

Table of Contents

CHAPTER 1. CHALLENGING VALIDITY OF SERVICE: MOTION TO DISMISS

§ 1:1	Suggested motion text
§ 1:2	Overview of motion
§ 1:3	Key supporting citations
§ 1:4	—General authorities—Authority for motion to dismiss for untimely service [CR 3]
§ 1:5	— —Authority for motion to dismiss for defective service [CR 12]
§ 1:6	— —Due process considerations
§ 1:7	— —Burden of proof
§ 1:8	— —Process and summons servers, generally
§ 1:9	— —Strict compliance with statutes required
§ 1:10	— —Special vs. general appearance
§ 1:11	— —Waiver of deficiencies in service or process
§ 1:12	— —Filing motions or other documents
§ 1:13	— —Grounds for motion
§ 1:14	— —Procedural considerations—Timing of motion
§ 1:15	— — —Motions, briefs and affidavits
§ 1:16	— — —Hearing on motion
§ 1:17	— — —Appeal of order
§ 1:18	— — —Proof of jurisdiction
§ 1:19	—Defective service of summons
§ 1:20	— —Personal service [RCWA 4.28.080(14), (15)]
§ 1:21	— —Service on individual in representative capacity
§ 1:22	— —Service on county [RCWA 4.28.080(1)]
§ 1:23	— —Service on town or city [RCWA 4.28.080(2)]
§ 1:24	— —Service on school or fire district [RCWA 4.28.080(3)]
§ 1:25	— —Service on railroad corporation [RCWA 4.28.080(4)]
§ 1:26	— —Service on owner of sleeping or hotel cars [RCWA 4.28.080(5)]
§ 1:27	— —Service on domestic insurance company [RCWA 4.28.080(6)]
§ 1:28	— —Service on foreign or alien insurance company [RCWA 4.28.080(7)]
§ 1:29	— —Service on represented entity [RCWA 4.28.080(8), RCWA 4.28.090, RCWA 23B.05.040]
§ 1:30	— —Service on minor [RCWA 4.28.080(9)]

SUMMARY JUDGMENT AND RELATED MOTIONS

- § 1:31 — —Service on person subject to guardianship [RCWA 4.28.080(10)]
- § 1:32 — —Service on foreign or alien steamship company or steamship charterer [RCWA 4.28.080(11)]
- § 1:33 — —Service on a regulated self-insurance program [RCWA 4.28.080(12)]
- § 1:34 — —Service on a purchaser of real estate [RCWA 4.28.080(13)]
- § 1:35 — —Service by publication or mail [RCWA 4.28.100]
- § 1:36 — —Service by publication—Requirements [RCWA 4.28.110]
- § 1:37 — — —Eminent domain [RCWA 4.28.120]
- § 1:38 — — —Unknown heirs and claimants [RCWA 4.28.140, 4.28.150]
- § 1:39 — —Personal service outside state [RCWA 4.28.180, 4.28.185]
- § 1:40 — —Absent motorists [RCWA 46.64.040]
- § 1:41 — —Forcible entry and forcible and unlawful detainer [RCWA 59.12.040]
- § 1:42 — —Service in a foreign country [CR 4(i)]
- § 1:43 — —Service in forfeiture cases (RCWA 69.50.505(3))
- § 1:44 — —Summons defective
- § 1:45 Key opposition citations
- § 1:46 —General authorities
- § 1:47 — —Allowable deficiencies
- § 1:48 — —Process servers
- § 1:49 — —Waiver of improper service
- § 1:50 — —Actual notice
- § 1:51 — —Burden of proof and presumptions
- § 1:52 —Defective service of summons—Service on individual in representative capacity
- § 1:53 — —Service on insurance carrier [RCWA 4.28.080(6)]
- § 1:54 — —Service on foreign or alien insurance carrier through Commissioner [RCWA 48.05.200]
- § 1:55 — —Service on represented entity [RCWA 4.28.080(8)]
- § 1:56 — —Service on foreign corporation
- § 1:57 — —Personal service
- § 1:58 — —Service by publication or mail
- § 1:59 — —Absent motorists [RCWA 46.64.040]
- § 1:60 — —Notice to persons outside state [RCWA 26.27.081]
- § 1:61 — —Forcible entry and forcible and unlawful detainer [RCWA 59.12.040]
- § 1:62 — —Defective summons
- § 1:63 Sample supporting and opposition briefs
- § 1:64 —Motion to dismiss for defective service of summons—
Motion to dismiss for defective service of summons

