

To: Advisory Committee on Rules

From: David Peck

Re: Amendments to Superior Court Rule 41, District Division Rule 1.27,
Probate Division Rule 172, and Family Division Rule 1.32

Date: December 17, 2021

In its July 1, 2021 report to the court, the Advisory Committee on Rules recommended that the court adopt amendments to Superior Court Rule 41, District Division Rule 1.27, Probate Division Rule 172, and Family Division Rule 1.32. These amendments were all similar, and were intended to spell out in the court rules the effect of voluntary and involuntary dismissals of actions – that is, the amendments addressed when dismissals are with prejudice and when they are without prejudice.

After putting the proposals out for public comment, the court voted not to adopt the amendments at this time. Instead, the court requested that the Rules Committee consider an alternative approach to addressing the issue of providing clarity as to whether dismissals are with or without prejudice. An alternative draft amendment of Superior Court Rule 41 is set forth below for the Rules Committee's consideration. In addition, the Committee is requested to consider whether similar amendments would be appropriate for inclusion in the District Division, Probate Division, and/or Family Division rules.

DRAFT AMENDMENT TO SUPERIOR COURT RULE 41

[New material is in bold and brackets]

Rule 41. Dismissal of Actions[; **Notice of Preclusive Effect**]

[A.] All cases which shall have been pending upon the docket for 3 years, without any action being shown on the docket other than being placed on the trial list, shall be marked “dismissed,” and notice thereof sent to the parties or representatives who have appeared in the action.

[B. In any order issued by the court that dismisses an action or claim, the court shall state whether: (1) the dismissal is with prejudice; or (2) the dismissal is without prejudice. A dismissal with prejudice operates as an adjudication on the merits.]