CHAPTER 1. SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT

A. SUGGESTED MOTION TEXT

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| | | | | | |

- § 1:2 Partial summary judgment
- § 1:3 Partial summary judgment as to liability
- § 1:4 Overview of motion

B. KEY SUPPORTING CITATIONS

| § 1:5 | Summary judgment—Authority for motion [Rule |
|--------|---|
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| § 1:6 | ——Description and purpose |
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| § 1:8 | —No triable issues |
| § 1:9 | —Mistaken grounds used by district court |
| § 1:10 | —Due to statute of limitations |
| § 1:11 | —Due to failure to exhaust administrative |
| | remedies |

- § 1:12 —Due to mootness
- § 1:13 —Due to judicial estoppel
- § 1:14 —Due to immunity
- § 1:15 —Due to claim preclusion
- § 1:16 —Due to res judicata
- § 1:17 —Summary judgment granted in selected specific cases—General tort cases
- § 1:18 —Summary judgment granted in specific cases— Medical malpractice
- § 1:19 —Summary judgment granted in selected specific cases—Employment and discrimination cases
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- § 1:25 ——Description and purpose of partial summary judgment motion
- § 1:26 "Triable issues" and partial summary judgment
- § 1:27 —Burden of proof and partial summary judgment
- § 1:28 —Effect where partial summary judgment motion

SUMMARY JUDGMENT AND RELATED MOTIONS

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|---------|---|
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| § 1:31 | — —Conflicting local rules |
| § 1:32 | —Timing—Bringing motion |
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| § 1:42 | ——Must be requested |
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| § 1:51 | —Proposed order and statement of court's ruling |
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| § 1:55 | ——Negating plaintiff's case |
| § 1:56 | — — Waiving affirmative defense by not initially |
| \$ 1.00 | pleading it |
| § 1:57 | —Cannot rely on unsupported pleadings |
| § 1:58 | Evidence on motion—Generally |
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| § 1:60 | —Triable issues |
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| , 1.01 | a motion—Incompetent or untimely affidavits |
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| Ü | admissible under the rules of evidence |
| § 1:63 | ——Speculative |
| § 1:64 | —Proper evidence in support of or opposition to a |
| | motion—Generally |
| § 1:65 | — —Inferences |
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| § 1:67 | ——Request for judicial notice |
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- \$ 1:69 Objections to evidence in support of or opposition to motion
 \$ 1:70 Sanctions—Generally
 \$ 1:71 Appellate review of grant or denial of motion

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| § 1:74 | —Liberal construction of opposition papers |
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| § 1:76 | Summary judgment or partial summary judgment—Due to statute of limitations—Not proper |
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| § 1:78 | Summary judgment—Due to immunity—Not proper |
| § 1:79 | —Summary judgment and partial summary judgment improper in selected specific cases—Personal injury and wrongful death |
| § 1:80 | —Employment and discrimination cases |
| § 1:81 | ——Contract |
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| | competition |
| § 1:83 | ——Insurance |
| § 1:84 | ——Negligence, generally |
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| § 1:86 | — — Miscellaneous |
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| § 1:100 | ——Amendment must be requested |
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§ 1:102 —Conflicting local rules

| § 1:103 | —Limitation on joining motion of others |
|---------|--|
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CHAPTER 2. DISMISSAL BASED UPON DEFICIENCY IN PLEADING

- § 2:1 Suggested text of motion
- § 2:2 Overview of motions

A. KEY SUPPORTING CITATIONS

- § 2:3 Failure to state a claim upon which relief can be granted—Authority for motion—Authority for motion, generally [Rule 12]
- § 2:4 ——Demurrer abolished
- § 2:5 —Key procedural requirements—Liberal construction of pleading
- § 2:6 Contentions, deductions or conclusions
- § 2:7 ——Allegations assumed to be true
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- § 2:11 ——No leave to amend
- § 2:12 ——Timing
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- § 2:14 ——Filing concurrently with other motions [Rule
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- § 2:20 Uncertain complaint [Rule 12]
- § 2:21 Dismissal for improper subject matter jurisdiction—Statutory authority [Rule 12]
- § 2:22 —Evidence considered
- § 2:23 —Timing
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- § 2:25 Lack of legal capacity to sue or be sued / not the real party in interest
- § 2:26 Party defect, nonjoinder or misjoinder [Rule 12 and Rule 19]

