

Florida Jurisprudence, Second Edition  
Database updated August 2012

## Actions

Kathleen M. Geiger, J.D., Samantha M. Khosla, J.D., M.A., Sonja Larsen, J.D., Richard Link, J.D., and Barbara J. Van Arsdale, J.D.

IV. Dismissal and Discontinuance  
B. Voluntary Dismissal  
2. By Court OrderTopic Summary Correlation Table References

## § 160. Effect on counterclaim

## West's Key Number Digest

West's Key Number Digest, Pretrial Procedure k517.1, 518

## Treatises and Practice Aids

Trawick's Florida Practice and Procedure § 21:3 (2010 ed.) (Other voluntary dismissals)

If a counterclaim has been served by a defendant prior to the service upon him or her of the plaintiff's notice of dismissal, the action shall not be dismissed against the defendant's objections unless the counterclaim can remain pending for independent adjudication by the court.[1]

**Illustration:**

A father's petition for relief did not serve as a bar to the voluntary dismissal of the Department of Revenue's Uniform Interstate Family Support Act/Uniform Reciprocal Enforcement of Support Act action on behalf of a Texas mother; the petition for relief was a contest to the registration of the Texas child support order and not a counterclaim seeking affirmative relief that would act as a bar to a voluntary dismissal.[2]

A wife's answer to her husband's petition for dissolution of marriage and her motions for support for her children and for alimony for herself constituted counterclaims sufficient to prevent voluntary dismissal by the husband.[3]

The purpose of the statute generally prohibiting the dismissal of an action when a counterclaim has been served on plaintiff prior to service upon the defendant of plaintiff's notice of voluntary dismissal is to preclude a plaintiff from unilaterally terminating the litigation when the defendant countersues.[4]

Thus, where a counterclaim is filed by a defendant or a third party, the plaintiff cannot voluntarily dismiss the action as against the counter plaintiff,[5] without an order of the trial court,[6] when a counterclaim[7] or an

amended counterclaim is pending.[8] Although a counterclaim is not extinguished by voluntary dismissal of the complaint, a defendant cannot pursue a cross-claim against a codefendant after the plaintiff has voluntarily dismissed the complaint.[9]

A defendant is not required to effectuate service of process on the plaintiff of an amended counterclaim after plaintiff's notice of voluntary dismissal where the initial counterclaim was served before plaintiff's voluntary dismissal was served on defendant and the amended counterclaim relates back to the date of service of the original counterclaim.[10]

The dismissal of a compulsory counterclaim with prejudice is not considered a final disposition and is, thus, not appealable until a final disposition of the original cause has been obtained on the merits.[11]

**Illustration:**

Clients' counterclaim remained pending where it was dismissed with prejudice and clients could not seek review until disposition of a law firm's original cause, and thus, to allow a voluntary dismissal of the original cause to otherwise cut off clients' rights under the counterclaim would violate Rules of Civil Procedure.[12]

---

[FN1] Fla. R. Civ. P. 1.420(a)(2).

As to counterclaims, generally, see Fla. Jur. 2d, Pleadings §§ 1 et seq.

[FN2] Hedge v. Hedge, 816 So. 2d 241 (Fla. Dist. Ct. App. 4th Dist. 2002).

[FN3] McFarley v. McFarley, 353 So. 2d 1250 (Fla. Dist. Ct. App. 2d Dist. 1978); Cooper v. Cooper, 194 So. 2d 278 (Fla. Dist. Ct. App. 2d Dist. 1967).

[FN4] Murphy v. WISU Properties, Ltd., 895 So. 2d 1088 (Fla. Dist. Ct. App. 3d Dist. 2004).

[FN5] Rogers v. Publix Super Markets, Inc., 575 So. 2d 214 (Fla. Dist. Ct. App. 5th Dist. 1990); Federal Ins. Co. v. Fatolitis, 478 So. 2d 106 (Fla. Dist. Ct. App. 2d Dist. 1985).

[FN6] Rogers v. Publix Super Markets, Inc., 575 So. 2d 214 (Fla. Dist. Ct. App. 5th Dist. 1990); Siler v. Lumbermens Mut. Cas. Co., 420 So. 2d 357 (Fla. Dist. Ct. App. 5th Dist. 1982).

[FN7] Federal Ins. Co. v. Fatolitis, 478 So. 2d 106 (Fla. Dist. Ct. App. 2d Dist. 1985); Gull Const. Co. v. Hendrie, 271 So. 2d 775 (Fla. Dist. Ct. App. 2d Dist. 1973).

[FN8] Our Gang, Inc. v. Commvest Securities, Inc., 608 So. 2d 542 (Fla. Dist. Ct. App. 4th Dist. 1992).

[FN9] Layne Dredging Co. v. Regus, Inc., 622 So. 2d 7 (Fla. Dist. Ct. App. 2d Dist. 1993).

[FN10] Murphy v. WISU Properties, Ltd., 895 So. 2d 1088 (Fla. Dist. Ct. App. 3d Dist. 2004).

[FN11] Machinery Wholesalers, Inc. v. Wolpe, Leibowitz & Brotman, 700 So. 2d 170 (Fla. Dist. Ct. App. 3d Dist. 1997); Campbell v. Gordon, 674 So. 2d 783 (Fla. Dist. Ct. App. 1st Dist. 1996).

[FN12] Johnson v. Allen, Knudsen, DeBoest, Edwards & Rhodes, P.A., 621 So. 2d 507 (Fla. Dist. Ct. App. 2d Dist. 1993).

Westlaw. © 2012 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

FLJUR ACTIONS § 160

END OF DOCUMENT