

Rule 40. Voluntary Withdrawal; Involuntary Dismissal; Summary Judgment**40.01 Voluntary Withdrawal of Petition**

A petition may be withdrawn or dismissed by a petitioner without order of the court by filing:

- (a) at any time a notice of withdrawal along with proof of service upon all parties; or
- (b) a stipulation of dismissal signed by all parties who have appeared in the matter.

(Amended effective January 1, 2007.)

40.02 Involuntary Dismissal of Petition

Pursuant to the timing, notice, and format requirements of Minn. R. Civ. P. 7, the court, upon its own initiative or upon motion of a party, may dismiss a petition or grant judgment on the pleadings. Grounds for such dismissal or judgment on the pleadings shall include, but not be limited to:

- (a) failure to comply with these rules;
- (b) failure to move forward on the petition;
- (c) failure to state a claim upon which relief may be granted;
- (d) lack of jurisdiction over the subject matter;
- (e) lack of jurisdiction over the person;
- (f) insufficiency of service of process; and
- (g) failure to join a necessary party.

Furthermore, after a petitioner has completed the presentation of evidence, any other party to the proceeding, without waiving the right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that based upon the facts and the law, the petitioner has shown no right to relief.

(Amended effective January 1, 2007.)

40.03 Summary Judgment

Pursuant to the timing, notice, and format requirements of Minn. R. Civ. P. 7, a party may move with or without supporting affidavits for summary judgment. Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that a moving party is entitled to judgment as a matter of law.