| § 2:27 | Another action pending |
|------------------|---|
| § 2:28 | Failure to exhaust administrative remedies |
| § 2:29 | Premature action |
| § 2:30 | Res judicata |
| § 2:31 | Laches |
| § 2:32 | Judicial admissions |
| § 2:33 | Lack of specificity in fraud actions |
| § 2.33 | Conspiracy actions |
| § 2.34 § 2:35 | Statute of limitations |
| § 2.35 § 2:36 | |
| - | Failure to provide statutory notice |
| § 2:37 | Lack of required certificate under state law |
| § 2:38 | Government tort claims |
| § 2:39 | Statute of frauds |
| § 2:40 | Preemption |
| § 2:41 | Immunity |
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| B. K | ET OPPOSITION CITATIONS |
| § 2:42 | Failure to state a claim upon which relief can be |
| _ | granted—Authority for motion—Authority for |
| | motion, generally [Rule 12] |
| § 2:43 | —Key procedural requirements—Liberal |
| | construction of pleading |
| § 2:44 | — Contentions, deductions or conclusions |
| § 2:45 | ——Allegations in complaint assumed to be true |
| § 2:46 | ——Court cannot consider matters outside of the |
| | pleadings |
| $\S 2:47$ | — Not conceded by opposing party/failure to file |
| | a response |
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| $\S 2:50$ | — — Timing and waiver |
| § 2:51 | —Motion for failure to state a claim upon which |
| | relief can be granted denied |
| § 2:52 | —Appeal of decision on motion to dismiss for |
| | failure to state a claim |
| § 2:53 | Uncertain pleading |
| $\S 2:54$ | Improper subject matter jurisdiction [Rule 12] |
| $\S 2:55$ | Improper subject matter jurisdiction—Dismissal |
| | is without prejudice |
| $\S 2:56$ | No legal capacity to sue or be sued / not real |
| | party in interest |
| $\S 2:57$ | Party defect, nonjoinder or misjoinder [Rule 12, |
| | Rule 21 and Rule 19] |
| § 2:58 | Another action pending |
| § 2:59 | Failure to exhaust administrative remedies |
| § 2:60 | Premature action |
| § 2:61 | Res judicata |
| 8 2.62 | Lachas |

| § 2:63 | Inconsistent amended complaint / judicial |
|--------|---|
| | admissions |
| § 2:64 | Lack of specificity in fraud actions |
| § 2:65 | Conspiracy |
| § 2:66 | Statute of limitations—Statute of limitations, |
| | generally |
| § 2:67 | —Tolling, generally |
| § 2:68 | Failure to provide required certificate under state |
| | law |
| § 2:69 | Government tort claims |
| § 2:70 | Statute of frauds |
| § 2:71 | No preemption |
| § 2:72 | No immunity |

C. SAMPLE SUPPORTING AND OPPOSITION **BRIEFS**

- § 2:73 Defendant's motion to dismiss for failure to state a cause of action—Notice of motion
- —Defendant's points and authorities—Failure to § 2:74 state cause of action—Statute of limitations
- § 2:75 Plaintiff's opposition to motion to dismiss for failure to state a cause of action-Points and authorities in opposition to motion to dismiss for failure to state a cause of action