TABLE OF CONTENTS

- § 1:65 — —Notice of motion to dismiss for defective service
- § 1:66 —Motion to dismiss for defective service—Declaration in support to motion to dismiss for defective service of process
- § 1:67 —Opposition to dismiss for defective service of summons—Plaintiff’s brief in support of in opposition to dismiss for defective service of summons
- § 1:68 —Opposition to dismiss for failure to timely commence action—Defendant’s motion to dismiss for failure to timely serve and commence action
- § 1:69 — —Defendant’s declaration in support of motion to dismiss for failure to timely serve and commence action

CHAPTER 2. MOTION TO DISMISS: JURISDICTION

- § 2:1 Suggested text of motion
- § 2:2 Overview of dismissal
- § 2:3 Key supporting citations
- § 2:4 —Statutory authority—Generally [CR 12(b)]
- § 2:5 — —Grounds [CR 12(b)]
- § 2:6 —General authorities—Procedural considerations—Timing of motion [CR 12(b)]
- § 2:7 — — —Consolidation; successive motions [CR 12]
- § 2:8 — — —Consideration of evidence
- § 2:9 —Lack of jurisdiction over property
- § 2:10 —Lack of subject matter jurisdiction
- § 2:11 — —Jurisdiction of courts
- § 2:12 — —Timeliness of motion
- § 2:13 —Lack of jurisdiction of subject matter—Burden and presumptions
- § 2:14 — —Determination
- § 2:15 — —Court’s own motion
- § 2:16 — —Effect of lack of jurisdiction
- § 2:17 — —Lack of justiciable controversy
- § 2:18 — — —Ripeness
- § 2:19 — — —Mootness
- § 2:20 — — —Lack of standing
- § 2:21 — —Examples of lack of subject matter jurisdiction
- § 2:22 —Lack of personal jurisdiction—Generally
- § 2:23 — — —Burden of showing
- § 2:24 — —Minimum contacts
- § 2:25 — —Purposeful availment
- § 2:26 — —Contractual forum selection clauses
- § 2:27 — —Types of jurisdiction—Corporations

SUMMARY JUDGMENT AND RELATED MOTIONS

- § 2:28 — —Types of actions—Torts
- § 2:29 — — —Contract actions
- § 2:30 —Prior pending case—Generally
- § 2:31 — —Cases properly dismissed
- § 2:32 Key opposition citations
- § 2:33 —Statutory authority—Timing of motion
- § 2:34 —Lack of jurisdiction over property
- § 2:35 —Lack of subject matter jurisdiction—Generally
- § 2:36 — —Lack of justiciable controversy; standing
- § 2:37 —Lack of jurisdiction of subject matter—Lack of justiciable controversy—Continuing and substantial public interest/important issues
- § 2:38 —Lack of subject matter jurisdiction—Jurisdiction proper
- § 2:39 — —Dissolution of marriage or domestic partnership
- § 2:40 —Personal jurisdiction
- § 2:41 — —Personal jurisdiction [RCWA 4.28.185]
- § 2:42 — —Purposeful availment
- § 2:43 — —Nonresident business entities
- § 2:44 — —Contractual forum selection clauses
- § 2:45 — —Contract actions
- § 2:46 — —Torts
- § 2:47 —Removal/transfer to Superior Court rather than dismissal (CRLJ 14A)
- § 2:48 Sample supporting and opposition briefs
- § 2:49 —Motion—Defendant’s motion for summary disposition and points of authorities [lack of subject-matter jurisdiction]
- § 2:50 — —Notice of defendant’s motion to dismiss [lack of subject-matter jurisdiction]
- § 2:51 —Motion to dismiss for lack of jurisdiction—Brief in support of motion to dismiss due to lack of personal jurisdiction
- § 2:52 —Motion to dismiss due to lack of jurisdiction—Declaration in support of motion to dismiss due to lack of jurisdiction
- § 2:53 —Opposition to motion to dismiss for lack of jurisdiction—Plaintiff’s brief in support of opposition to motion to dismiss for lack of jurisdiction

