

## **RULE 116. DISMISSAL OF ACTIONS**

Rule 41 shall govern practice under this chapter regarding dismissal of actions, except that all dismissals shall be without prejudice unless the court specifically indicates that a dismissal is with prejudice and precludes further litigation of the same issue. Any new action addressing issues similar to a dismissed action shall be subject to appropriate counterclaims and defenses.

### **Advisory Notes June 2008**

Rule 116 incorporates Rule 41 relating to dismissals with a special provision under the Family Division Rules. That provision allows filing of another action to address similar issues subject to appropriate counterclaims and defenses following the dismissal of a prior action that is not a final judgment on the merits. Thus, when a divorce action is filed but dismissed without a final judgment, that dismissal does not preclude a subsequent divorce action from being filed, heard, and decided on the merits. The same non-preclusive effect of a dismissal would apply to other Family Division actions unless the court, in entering the dismissal, specially indicated that the dismissal was with prejudice, precluding further litigation of the same issues.