CHAPTER 3. MOTION TO STRIKE

- Suggested motion text § 3:1
- § 3:2 Overview of motion

KEY SUPPORTING CITATIONS

- General authorities—Statutory authority [Rule § 3:3 12(f)§ 3:4 —Typical use of motion—Generally ——Arising from discovery abuse § 3:5 Grounds for motion to strike [Rule 12(f)]— § 3:6 Generally § 3:7 -Irrelevant -Scandalous, prejudicial or impertinent § 3:8 § 3:9 -Argumentative § 3:10 -Moot allegations § 3:11 —Hearsay
- § 3:12 —Frivolous allegations or defenses
- § 3:13 —Sham allegations or defenses
- § 3:14 —Insufficient allegations or defenses
- § 3:15 —Vague, misleading or confusing allegations
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- -Improper conclusions of fact or law § 3:17

| § 3:18 | Key procedural requirements—Generally |
|---|--|
| § 3:19 | —Hearing |
| § 3:20 | —Notice |
| § 3:21 | —Form of motion—Must be specific in requests to |
| | strike |
| § 3:22 | —Method of striking |
| § 3:23 | —Evidence on motion |
| § 3:24 | —Persons entitled to file motion |
| § 3:25 | —Timing of motion—Generally |
| § 3:26 | Discretion of court |
| § 3:27 | Types of pleadings subject to being stricken— Prayer for relief |
| § 3:28 | —Defenses |
| § 3:29 | —Complaints and amended complaints |
| § 3:30 | —Counterclaims |
| § 3:31 | —Memoranda |
| § 3:32 | —Striking punitive damage allegations |
| § 3:33 | Partial striking of a pleading |
| § 3:34 | Filed motions treated as different type of motion |
| § 3:35 | Appellate review of motion |
| В. О | PPOSITION CITATIONS |
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| | |
| § 3:36 § 3:37 | General authorities—Motion improper, generally |
| § 3:36 § 3:37 | |
| § 3:36 § 3:37 § 3:38 | General authorities—Motion improper, generally —Liberal construction of pleadings —Motion disfavored |
| § 3:36 § 3:37 § 3:38 § 3:39 | General authorities—Motion improper, generally —Liberal construction of pleadings —Motion disfavored —Motion denied, generally |
| § 3:36 § 3:37 § 3:38 | General authorities—Motion improper, generally —Liberal construction of pleadings —Motion disfavored |
| \$ 3:36 \$ 3:37 \$ 3:38 \$ 3:39 \$ 3:40 | General authorities—Motion improper, generally —Liberal construction of pleadings —Motion disfavored —Motion denied, generally Key procedural requirements—Court's discretion —Evidence on motion |
| \$ 3:36 \$ 3:37 \$ 3:38 \$ 3:39 \$ 3:40 \$ 3:41 | General authorities—Motion improper, generally —Liberal construction of pleadings —Motion disfavored —Motion denied, generally Key procedural requirements—Court's discretion —Evidence on motion —Untimely motion Grounds for denial—Discovery available and/or |
| \$ 3:36 \$ 3:37 \$ 3:38 \$ 3:39 \$ 3:40 \$ 3:41 \$ 3:42 \$ 3:43 | General authorities—Motion improper, generally —Liberal construction of pleadings —Motion disfavored —Motion denied, generally Key procedural requirements—Court's discretion —Evidence on motion —Untimely motion Grounds for denial—Discovery available and/or required |
| \$ 3:36 \$ 3:37 \$ 3:38 \$ 3:39 \$ 3:40 \$ 3:41 \$ 3:42 \$ 3:43 \$ 3:44 | General authorities—Motion improper, generally —Liberal construction of pleadings —Motion disfavored —Motion denied, generally Key procedural requirements—Court's discretion —Evidence on motion —Untimely motion Grounds for denial—Discovery available and/or required —Not prejudicial |
| \$ 3:36 \$ 3:37 \$ 3:38 \$ 3:39 \$ 3:40 \$ 3:41 \$ 3:42 \$ 3:43 \$ 3:44 \$ 3:45 | General authorities—Motion improper, generally —Liberal construction of pleadings —Motion disfavored —Motion denied, generally Key procedural requirements—Court's discretion —Evidence on motion —Untimely motion Grounds for denial—Discovery available and/or required |
| \$ 3:36 \$ 3:37 \$ 3:38 \$ 3:39 \$ 3:40 \$ 3:41 \$ 3:42 \$ 3:43 \$ 3:44 \$ 3:45 \$ 3:46 | General authorities—Motion improper, generally —Liberal construction of pleadings —Motion disfavored —Motion denied, generally Key procedural requirements—Court's discretion —Evidence on motion —Untimely motion Grounds for denial—Discovery available and/or required —Not prejudicial —Irrelevant, false or improper matter —Redundant matter |