CHAPTER 3. MOTION TO STRIKE

PART A: GENERAL MOTIONS TO STRIKE

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

TABLE OF CONTENTS

§ 3:3	Key supporting citations—General authorities— Statutory authority [CR 12(f)]
§ 3:4	— — Statutory authority—After grant of more definite statement [CR 12e]
§ 3:5	— — — For discovery abuse [CR 37]
§ 3:6	— Key procedural requirements—Time to obey order to make more definite statement [CR 12(e)]
§ 3:7	— Determination by court
§ 3:8	— Motion to strike—Generally
§ 3:9	— Irrelevant, false or improper matter [CR 12(f)]— Generally
§ 3:10	— After motion for more definite statement
§ 3:11	— For failure to comply with CR 11
§ 3:12	— For discovery abuse
§ 3:13	— — Determination
§ 3:14	— — Case properly dismissed
§ 3:15	— Pleading not drawn in conformity with laws— Generally
§ 3:16	— — Improper cause of action
§ 3:17	— — Improper amendment
§ 3:18	— — Improper prayer for relief—Striking punitive damage allegations
§ 3:19	— — — Attorney’s fees
§ 3:20	— — — Particular cases
§ 3:21	Key opposition citations—General authorities—Liberal construction
§ 3:22	— — Pleading capable of amendment
§ 3:23	— Key procedural requirements—Motion for more definite statement
§ 3:24	— Pleading not drawn in conformity with laws— Generally
§ 3:25	— — Prayer for relief—Punitive damages
§ 3:26	— — — Attorney fees
§ 3:27	— Discovery abuse
§ 3:28	— — Case improperly dismissed
§ 3:29	Sample supporting and opposition briefs
§ 3:30	— Motion to strike portions of complaint (attorney’s fees)—Motion to strike portions of complaint and brief in support
§ 3:31	— — Notice of hearing on motion to strike portions of complaint
§ 3:32	— Plaintiff’s opposition to motion to strike complaint (discovery abuse)
§ 3:33	— Motion to strike plaintiff’s amended petition—Notice of motion to dismiss

SUMMARY JUDGMENT AND RELATED MOTIONS

- § 3:34 — —Memorandum of points and authorities in support of motion to strike
- § 3:35 — —Order granting motion to strike

PART B: SPECIAL (“ANTI-SLAPP”) MOTIONS TO STRIKE

- § 3:36 Special motion to strike “SLAPP” lawsuits—Uniform Public Expression Protection Act (UPEPA)
- § 3:37 — —Special motion
- § 3:38 — —Stay of proceedings
- § 3:39 — —Hearing
- § 3:40 — —Proof
- § 3:41 — —Dismissal in whole or in part
- § 3:42 — —Ruling; Appeal
- § 3:43 — —Costs, attorney fees and expenses
- § 3:44 — —Communication to government agency or self-regulatory organization—Immunity from civil liability [RCWA 4.24.510]
- § 3:45 — —Parties entitled to protection of anti-SLAPP statute [RCWA 4.24.510]
- § 3:46 — —History of SLAPP statutes

CHAPTER 4. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND MOTION FOR JUDGMENT ON THE PLEADINGS

- § 4:1 Suggested motion text
- § 4:2 Key supporting authorities—Authority in general [CR 12(b)(6)]—Key statutory authority [CR 12(b)(6)]
- § 4:3 — —Key statutory authority [CR 12(c)]
- § 4:4 — —Typical use of motion—Failure to state a claim
- § 4:5 — —Procedural requirements—Failure to state a claim—Timing of motion[CR 12(h)]
- § 4:6 — —Motion for judgment on the pleadings—Timing of motion[CR 12(e)]
- § 4:7 — —Determination—Failure to state a claim
- § 4:8 — —Failure to state a claim—Evidence on motion—Generally
- § 4:9 Key supporting citations—Failure to state a claim—Sufficient pleadings
- § 4:10 — —Cases properly dismissed
- § 4:11 — —Lack of legal capacity to sue—Generally
- § 4:12 Key supporting authorities—Motion for judgment on the pleadings—Generally
- § 4:13 — —Determination

