

# Index

## ADMINISTRATIVE REMEDIES

Failure to exhaust, motion to dismiss for failure to state cause of action, § 2:33, 2:89

## ADMISSIONS

Summary judgment, evidence on motion, § 5:55

## AFFIDAVITS

Lack of jurisdiction, affidavit re motion to quash, § 1:92

Motion to strike affidavit based on no personal knowledge and bad faith, § 3:49

Summary Judgment, this index

## AGENT

Statutory Agent, this index

## APPEARANCES

Excusable neglect, failure to appear for trial, dismissal based on, § 6:83

Failure to appear for mediation, dismissal based on

Opposition citations, § 6:82

Failure to appear for trial, dismissal based on

Generally, § 6:76 to 6:81

Excusable neglect, § 6:83

Opposition citations, § 6:81

Overview of motion, § 6:77

Primary authorities, § 6:78 to 6:80

Supporting citations, § 6:78 to 6:80

Text of motion, suggested, § 6:76

Where either party fails to appear, § 6:81

Workers compensation, § 6:80

General vs. special appearance.

Motion to Quash, this index

Mediation, failure to appear, dismissal based on, § 6:82

## APPEARANCES—Cont'd

Nonresident, special appearance to contest process, § 1:88

## APPELLATE REVIEW

Failure to state cause of action, motion to dismiss, § 2:65, 2:114

Judgment on pleadings, motion for, § 4:38

Motion to quash, § 1:53

Motion to strike, § 3:28

Statute of limitations, appeal and reversal, § 2:50, 2:103

Summary judgment, § 5:121

Transfer fees, dismissal based on failure to pay, § 6:75

## ATTORNEYS

Motion to strike, substitution of attorney, § 3:14

## ATTORNEY'S FEES

Striking prayer for relief, § 3:25, 3:44

## BANKS AND OTHER FINANCIAL INSTITUTIONS

Lack of capacity to sue, motion to dismiss for failure to state cause of action, § 2:26, 2:81

Service on financial institutions, motion to quash, § 1:34, 1:68

## BURDEN OF PROOF

Forum non conveniens, dismissal based on, § 6:11

Motion to quash, § 1:6

Personal jurisdiction, lack of, § 1:45

Summary Judgment, this index

## CAPACITY TO SUE, LACK OF

Failure to State a Cause of Action, Motion to Dismiss, this index

## CERTIORARI

Judgment on pleadings, motion for, § 4:39

FLORIDA SUMMARY JUDGMENT AND RELATED MOTIONS

**CHILD CUSTODY CASES**

Motion to strike, § 3:39

**CHILD SUPPORT**

Summary judgment, § 5:87

**CHOICE OF LAW**

Personal jurisdiction, lack of,  
corporation or nonresident  
where parties agree Florida law  
governs, § 1:49

**CLERICAL ERROR**

General vs. special appearance,  
default or motion for relief from  
default, § 1:13

**COLLECTIONS**

Summary judgment, § 5:86

**CONCEALMENT**

Statute of limitations, § 2:47, 2:100

**CONSPIRACY ACTIONS**

Failure to state cause of action,  
motion to dismiss, § 2:39

**CONSTITUTIONAL CASES**

Due Process, this index  
Summary judgment, § 5:18, 5:83

**CONTINUANCES**

Summary judgment, § 5:30 to 5:32,  
5:94 to 5:96

**CONTRACT ACTIONS**

Failure to state cause of action,  
motion to dismiss, § 2:61 to  
2:64, 2:110 to 2:114  
Personal jurisdiction, lack of, § 1:52,  
1:82  
Summary judgment, § 5:15, 5:80

**CORPORATIONS**

Nonprofit corporation, lack of capac-  
ity to sue, motion to dismiss for  
failure to state cause of action,  
§ 2:25, 2:80  
Personal jurisdiction, lack of,  
corporation or nonresident  
where parties agree Florida law  
governs, § 1:49  
Service of summons, defective,  
§ 1:32, 1:66

**COUNTERCLAIMS**

Summary judgment, § 5:45, 5:138

**DAMAGES**

Motion to Strike, this index

**DANGEROUS CONDITION OF  
PROPERTY**

Summary judgment, § 5:11, 5:75

**DEATH**

Statute of limitations, § 2:48, 2:101

**DECLARATORY RELIEF**

Judgment on pleadings compared,  
§ 4:11

**DEFAULT JUDGMENT**

Failure to state cause of action,  
motion to dismiss, § 2:32  
General vs. special appearance,  
default or motion for relief from  
default, § 1:12