| \$ 3:36 \$ 3:37 \$ 3:38 \$ 3:39 \$ 3:40 \$ 3:41 \$ 3:42 \$ 3:43 \$ 3:44 \$ 3:45 \$ 3:46 \$ 3:47 | General authorities—Motion improper, generally —Liberal construction of pleadings —Motion disfavored —Motion denied, generally Key procedural requirements—Court's discretion —Evidence on motion —Untimely motion Grounds for denial—Discovery available and/or required —Not prejudicial —Irrelevant, false or improper matter —Redundant matter —Sham pleadings |
| \$ 3:36 \$ 3:37 \$ 3:38 \$ 3:39 \$ 3:40 \$ 3:41 \$ 3:42 \$ 3:43 \$ 3:44 \$ 3:45 \$ 3:46 \$ 3:47 \$ 3:48 | General authorities—Motion improper, generally —Liberal construction of pleadings —Motion disfavored —Motion denied, generally Key procedural requirements—Court's discretion —Evidence on motion —Untimely motion Grounds for denial—Discovery available and/or required —Not prejudicial —Irrelevant, false or improper matter —Redundant matter —Sham pleadings —Material allegations |
| \$ 3:36 \$ 3:37 \$ 3:38 \$ 3:39 \$ 3:40 \$ 3:41 \$ 3:42 \$ 3:43 \$ 3:44 \$ 3:45 \$ 3:45 \$ 3:46 \$ 3:47 \$ 3:48 \$ 3:49 | General authorities—Motion improper, generally —Liberal construction of pleadings —Motion disfavored —Motion denied, generally Key procedural requirements—Court's discretion —Evidence on motion —Untimely motion Grounds for denial—Discovery available and/or required —Not prejudicial —Irrelevant, false or improper matter —Redundant matter —Sham pleadings —Material allegations —Background matter |
| \$ 3:36 \$ 3:37 \$ 3:38 \$ 3:39 \$ 3:40 \$ 3:41 \$ 3:42 \$ 3:43 \$ 3:44 \$ 3:45 \$ 3:46 \$ 3:47 \$ 3:48 \$ 3:49 \$ 3:50 | General authorities—Motion improper, generally —Liberal construction of pleadings —Motion disfavored —Motion denied, generally Key procedural requirements—Court's discretion —Evidence on motion —Untimely motion Grounds for denial—Discovery available and/or required —Not prejudicial —Irrelevant, false or improper matter —Redundant matter —Sham pleadings —Material allegations —Background matter Not properly stricken through motion to strike |
| \$ 3:36 \$ 3:37 \$ 3:38 \$ 3:39 \$ 3:40 \$ 3:41 \$ 3:42 \$ 3:43 \$ 3:44 \$ 3:45 \$ 3:45 \$ 3:46 \$ 3:47 \$ 3:48 \$ 3:49 | General authorities—Motion improper, generally —Liberal construction of pleadings —Motion disfavored —Motion denied, generally Key procedural requirements—Court's discretion —Evidence on motion —Untimely motion Grounds for denial—Discovery available and/or required —Not prejudicial —Irrelevant, false or improper matter —Redundant matter —Sham pleadings —Material allegations —Background matter Not properly stricken through motion to strike Costs and attorney's fees |
| \$ 3:36 \$ 3:37 \$ 3:38 \$ 3:39 \$ 3:40 \$ 3:41 \$ 3:42 \$ 3:43 \$ 3:44 \$ 3:45 \$ 3:46 \$ 3:47 \$ 3:48 \$ 3:49 \$ 3:50 \$ 3:51 | General authorities—Motion improper, generally —Liberal construction of pleadings —Motion disfavored —Motion denied, generally Key procedural requirements—Court's discretion —Evidence on motion —Untimely motion Grounds for denial—Discovery available and/or required —Not prejudicial —Irrelevant, false or improper matter —Redundant matter —Sham pleadings —Material allegations —Background matter Not properly stricken through motion to strike Costs and attorney's fees Inconsistent allegations not improper |
| \$ 3:36 \$ 3:37 \$ 3:38 \$ 3:39 \$ 3:40 \$ 3:41 \$ 3:42 \$ 3:43 \$ 3:44 \$ 3:45 \$ 3:46 \$ 3:47 \$ 3:48 \$ 3:49 \$ 3:50 \$ 3:51 \$ 3:52 | General authorities—Motion improper, generally —Liberal construction of pleadings —Motion disfavored —Motion denied, generally Key procedural requirements—Court's discretion —Evidence on motion —Untimely motion Grounds for denial—Discovery available and/or required —Not prejudicial —Irrelevant, false or improper matter —Redundant matter —Sham pleadings —Material allegations —Background matter Not properly stricken through motion to strike Costs and attorney's fees |