TABLE OF CONTENTS

§ 4:14	— —Evidence
§ 4:15	— —Motion correctly granted
§ 4:16	Key opposition citations—Failure to state claim
§ 4:17	— —Determination
§ 4:18	— —Examples of properly stated claim
§ 4:19	—Failure to state a claim—Lack of legal capacity to sue
§ 4:20	— —Evidence on motion
§ 4:21	—Motion for judgment on the pleadings
§ 4:22	— —Determination
§ 4:23	— —Not appropriate where there are issues of fact
§ 4:24	— —Motion should not be granted
§ 4:25	Sample supporting and opposition briefs
§ 4:26	—Motion—Defendant’s motion to dismiss and brief in support [failure to state a claim]
§ 4:27	—Motion to dismiss (failure to state a claim)—Notice of hearing on motion to dismiss
§ 4:28	—Opposition to motion to dismiss—Plaintiff’s brief in opposition to motion to dismiss (failure to state a claim)
§ 4:29	—Motion for judgment on the pleadings—Motion for judgment on the pleadings and brief in support
§ 4:30	— —Notice of hearing on motion for judgment on the pleadings
§ 4:31	—Opposition to motion for judgment on the pleadings—Plaintiff’s Points and authorities in opposition to motion for judgment on the pleadings

CHAPTER 5. SUMMARY JUDGMENT

§ 5:1	Suggested motion text
§ 5:2	Overview of motion
§ 5:3	Key supporting citations—Authority for motion [CR 56]—Claimant as movant
§ 5:4	— —Defending party as movant
§ 5:5	— —Description and purpose
§ 5:6	—“Genuine issues”
§ 5:7	— —Genuine issues re opposition to motion
§ 5:8	—“Material facts”
§ 5:9	—Summary judgment in specific cases—Generally
§ 5:10	— —Commercial law and contract cases
§ 5:11	— —Employment cases
§ 5:12	— —Insurance cases
§ 5:13	— —Tort cases
§ 5:14	— —Governmental immunity cases
§ 5:15	—Procedural considerations—Generally

SUMMARY JUDGMENT AND RELATED MOTIONS

- § 5:16 — —Timing—Claimant bringing motion
- § 5:17 — — —Defending party bringing motion
- § 5:18 — — —Notice of motion
- § 5:19 — — —Opposition and reply
- § 5:20 — — —Determination
- § 5:21 — —Format and content of motion—Evidence
- § 5:22 — — — —Affidavits
- § 5:23 — —Amendment of pleadings
- § 5:24 — —Continuances
- § 5:25 — — —More discovery needed
- § 5:26 — —Case not fully adjudicated on motion
- § 5:27 —Burden of proof—Generally
- § 5:28 — —Burden where defendant brings motion
- § 5:29 — —Burden where plaintiff brings motion
- § 5:30 —Evidence on motion—Generally
- § 5:31 — — —Strict construction of movant’s evidence
- § 5:32 — —Genuine issues
- § 5:33 — —Pleadings—Acceptable use
- § 5:34 — — —Unacceptable use
- § 5:35 — —Admissible supporting evidence—Generally
- § 5:36 — — —Affidavits and declarations
- § 5:37 — — —Discovery responses
- § 5:38 — — —Interrogatories and depositions
- § 5:39 — — —Admissions
- § 5:40 — — —Inferences
- § 5:41 — — —Exhibits
- § 5:42 — — —Request for judicial notice
- § 5:43 — — —Incorporation by reference
- § 5:44 — —Attacking opposition evidence—Incompetent affidavits & declarations
- § 5:45 — — —Conclusions or conclusory statements
- § 5:46 — — —Speculation or conjecture
- § 5:47 —Review of motion
- § 5:48 — —Standard of review
- § 5:49 Key opposition citations—Summary judgment—Generally
- § 5:50 — —Drastic remedy
- § 5:51 — —Summary judgment in specific cases—Generally
- § 5:52 — — —Premises liability
- § 5:53 — — —Tort cases
- § 5:54 — — —Employment and discrimination cases
- § 5:55 — — —Commercial law and contract cases
- § 5:56 — — —Insurance cases
- § 5:57 — — —Legal malpractice
- § 5:58 — — —Real property cases