**DELAY IN PROSECUTION,  
DISMISSAL BASED ON**

Generally, § 6:46 to 6:68  
Abuse of discretion, § 6:62  
All claims, dismissal of, § 6:59  
Diligence  
Generally, § 6:67  
Overcoming plaintiff excuse,  
§ 6:56  
Discovery as factor considered,  
§ 6:63  
Due process, § 6:64  
Excuse for delay  
Overcoming, § 6:56, 6:57  
Reasonable diligence, § 6:67  
Waiver and estoppel, § 6:68  
Grounds for motion, § 6:51 to 6:53  
Mandatory dismissal, § 6:50, 6:61,  
6:62  
New trial, consideration of, § 6:53  
No activity within time period, § 6:52  
Notice and hearing required, § 6:55  
Opposition citations  
Generally, § 6:58 to 6:68  
Abuse of discretion, § 6:62  
All claims, dismissal of, § 6:59

## INDEX

### **DELAY IN PROSECUTION, DISMISSAL BASED ON**

#### **—Cont'd**

Opposition citations—Cont'd

Discovery as factor considered,  
§ 6:63

Due process, § 6:64

Excuse for delay, § 6:67, 6:68

General authorities, § 6:61 to 6:62

Mandatory dismissal, § 6:61, 6:62

Premature motion, § 6:66

Procedural considerations, § 6:64  
to 6:66

Taking action to avoid dismissal,  
§ 6:60

Trying case on merits, policy  
favoring, § 6:58

Where court brings motion, § 6:65

Overview of motion, § 6:46

Premature motion, § 6:66

Primary authorities, § 6:47 to 6:50

Procedural considerations, § 6:54,  
6:55, 6:64 to 6:66

Purpose and policy, § 6:49

Supporting citations

Generally, § 6:47 to 6:57

Diligence, overcoming plaintiff  
excuse, § 6:56

Excuse for delay, overcoming,  
§ 6:56, 6:57

Grounds for motion, § 6:51 to 6:53

Mandatory motion, § 6:50

New trial, consideration of, § 6:53

No activity within time period,  
§ 6:52

Notice and hearing required,  
§ 6:55

Primary authorities, § 6:47 to 6:50

Procedural considerations, § 6:54,  
6:55

Purpose and policy, § 6:49

Test, § 6:48

Timing of motion, § 6:54

Tolling, overcoming plaintiff  
excuse, § 6:57

Taking action to avoid dismissal,  
§ 6:60

Test, § 6:48

Timing of motion, § 6:54

### **DELAY IN PROSECUTION, DISMISSAL BASED ON**

#### **—Cont'd**

Tolling, overcoming plaintiff excuse,  
§ 6:57

Trying case on merits, policy favor-  
ing, § 6:58

Waiver and estoppel, excuse for  
delay, § 6:68

Where court brings motion, § 6:65

### **DEMURRER**

Abolished, § 2:2

Judgment on pleadings compared,  
§ 4:8

### **DENTAL MALPRACTICE ACTIONS**

Motion to strike, § 3:34

### **DISCOVERY**

Dismissal based on failure to make  
discovery

Generally, § 6:82 to 6:98

Abuse of discretion, dismissal as,  
§ 6:100, 6:101

Attorney's misconduct, § 6:100

Drastic sanction, § 6:94

Factors, § 6:88

False testimony, § 6:91

Fraud on court, § 6:90, 6:94

Medical malpractice, dismissal a  
drastic sanction, § 6:94

Monetary sanctions, failure to pay,  
§ 6:99

No fraud on court, § 6:94

Opposition citations

Generally, § 6:93 to 6:101

Abuse of discretion, dismissal  
as, § 6:100, 6:101

Attorney's misconduct, § 6:100

Dismissal a drastic sanction,  
§ 6:94

Medical malpractice, dismissal a  
drastic sanction, § 6:94

Monetary sanctions, failure to  
pay, § 6:99

No fraud on court, § 6:94

Plaintiff unable to comply,  
§ 6:101

**DISCOVERY—Cont’d**

- Dismissal based on failure to make discovery—Cont’d
- Opposition citations—Cont’d
  - Social networking privacy, § 6:92
  - Substantial compliance, § 6:97
  - Willfulness, § 6:98
- Overview of motion, § 6:84
- Plaintiff unable to comply, § 6:101
- Primary authorities, § 6:86 to 6:91
- Sample motion and order, § 6:125, 6:126
- Social networking privacy, opposition citations, § 6:92
- Substantial compliance, § 6:97
- Supporting citations
  - Generally, § 6:86 to 6:91
  - Factors, § 6:88
  - False testimony, § 6:91
