

## **Verified Motion to Dismiss Pursuant to T.R. 41(E)**

Use this form when:

You are the Defendant and

- The claim against you has been pending continuously for at least sixty (60) days and the Plaintiff has done nothing in those sixty (60) days to continue to pursue the claim

“Verified” means that by signing and submitting this Motion, you swear or affirm under oath and under penalties for perjury that all the answers and information are true and accurate.

**This form has three parts: (1) Motion (2) Proposed Order to Show Cause (3) Proposed Order to Dismiss.**

- You must fully complete and sign the Motion.
- You must complete only the top half of the Show Cause Order. This form has a front and a back. Print both sides of this Show Cause Order.
- You must complete only the top half of the Order to Dismiss.

Print and bring all forms to court.

**SCROLL DOWN FOR      Verified Motion to Dismiss Pursuant to T.R. 41(E)**

**VERIFIED MOTION TO DISMISS PURSUANT TO T.R. 41(E)**  
**[to be filed by Defendant]**

**TIPPECANOE SUPERIOR COURT No. 4**

Courthouse, 301 Main Street  
Lafayette, Indiana 47901  
Telephone: (765) 423-9266

**CAUSE NO. 79D04-\_\_\_\_\_ -PL/SC-\_\_\_\_\_**

<b>Plaintiff 1</b> _____	<b>Defendant 1</b> _____
Address _____	Address _____
Address _____	Address _____
City _____ State _____ Zip _____	City _____ State _____ Zip _____
Telephone (_____) _____	Telephone (_____) _____
Email _____	Email _____

<b>Plaintiff 2</b> _____	<b>Defendant 2</b> _____
Address _____	Address _____
Address _____	Address _____
City _____ State _____ Zip _____	City _____ State _____ Zip _____
Telephone (_____) _____	Telephone (_____) _____
Email _____	Email _____

If Plaintiff is represented by an Attorney:  
Attorney \_\_\_\_\_  
Attorney No. \_\_\_\_\_  
Address \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone (\_\_\_\_\_) \_\_\_\_\_  
Email \_\_\_\_\_

**VERIFIED MOTION TO DISMISS PURSUANT TO T.R. 41(E)**  
**[Attach both a Proposed Show Cause Order and Proposed Order to Dismiss]**

Comes now the Defendant (s) and respectfully requests the Court to dismiss,  without prejudice [first Motion to dismiss]  with prejudice [second Motion to Dismiss], the Small Claims or Plenary matter pending herein pursuant to Trial Rule 41(E) as the Plaintiff(s) has/have failed to diligently pursue this claim and has/have failed to take affirmative action on this claim for a continuous period of more than sixty (60) days.

I swear or affirm under penalties for perjury, as specified in I.C. 35-44-2-1, the information herein is true and accurate to the best of my knowledge and belief and that on the date this Motion was filed, I served a copy of this Motion on the other party by:

- U.S. Mail (1<sup>st</sup> class) to the address of the other party as listed above.
- U.S. Mail (1<sup>st</sup> class) to the address of the plaintiff's attorney as listed above.
- Email to the address of the other party as listed above.
- Email to the address of the plaintiff's attorney as listed above.
- Other: \_\_\_\_\_.

\_\_\_\_\_, 20\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant

**ORDER ON RULE TO SHOW CAUSE PURSUANT TO TRIAL RULE 41(E)**

**TIPPECANOE SUPERIOR COURT No. 4**

Courthouse, 301 Main Street  
Lafayette, Indiana 47901  
Telephone: (765) 423-9266

**CAUSE NO. 79D04-\_\_\_\_\_ -PL/SC-\_\_\_\_\_**

<b>Plaintiff 1</b> _____	<b>Defendant 1</b> _____
Address _____	Address _____
Address _____	Address _____
City _____ State _____ Zip _____	City _____ State _____ Zip _____
Telephone (_____) _____	Telephone (_____) _____
Email _____	Email _____

<b>Plaintiff 2</b> _____	<b>Defendant 2</b> _____
Address _____	Address _____
Address _____	Address _____
City _____ State _____ Zip _____	City _____ State _____ Zip _____
Telephone (_____) _____	Telephone (_____) _____
Email _____	Email _____

If Plaintiff is represented by an Attorney:  
 Attorney \_\_\_\_\_  
 Attorney No. \_\_\_\_\_  
 Address \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone (\_\_\_\_\_) \_\_\_\_\_  
 Email \_\_\_\_\_

**ORDER ON RULE TO SHOW CAUSE PURSUANT TO TRIAL RULE 41(E)**

The Court examines the records in this Small Claims or Plenary matter. It does appear the Plaintiff(s) has/have failed to diligently pursue this claim and have failed to take affirmative action on this claim for a continuous period of more than sixty (60) days. Pursuant to T.R. 41(E), the Plaintiff(s) is/are ordered to show good cause why this case should not be dismissed on or before on or before \_\_\_\_\_ at 4:00 PM.

To demonstrate good cause, the Plaintiff(s) must file a written response on or before the above-listed date explaining the reason for the delay. The Court will consider the response and then decide that such explanation: (1) has demonstrated good cause and will issue an order permitting the Plaintiff(s) to continue with the claim, subject to specific conditions and requirements or (2) has not demonstrated good cause and will dismiss this claim with or without prejudice. If no response is timely filed, the claim will be dismissed  without prejudice  with prejudice.