TABLE OF CONTENTS

- § 5:59 — — — Governmental immunity cases
- § 5:60 — Procedural considerations—Request for continuance
- § 5:61 — — Amendment of pleadings—Generally
- § 5:62 — Burden of proof—Generally
- § 5:63 — — Burden where defendant brings motion—
Generally
- § 5:64 — Determination
- § 5:65 — Evidence on motion—Generally
- § 5:66 — — Affidavits
- § 5:67 — — Genuine issue
- § 5:68 — — Attacking supporting evidence—Incompetent
affidavits or declarations
- § 5:69 — — — Affidavits made in bad faith
- § 5:70 — — — Issue of state of mind
- § 5:71 — — — Speculation or conjecture
- § 5:72 — — — Contradictory admissions
- § 5:73 — — — Conclusory statements
- § 5:74 — Appellate review
- § 5:75 Sample supporting and opposition briefs
- § 5:76 — Motion for summary judgment by defendant—
Memorandum of points and authorities in support of
motion for summary judgment
- § 5:77 — — Notice of hearing on motion for summary
judgment
- § 5:78 — — Declaration in support of motion for summary
judgment
- § 5:79 — Plaintiff's opposition to motion for summary
judgment—Memorandum of points and authorities in
opposition to motion for summary judgment
- § 5:80 — Sample orders—Order granting summary judgment
- § 5:81 — — Order denying summary judgment

CHAPTER 6. DISMISSAL MOTIONS

- § 6:1 Chapter overview—Summary of motions
- § 6:2 Dismissal based on forum non conveniens—Suggested
motion text
- § 6:3 — Overview of motion
- § 6:4 — Key supporting citations
- § 6:5 — — Discretionary motion
- § 6:6 — — Primary authorities—Factors weighed by court
- § 6:7 — — Burden of proof
- § 6:8 — — Forum selection clauses
- § 6:9 — — Cases properly dismissed
- § 6:10 — Key opposition citations—Generally
- § 6:11 — — Presumptively convenient forum

SUMMARY JUDGMENT AND RELATED MOTIONS

- § 6:12 — —Forum selection clauses
- § 6:13 — —Alternative forum must be available
- § 6:14 — —Dismissal improper
- § 6:15 Dismissal based on delay in prosecution—Suggested motion text
- § 6:16 —Overview of motion
- § 6:17 —Key supporting citations—Primary authorities [CR 41(b)]
- § 6:18 — — —Purpose of motion
- § 6:19 — —Grounds for motion [CR 41(b)]—Factors
- § 6:20 —Key opposition citations—General authorities—Court’s discretion
- § 6:21 — —Factors considered
- § 6:22 — —Determination
- § 6:23 Dismissal based on failure to appear for trial—Suggested motion text
- § 6:24 —Overview of motion
- § 6:25 —Key supporting citations—Primary authorities—Generally
- § 6:26 —Key opposition citations
- § 6:27 Dismissal based on failure to join indispensable party—Suggested motion text
- § 6:28 —Overview of motion
- § 6:29 —Key supporting citations—Primary authorities—Joining indispensable parties [CR 19(a)]
- § 6:30 — — —Dismissal for failure to join indispensable party [CR 19(b) and CR 12(b)(7)]
- § 6:31 — —Grounds for motion—Statutory factors [CR 19(b)]
- § 6:32 — — —Burden
- § 6:33 —Key opposition citations—Generally
- § 6:34 — —Discretionary motion
- § 6:35 — —Not jurisdictional
- § 6:36 Dismissal for failure to substitute party upon death of party—Suggested motion text
- § 6:37 —Overview of motion
- § 6:38 —Key supporting citations—Primary authorities—Death of party [CR 25]
- § 6:39 —Key opposition citations
- § 6:40 Sample supporting and opposition briefs
- § 6:41 —Motion to dismiss plaintiff’s action—Notice of motion to dismiss [*failure to timely prosecute*]
- § 6:42 —Motion to dismiss plaintiff’s action [*failure to timely prosecute*—Memorandum of points and authorities in support of motion to dismiss
- § 6:43 —Motion to dismiss plaintiff’s action [*failure to*

TABLE OF CONTENTS

	<i>prosecute case</i> —Declaration of defendant in support of motion to dismiss
§ 6:44	—Plaintiff's opposition to motion to dismiss action <i>[forum non conveniens]</i> —Memorandum of points and authorities in opposition to motion to dismiss action
§ 6:45	—Plaintiff's opposition to motion to dismiss action <i>[delay in prosecution]</i> —Memorandum of points and authorities in opposition to motion to dismiss action
§ 6:46	— —Declaration of plaintiff in opposition to motion to dismiss action
§ 6:47	—Sample orders—Order to dismiss action <i>[delay in prosecution]</i> —Order to dismiss action
§ 6:48	—Motion to dismiss for failure to substitute party— Notice of motion to dismiss
§ 6:49	— —Memorandum of points and authorities in support of motion to strike
§ 6:50	— —Order granting motion

Table of Laws and Rules

Table of Cases

Index