

10-CV-C

From: Virginia Morgan/MIED/06/USCOURTS  
To: Rules\_Support@ao.uscourts.gov  
Date: 11/30/2010 11:35 AM  
Subject: Suggestions for Amendment to Rule 41, FR Civil P

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Dear Rules Committee:

First, thank you for this easy method of submitting suggestions for amendments to the Rules.

I would like to ask for consideration regarding an amendment to Rule 41(a) in light of some recent experience. I would like to request that the rule be amended to change Rule 41(a)(1)(A) *Without a Court Order* as follows: strike "motion for Summary Judgment" and substitute "responsive pleading." Alternatively, perhaps the rule should exclude removal actions where it is the defendant who has paid the filing fee.

The circumstances are these: Pro se plaintiff files an action in state court which is removed by the defendant. The complaint is very difficult to understand but appears to challenge a mortgage foreclosure action. Service is probably not correct but the defendant bank removes the case to federal court. So, defendant pays the filing fee. It then files a motion to dismiss attaching various documents, which if considered would clarify the complaint and convert the M/Dismiss to one for Summary Judgment. Relief sought by bank includes dismissal with costs and with prejudice. In what appears to be a response to the motion and in a notice which appears to be copied from a website or another case, pro se plaintiff files a Notice of Voluntary Dismissal without prejudice and without costs and the Clerk's office closes the case with no contact with the judge or chambers staff.

Perhaps this is a local procedure issue and the Clerk should not close the case. If so, please advise. I think the situation is exacerbated by the CMECF system where reaction is instantaneous.

Please do not hesitate to contact me if you need more information.

Sincerely,

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