C. SAMPLE SUPPORTING AND OPPOSITION BRIEFS

§ 3:55 Motion to strike portions of complaint—Notice of

- hearing on motion to strike portions of complaint
- § 3:56 —Memorandum of points and authorities in support of motion to strike portions of complaint
- § 3:57 Plaintiff's opposition to motion to strike portions of complaint

CHAPTER 4. MOTION FOR JUDGMENT ON THE PLEADINGS

- § 4:1 Suggested motion text
- § 4:2 Overview of motion

A. KEY SUPPORTING AUTHORITIES

- § 4:3 Authority in general [Rule 12(c)]—Key statutory authority [Rule 12(c)]
- § 4:4 —Typical use of motion
- § 4:5 —Relationship to other motions or actions— Demurrer compared
- § 4:6 ——Motion to dismiss for failure to state a claim or for lack of jurisdiction compared
- § 4:7 ——Summary judgment compared
- \$4:8 Grounds for motion—Statutory grounds [Rule 12(c)]
- § 4:9 ——Lack of jurisdiction [Rule 12(b) Rule 12(h) or Rule 12(c)]
- $\ 4:10 \ --$ No cause of action stated [Rule 12(b or Rule 12(c))]
- 4:11 Where answer fails to state defense [Rule 12(c))]
- \$ 4:12 —As to entire pleading or cause of action [Rule 12(c)]
- § 4:13 —Where court makes motion
- § 4:14 Procedural requirements—Timing of motion
- § 4:15 —After grant of motion—Leave to amend
- $\S~4:16$ ——Entry of judgment where no timely amendment filed
- § 4:17 Evidence on motion—Generally
- § 4:18 —Grounds must appear on face of pleadings or judicially noticed matter [Rule 12(c)]—Face of pleadings
- § 4:19 Judicial notice
- § 4:20 Appellate review

B. KEY OPPOSITION CITATIONS

- § 4:21 Authority in general
- § 4:22 —Liberal construction of pleadings in favor of non-moving party

- § 4:23 Grounds for motion—Lack of jurisdiction [Rule 12(b) or Rule 12(c)]
- § 4:24 —Cause of action stated
- § 4:25 —Where answer fails to state defense
- § 4:26 —Estoppel
- § 4:27 Procedural requirements—Leave to amend
- § 4:28 —Improper timing
- § 4:29 Evidence on motion
- § 4:30 Appellate review

C. SAMPLE SUPPORTING AND OPPOSITION BRIEFS

- § 4:31 —Motion for judgment on the pleadings—Notice of hearing on motion for judgment on the pleadings
- § 4:32 Motion for judgment on the pleadings—Points and authorities in support of motion for judgment on the pleadings
- § 4:33 —Request for judicial notice in support of defendant's motion for judgment on the pleadings
- § 4:34 Opposition to motion for judgment on the pleadings—Plaintiff's points and authorities in opposition to motion for judgment on the pleadings