SO ORDERED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mathew S. Sandy, Judge  
Tippecanoe Superior Court 4

COPY:  Plaintiff  Attorney for plaintiff  Defendant  Attorney for defendant

**(See important information on reverse side)**

## IMPORTANT INFORMATION CONCERNING THIS MOTION TO DISMISS and TRIAL RULE 41(E)

(1) Once the Plaintiff files a claim, the Plaintiff has a duty to diligently pursue the claim or the claim may be dismissed pursuant to Trial Rule 41(E). Trial Rules 41(E) and (F) state:

(E) *Failure to prosecute civil actions or comply with rules.* Whenever there has been a failure to comply with these rules or when no action has been taken in a civil case for a period of sixty (60) days, the court, on motion of a party or its own motion shall order a hearing for the purpose of dismissing such case. The court shall enter an order of dismissal at plaintiff's costs if the plaintiff shall not show sufficient cause at or before such hearing. Dismissal may be withheld or reinstatement of dismissal may be made subject to the condition that the plaintiff comply with these rules and diligently prosecute the action and upon such terms that the court in its discretion determines to be necessary to assure such diligent prosecution.

(F) *Reinstatement following dismissal.* For good cause shown and within a reasonable time the court may set aside a dismissal without prejudice. A dismissal with prejudice may be set aside by the court for the grounds and in accordance with the provisions of Rule 60(B).

(2) If a Plaintiff has failed to diligently pursue this claim and has failed to take affirmative action on this claim for a continuous period of more than sixty (60) days, the Defendant may file this Motion to Dismiss.

If the Court finds there is merit to this Motion to Dismiss, the Court may dismiss the case the first time without prejudice. A case dismissed without prejudice may be filed again by the Plaintiff as a new case (along with payment of a new court filing fee) provided the case is refiled while still within the applicable statute of limitations.

(3) If a case is dismissed without prejudice and the Plaintiff does refile the claim as a new case, if the Plaintiff again fails to diligently pursue this claim or again fails to take affirmative action on this claim for a continuous period of more than sixty (60) days, the Defendant may file a second Motion to Dismiss of the refiled case.

If the Court finds there is merit to this second Motion to Dismiss the refiled case, the Court may dismiss with case with prejudice. A case dismissed with prejudice can only be refiled for grounds and in accordance with the provisions of Trial Rule 60(B).

If the Plaintiff's case has been dismissed with prejudice and the Plaintiff wants to attempt to refile the case for a third time, the Court highly recommends the Plaintiff consult with an attorney as the rules and procedures of Rule 60(B) must be strictly followed.

(4) Simply resuming the litigation after the filing of a Motion to Dismiss Pursuant to T.R. 41(E) is not enough to prevent the dismissal of the case pursuant to T.R. 41(E). For the Plaintiff to avoid dismissal of this case, the Plaintiff must provide, sufficient cause and good reason for the Plaintiff's failure to diligently pursue this claim. Some factors the Court will consider in determining if the Plaintiff has shown sufficient cause and good reason why the case should not be dismissed include:

(1) the length of the delay, (2) the reason for the delay, (3) the degree of personal responsibility by the Plaintiff, (4) the degree to which the Plaintiff will be charged with the acts or omission of his/her attorney, (5) the amount of prejudice to the Defendant caused by the Plaintiff's delay, (6) the presence or absence of a lengthy history of having deliberately proceeded in a dilatory manner, (7) the existence and effectiveness of sanctions less drastic than dismissal which fulfill the purposes of the rule and the desire to avoid court congestion, (8) the desirability of deciding the case on the merits, (9) the extent to which the Plaintiff's desire to resume pursuing the case was brought on by the filing of the Motion to Dismiss as compared to the Plaintiff's diligence.

**ORDER GRANTING MOTION TO DISMISS PURSUANT TO TRIAL RULE 41(E)**

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**CAUSE NO. 79D04-\_\_\_\_\_ -PL/SC-\_\_\_\_\_**

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Email _____	Email _____

<b>Plaintiff 2</b> _____	<b>Defendant 2</b> _____
Address _____	Address _____
Address _____	Address _____
City _____ State _____ Zip _____	City _____ State _____ Zip _____
Telephone (_____) _____	Telephone (_____) _____
Email _____	Email _____

If Plaintiff is represented by an Attorney:

Attorney \_\_\_\_\_  
Attorney No. \_\_\_\_\_  
Address \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone (\_\_\_\_\_) \_\_\_\_\_  
Email \_\_\_\_\_

**ORDER GRANTING MOTION TO DISMISS PURSUANT TO TRIAL RULE 41(E)**

The Court, having received no response on or before the listed deadline in its previously issued Order for Trial Rule 41(E), now Orders this Small Claims or Plenary matter to be dismissed,  without prejudice  with prejudice, for failure to diligently pursue this claim for a period of more than sixty (60) days.

SO ORDERED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mathew S. Sandy, Judge  
Tippecanoe Superior Court 4

COPY:  Plaintiff  Attorney for plaintiff  Defendant  Attorney for defendant