  - Fraud on court, § 6:90
  - Primary authorities, § 6:86 to 6:91
  - Willful failure to comply, § 6:89
  - Text of motion, suggested, § 6:82
  - Willful failure to comply, § 6:89, 6:98
- Judgment on pleadings, motion for, discovery responses as evidence, § 4:22
- Medical malpractice, dismissal a drastic sanction, § 6:94
- Motion to strike arising from discovery abuse, § 3:5
- Social networking privacy, opposition citations, dismissal based on failure to make discovery, § 6:92
- Summary Judgment, this index

**DISCRIMINATION CASES**

- Summary judgment, § 5:13, 5:78

**DISMISSAL MOTIONS**

- Generally, § 6:1 to 6:125
- Appearance
  - Failure to appear. Appearances, this index
  - General vs. special, § 1:11

**DISMISSAL MOTIONS—Cont’d**

- Court order, failure to comply with, § 6:116
- Court’s inherent authority
  - Generally, § 6:112 to 6:115
  - Opposition citations, § 6:115
  - Overview of motion, § 6:113
  - Supporting citations, § 6:114
  - Text of motion, suggested, § 6:112
- Delay in Prosecution, Dismissal
  - Based on, this index
- Discovery, failure to make.
  - Discovery, this index
- Failure to appear. Appearances, this index
- Failure to Prosecute, this index
- Failure to State a Cause of Action,
  - Motion to Dismiss, this index
- Forum Non Conveniens, this index
- Indispensable party, failure to join.
  - Indispensable Parties, this index
- Inherent authority. Court’s inherent authority, above
- Judgment on pleadings compared, § 4:12
- Local rules, violation of, § 6:109 to 6:111
- Medical malpractice, § 6:94
- Prosecution
  - Delay in Prosecution, Dismissal
    - Based on, this index
  - Failure to Prosecute, this index
- Sample documents and suggested text
  - Generally, § 6:117 to 6:127
  - Discovery, failure to make, § 6:125, 6:126
  - Failure to prosecute, § 6:122 to 6:125
  - Failure to State Cause of Action,
    - Motion to Dismiss, this index
  - Forum non conveniens, § 6:118, 6:119
  - Indispensable party, failure to join, § 6:127
  - Service of process, waiver of, § 6:120
- Summary of motions, § 6:1

## INDEX

### **DISMISSAL MOTIONS—Cont'd**

- Summons, Failure to Serve, this index
- Transfer Fees, Failure to Pay, this index

### **DOING BUSINESS IN STATE**

- Service of summons, defective, out-of-state defendant doing business in state, § 1:30, 1:65

### **DUE DILIGENCE**

- Substituted service, § 1:26

### **DUE PROCESS**

- Contract actions, § 2:113
- Delay in prosecution, dismissal based on, § 6:64
- Motion to quash, due process considerations, § 1:5
- Summary judgment, § 5:22

### **EMPLOYMENT CASES**

- Summary judgment, § 5:13, 5:78

### **EQUITABLE ESTOPPEL**

- Statute of limitations, tolling or equitable estoppel, § 2:53, 2:90 et seq.

### **ESTATES**

- Summary judgment, § 5:88

### **EVIDENCE**

- Burden of Proof, this index
- Failure to State a Cause of Action, Motion to Dismiss, this index
- Judgment on Pleadings, this index
- Motion to strike, evidence on motion, § 3:15, 3:31
- Summary Judgment, this index

### **EXHIBITS**

- Failure to State a Cause of Action, Motion to Dismiss, this index
- Summary judgment, § 5:57, 5:117

### **FAILURE TO APPEAR**

- Appearances, this index

### **FAILURE TO PROSECUTE**

- Generally, § 6:44
- Delay in Prosecution, Dismissal Based on, this index

### **FAILURE TO PROSECUTE**

#### **—Cont'd**

- Order of dismissal, § 6:123
- Sample documents and suggested text
  - Generally, § 6:45, 6:122 to 6:125
- Court's sua sponte motion and notice for final judgment dismissing action, § 6:124
- Order dismissing action, § 6:123
- Sua sponte motion and notice for final judgment dismissing action, § 6:124

