dismissals in a generic fashion, and thus do not differentiate between or among dismissals founded on Rules 12 or 41.”).

² [*The Need for Additional Judgeships: Litigants Suffer When Cases Linger*](#), U.S. CTS. (Nov. 18, 2024) (“Over the past 20 years, the number of civil cases pending more than three years rose 346 percent, from 18,280 on March 31, 2004 to 81,617 on March 31, 2024.”).

malfunctioning and dangerous government entities at all levels, including police departments, prisons, and institutional care facilities.³

One practice area that has changed considerably is civil rights law. In the past 15 years, the types of civil rights cases have evolved with the rise of police misconduct litigation, which frequently involves claims against multiple defendants.⁴ A typical police or prison misconduct case may involve initial harms inflicted by officers or correctional guards that are followed or compounded by additional harms, such as emergency responders' or health professionals' failure to provide prompt and effective medical care.⁵ Due to short statutes of limitations, these cases often must be filed before official investigations are completed and evidence is made fully available for review.⁶ The proposed amendments would allow for streamlining of claims, ensuring that cases can move forward expeditiously, while providing a mechanism for dismissing claims that are no longer viable after more information becomes available or have been settled.

II. The Proposed Amendments Will Ensure Court Efficiency and Predictability

In February 2022, then-Rules Law Clerk Burton Dewitt detailed the long-standing circuit split involving three-fourths of the circuits, with the remaining circuits developing intra-circuit splits in a research memorandum.⁷ The current circuit split is unhelpful to both parties and the courts. For practitioners who represent plaintiffs in numerous circuits, the unpredictability is

³ David Marcus, [Groups and Rights in Institutional Reform Litigation](#), 97 NOTRE DAME L. REV. 619, 652 (2022).

⁴ The rise of this litigation generally involves multiple claims over time against the same officers, whose claims are paid by the police department that employs them. See, e.g., Keith L. Alexander, Steven Rich, & Hannah Thacker, [The Hidden Billion Dollar Cost of Repeated Police Misconduct](#), WASH POST (Mar. 9, 2022); Aurélie Ouss & John Rappaport, [Is Police Behavior Getting Worse? Data Selection and the Measurement of Policing Harms](#), 49 J. LEGAL STUD. 153, 153 (Jan. 1, 2020) (finding that “societal responses to policing harms are intensifying”).

⁵ In 2023, Memphis police officers pulled over Tyre Nichols for a traffic stop, beat him, peppered sprayed and kicked him in the head. EMS on the scene did nothing to treat his injuries and delayed transporting him to the hospital, where Nichols later died. A civil trial date is set for July 2026. Katie Riordan, [Jury Finds 3 Former Memphis Police Officers Not Guilty in Death of Tyre Nichols](#), NPR (May 7, 2025). In Colorado, Elijah McClain died several days after being stopped by police for “looking suspicious” while walking home from a convenience store. Although he did not resist arrest, police put the 23-year-old McClain into a chokehold and he lost consciousness. Instead of checking vitals, paramedics at the scene injected McClain with ketamine, a powerful sedative now banned in Colorado. The amount of ketamine was an overdose based on McClain’s bodyweight and he went into cardiac arrest, later dying from his injuries. A civil rights lawsuits filed by the family against law enforcement was settled for \$15 million and at least one officer was held criminally responsible. Lucy Thompkins, [Here’s What You Need to Know About Elijah McClain’s Death](#), N.Y. TIMES (Oct 23, 2023); Faith Miller, [Aurora Agrees to Pay \\$15M in Settlement with Elijah McClain’s Parents](#), COLO. NEWS WIRE (Nov. 19, 2021).

⁶ The National Police Accountability Project (NPAP) provides information to the public on the different types of investigations and why they take time to complete. In states with law enforcement bill of rights laws (LEOBR), “[c]ivil lawsuits are often the only form of recourse available to victims of police abuse, especially in states with LEOBR laws where officers are particularly insulated from employment consequences.” See NAT’L POLICE ACCOUNTABILITY PROJECT, [LAW ENFORCEMENT BILL OF RIGHTS STATUTES: HOW STATE LAW LIMITATIONS CONTRIBUTE TO POLICE HARM AND COMMUNITY DISTRUST](#) (June 2022).

⁷ See Memorandum from Burton S. DeWitt, Rules Law Clerk, to Professors Ed Cooper & Rick Marcus, Civil Rules Reporters (Feb. 28, 2022), in [Advisory Committee to Civil Rules Agenda Book](#) 218 (Oct. 2022).

unnecessary and can result in the inability to efficiently streamline litigation, which is especially important given the frequent long waits for jury trials in federal court.⁸

The proposed amendment provides needed efficiency for managing claims that inures to the benefit of both courts and parties. As litigation has become more complex, increasingly involving multiple claims and parties, the task of sorting responsibility is even more complicated. Voluntary dismissal—whether due to the narrowing of factual or legal issues after discovery⁹ or because of settlement with a party in the case—should be encouraged to ensure judicial efficiency. It will also help with the management of any issues that result in an immediate appeal, such as a motion for summary judgment, by limiting the issues for appeal.