CHAPTER 5. MOTIONS TO QUASH AND DISMISS

- § 5:1 Suggested motion text
- § 5:2 Overview of motion

A. KEY SUPPORTING CITATIONS

- § 5:3 General authorities—Authority for motion [Rule 12(b)]
- § 5:4 —Methods for proper service [Rule 4]
- § 5:5 —Due process considerations
- § 5:6 —Burden of proof
- § 5:7 —Process servers, generally
- § 5:8 ——No service by a party
- § 5:9 —Strict compliance with service statutes
- § 5:10 —No special vs. general appearance
- § 5:11 —Motion to dismiss
- § 5:12 Procedural considerations—Timing—Timing for service, generally
- § 5:13 ——Timing for motion to quash or dismiss, generally [Rule 12]
- § 5:14 ——Timing for decision on motion to quash or dismiss, generally [Rule 12(i)]

| § 5:15 | — Motion to be made before responsive |
|--------|---|
| | pleading or to be included within it [Rule 12)] |
| § 5:16 | —Notice requirements—General format for notice |
| § 5:17 | ——Caution regarding local rules |
| § 5:18 | — —Time of notice |
| § 5:19 | —Effect on time to respond |
| § 5:20 | —Proof of service and/or jurisdiction |
| § 5:21 | —Service and joinder |
| § 5:22 | -Motion does not need to be verified |
| § 5:23 | Defective service of summons |
| § 5:24 | —Personal service [Rule 4] |
| § 5:25 | —Substituted service [Rule 4] |
| § 5:26 | —Service by mail [Rule 4] |
| § 5:27 | —Defendant outside state [Rule 4] |
| § 5:28 | —Hague Convention—Service abroad [Rule 4(f)] |
| § 5:29 | —Service on corporation [Rule 4(h)] |
| § 5:30 | —Service on public entity [Rule 4(i) and (j)] |
| § 5:31 | —Service on minor [Rule 4(g)] |
| § 5:32 | —Publication |
| § 5:33 | —Valid in state where district court is located but |
| | not a new attempt at service [Rule 4(e)] |
| § 5:34 | —Reasonable diligence |
| § 5:35 | —Summons defective |
| § 5:36 | Lack of personal jurisdiction—Generally |
| § 5:37 | ——Burden of showing |
| § 5:38 | —Evidence considered |
| § 5:39 | —Immunity |
| § 5:40 | —Minimum contacts |
| § 5:41 | Appellate review of motion |
| | |

B. KEY OPPOSITION CITATIONS

| § 5:42 | General authorities |
|-----------|--|
| § 5:43 | —No special appearances in federal courts |
| § 5:44 | —Actual notice |
| § 5:45 | —Discovery on jurisdiction issue |
| § 5:46 | —Proper under state law and was a separate |
| | attempt at service |
| $\S 5:47$ | Defective service of summons |
| § 5:48 | —Personal service [Rule 4] |
| § 5:49 | —Recalcitrant defendant |
| § 5:50 | —Substituted service [Rule 4] |
| § 5:51 | —Service by mail [Rule 4] |
| § 5:52 | —Defendant outside state [Rule 4(e) and (f)] |
| § 5:53 | —Service on corporation [Rule 4(h)] |
| § 5:54 | —Service on unincorporated association [Rule 4(h)] |
| § 5:55 | —Service on public entity [Rule 4(i) and (j)] |

| $\S 5:56$ | —Service on minor [Rule 4(g)] |
|-----------|--|
| § 5:57 | —Publication |
| § 5:58 | —Substantial compliance |
| § 5:59 | Personal jurisdiction—Immunity |
| § 5:60 | —Minimum contacts |
| § 5:61 | Procedural considerations—Waiver of |
| | jurisdictional defect claim |
| § 5:62 | —Court's discretion |
| § 5:63 | —Dismissal not proper |
| § 5:64 | —No prejudice |
| § 5:65 | —Amendment of summons |
| § 5:66 | —Not res judicata |
| § 5:67 | —Prima facie showing is sufficient when no |
| | hearing is held |
| § 5:68 | —Evidence construed in light most favorable to |
| | the plaintiff |
| § 5:69 | —Costs awarded |
| § 5:70 | Appellate review of motion |
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