

## **Civil Rights Update**

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# **Rule 41(a) Voluntary Dismissal in Federal Court Takes Effect Immediately Upon Filing, Not When Docketed**

On November 5, 2007, the United States Court of Appeals for the Seventh Circuit decided *Jenkins v. Village of Maywood*, 506 F.3d 622 (7th Cir. 2007), a case that should put all federal court practitioners on notice. Although state law may govern applicable limitations and tolling periods, the Federal Rules of Civil Procedure dictate *when* and *how* a voluntary dismissal takes place. In the case of a voluntary dismissal through a stipulation between the parties, the dismissal occurs the moment the plaintiff's counsel files the signed instrument with the court clerk. A plaintiff intent on re-filing a suit may run afoul of the statute of limitations if he believes he has one year from the court's docketing of an order acknowledging the dismissal. Under Fed. R. Civ. P. 41(a), such a court order is merely superfluous, and the plaintiff may find himself barred from re-filing his claim.

### **Facts**

The plaintiff in *Jenkins* brought suit in the District Court for the Northern District of Illinois against the Village of Maywood and several of its employees, asserting claims under both 42 U.S.C. § 1983 and Title VII. *Jenkins*, 506 F.3d at 622 (The Title VII claim was dismissed as untimely by the district court on July 18, 2005 and the plaintiff did not appeal that dismissal. *Id.* at 623, n.1.) On March 9, 2004, the parties entered into a joint stipulation for voluntary dismissal of the action without prejudice, pursuant to Fed. R. Civ. P. 41(a)(1)(ii). *Id.* The stipulation was tendered to the clerk and file stamped that day. *Id.* at 623. Six days later, on March 15, 2004, an order dismissing the case without prejudice was entered on the court's docket. *Id.* at 624.

Exactly one year later, on March 15, 2005, the plaintiff refiled a nearly identical suit in the same forum against the same defendants. *Id.* at 624. The defendants moved for summary judgment, claiming that the plaintiff had failed to bring the second action within the one-year tolling provision in Illinois law. *Id.* at 622. The district court considered the issue in detail. The court observed that because 42 U.S.C. § 1983 contains neither its own statute of limitations nor tolling rules, both are borrowed from the state in which the civil rights action is filed. In Illinois, the applicable statute of limitations is two years. *Id.* at 623. Illinois' tolling provision, 735 ILCS 5/13-217, allows a plaintiff to re-file a case within one year of its voluntary dismissal, or within the remaining period of limitations, whichever time period is greater. *Jenkins*, 506 F.3d at 623. In *Jenkins*, the greater of the two periods was one year. The central question facing the district court, therefore, was whether the one-year tolling period commenced on the date the stipulation was filed (March 9, 2004) or the date the court entered its order of dismissal (March 15, 2004).

### **State Versus Federal Law**

Familiarity with Illinois' Code of Civil Procedure would naturally lead many attorneys to conclude that March 15, 2004 began the Section 13-217 tolling period. After all, the statutory section that governs voluntary dismissals in Illinois plainly states that such dismissals are "by order filed in the cause." 735 ILCS 5/2-1009(a). The plaintiff made this argument to the district court, which acknowledged that in Illinois, voluntary

dismissals are not effective until the clerk enters the order into the court docket. *Jenkins*, 506 F.3d at 623. The defendants prevailed in their motion, however, by pointing to the Federal Rules. *Id.* Specifically, Rule 41(a) states that “an action may be dismissed by the plaintiff without order of court \* \* \* by filing a stipulation of dismissal signed by all parties who have appeared in the action.” *Id.* The district court ruled that “filing” meant the moment in which the signed stipulation was delivered to the clerk. *Id.* What happened afterwards was immaterial under Rule 41(a). The district court accordingly found the plaintiff’s second suit to be untimely, and granted the defendants’ motion for summary judgment. *Id.*

#### **Seventh Circuit’s Affirmance**

On appeal, the plaintiff again argued that his second complaint was not tardy because under Illinois law an action is not actually “dismissed” until the court enters an order to that effect into the record. *Id.* at 623. The Seventh Circuit wasted little time dispensing with his argument, writing:

If the case had been dismissed under 735 ILCS 5/2-1009, *Jenkins* might be correct \* \* \*. But the case was in federal court, not state court, and the Federal Rules of Civil Procedure apply in federal court. Fed. R. Civ. P. 1 (“These rules govern the procedure in the United States district courts in all suits of a civil nature[.]”). Although we borrow the statute of limitations and coordinate tolling rules from Illinois, federal procedural rules govern the determination of when the action was voluntarily dismissed.

*Id.* at 624. After all, the court reasoned, “a rule governing dismissal is not a coordinate tolling rule.” *Id.* Because the plaintiff’s March 15, 2005 refiling was six days late, the Seventh Circuit affirmed summary judgment in favor of the defendants. *Id.* at 625.

#### **Conclusion**

The answer, therefore, was found in Rule 1, which long ago established that the Federal Rules govern all civil lawsuits filed in federal court. The plaintiff’s action was a federal case on the call of a federal judge. The plaintiff’s decision to obtain a stipulation from the defendants and voluntarily dismiss the suit did nothing to suddenly implicate state law. Illinois’ tolling statute only came into play after the plaintiff had already dismissed his federal action pursuant to the Federal Rules. Although it may serve as a wake-up call for plaintiffs’ counsel, this decision should certainly remain in the consciousness of any defense attorney facing the refiling of a § 1983 complaint in federal court.

## **About the Authors**

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