III. AAJ Supports the Proposed Time for Voluntary Dismissal

Unlike other rules, little scholarship has been published regarding Rule 41, but its origins indicate that voluntary dismissal by a plaintiff was a matter of historical practice.¹⁰ Current Rule 41(a) provides several voluntary dismissal options. AAJ supports both options for a plaintiff to dismiss provided in the proposed amendment to 41(a)(1)(A)(i)—either before the opposing party serves either an answer or a motion for summary judgment. However, AAJ opposes the suggestion to expand dismissal options to include a motion filed under Rule 12(b), (e), or (f). It seems reasonable to provide time for the defendant to answer the allegation raised in the complaint before the plaintiff considers whether to proceed as initially planned or to take some other action, which could include voluntary dismissal under Rule 41(a) or filing an amended complaint under Rule 15.¹¹ For this reason, AAJ supports the Rule 41(a)(1)(A)(i) as drafted.

In section (a)(1)(A)(ii), AAJ supports the proposed clarifying text to provide that a stipulation be signed by the parties who have appeared *and remain in the action* with the small

⁸ There has been a “century-long decline in the portion of cases terminated by trial” and a more than “twenty-five-year decline in the absolute number of civil trials.” Jeffrey Q. Smith & Grant R. MacQueen, [Going, Going, But Not Quite Gone: Trials Continue to Decline in Federal and State Courts. Does it Matter?](#), 101(4) JUDICATURE 26 (2017).

⁹ Both short statutes of limitations and delayed discovery of injury contribute to the need to file in order to preserve a plaintiff’s claims. Some actions may include claims that have different statutes of limitations, such as a shortened statute for a civil rights claim or *Bivens* action, a slightly longer one for medical malpractice claims, a longer one for claims involving minors, or another tolling mechanism.

¹⁰ Solimine & Lippert, *supra* note 1, at 386 (“[P]erhaps it was the perception that common law procedure disadvantaged plaintiffs more often than defendants, coupled with the notion that plaintiffs were the masters of their own lawsuits, that supported the existence of a voluntary dismissal option.”).

¹¹ The case of Tony Timpa, who died at the hands of Dallas police, illustrates this point well. Timpa suffered from anxiety and schizophrenia and called Dallas police for help. When the police arrived, they pressed 300 pounds of their body weight into the back and neck of the already hand-cuffed and zippered Timpa for over 14 minutes. Timpa died from his injuries while bodycam footage recorded the officers laughing about it. Timpa’s family brought a civil rights lawsuit against the Dallas police department, but the lawsuit could not and did not name the officers involved or describe with specificity what happened because Texas law allowed the City of Dallas to withhold bodycam footage and other evidence of how Timpa died. The city filed a motion to dismiss for failing to state a plausible claim. Before the motion to dismiss was decided, the plaintiff lawyer negotiated for the release of the bodycam footage and the release of other evidence documents and promptly filed an amended complaint. Joanna C. Schwartz, [An Even Better Way](#), 112 CAL. L. REV. 1083, 1090 (2024).

amendment noted below. This clarification will ensure that parties who no longer have an ongoing interest in the litigation can continue to have a say in the outcome.

IV. A Minor Edit Recommended to Subsection (a)(1)(A)(ii)

The Advisory Committee is to be commended for drafting the proposed text to ensure that the rule preserves both the original rule text referring to the dismissal of an action, as well as the amended text providing for the dismissal of one or more claims. Because the rule is now officially “cleaned up,” AAJ recommends one minor edit to the rule text and the accompanying committee note to ensure clarity: In Rule 41(a)(1)(A)(ii) strike “all” and replace it with “**the**” instead.¹²

The word “all” seems inconsistent with the added text referring to parties that “remain in the action” and in the clean-up of the rule, leaving no textual ambiguity is important. This is also conceptionally consistent with the purpose of the amendment: *that it be signed only by parties who have appeared and remain in the action*. With the edit, the rule text is:

(ii) a stipulation of dismissal signed by ~~all~~ **the** parties who have appeared **and remain in the action**.

The first sentence of the second paragraph of the Committee Note would then be modified in the same manner:

Second, Rule 41(a)(1)(A)(ii) is amended to clarify that a stipulation of dismissal need be signed only by ~~all~~ **the** parties who have appeared and remain in the action.

V. Conclusion

The proposed amendments to Rule 41(a) will streamline litigation involving multiple claims and helpfully resolve the existing circuit split. The amendment is particularly welcomed by civil rights practitioners, who often represent clients injured by two distinct sets of defendants. Please direct any questions regarding these comments to Susan Steinman, Senior Director of Policy & Senior Counsel, at susan.steinman@justice.org.

Respectfully submitted,



Bruce Plaxen
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¹² The Advisory Committee could also consider striking “all” and not adding any additional text.