### **FAILURE TO STATE CAUSE OF ACTION, MOTION TO DISMISS**

- Generally, § 2:1 to 2:118
- Absent party, statute of limitations, § 2:45, 2:98
- Administrative remedies, failure to exhaust, § 2:33, 2:89
- Allegations contradicted by exhibits or other pleadings, § 2:22
- Allegations deemed admitted, § 2:21
- Amendments
  - Leave to amend, § 2:10, 2:72
  - Opposition request to amend pleading, overcoming, § 2:19
  - Timing of motion, failure to amend, § 2:17
- Appeal and reversal, statute of limitations, § 2:50, 2:103
- Appellate review, § 2:65, 2:114
- Attaching documents, necessity of, § 2:15
- Bank, lack of capacity to sue, § 2:26, 2:81
- Capacity to sue, lack of
  - Generally, § 2:24, 2:79
  - Bank, § 2:26, 2:81
  - Nonprofit corporation, § 2:25, 2:80
- Complaint
  - Amendments, above
  - Insufficient, § 2:31
  - Reading as a whole, § 2:70
  - Sufficiency, § 2:69
- Concealment, statute of limitations, § 2:47, 2:100

**FAILURE TO STATE CAUSE OF ACTION, MOTION TO DISMISS—Cont'd**

Conspiracy actions, § 2:39  
 Contract actions  
     Generally, § 2:61 to 2:65, 2:110 to 2:114  
     Complaint, sufficiency, § 2:110  
     Due process, § 2:113  
     Exhibits, contracts as, § 2:62, 2:111  
     Indispensable parties, § 2:64  
     Key allegations, failure to plead, § 2:61  
     Statute of frauds, § 2:63, 2:112  
 Death of person, statute of limitations, § 2:48, 2:101  
 Default judgment, § 2:32  
 Delayed discovery of action, § 2:41 to 2:44, 2:94 to 2:97  
 Demurrer abolished, § 2:2  
 Due process, contract actions, § 2:113  
 Equitable estoppel, § 2:53  
 Equitable tolling, § 2:90, 2:93  
 Evidence on motion  
     Generally, § 2:20  
     Allegations contradicted by exhibits or other pleadings, § 2:22  
     Allegations deemed admitted, § 2:21  
     Opposition citations, § 2:75, 2:76  
 Exhibits  
     Allegations contradicted by exhibits or other pleadings, § 2:22, 2:76  
     Contracts as exhibits, § 2:62, 2:111  
 False name, party use of, statute of limitations, § 2:46, 2:99  
 Fraud actions  
     Generally, § 2:38, 2:88  
     Delayed discovery of action, § 2:42, 2:95  
 Government tort claims  
     Generally, § 2:54 to 2:59, 2:105 to 2:110  
     Estoppel, § 2:107

**FAILURE TO STATE CAUSE OF ACTION, MOTION TO DISMISS—Cont'd**

Government tort claims—Cont'd  
 Filing requirements, § 2:105 to 2:110  
 Late claim, relief from, § 2:58, 2:106  
 Process and answer, § 2:56  
 Statutory immunity, § 2:77  
 Substantial compliance with statute, § 2:59, 2:108  
 Time limit for filing claim, § 2:57  
 Tolling, filing requirement, § 2:109  
 Written claim requirement, § 2:55  
 Grounds for motion, § 2:11  
 Incapacity, statute of limitations, § 2:49, 2:102  
 Indispensable parties, contract actions, § 2:64  
 Insurance, § 2:60  
 Judicial notice, § 2:18, 2:75  
 Laches, § 2:36, 2:86  
 Leave to amend, § 2:10  
 Legal malpractice, delayed discovery of action, § 2:44, 2:97  
 Liberal construction, § 2:9, 2:71  
 Limitation of actions. Statute of limitations, below  
 Medical malpractice actions  
     Delayed discovery, § 2:43, 2:96  
     Notice of intent to sue, service of, § 2:51, 2:104  
 More definite statement motion distinguished, § 2:4  
 No facts in support of claim, § 2:30  
 Nonjoinder, § 2:28, 2:83  
 Nonprofit corporation, lack of capacity to sue, § 2:25, 2:80  
 Not real party in interest, § 2:37, 2:87  
 Notice of motion, sample, § 2:116  
 Opposition citations  
     Generally, § 2:67 to 2:113  
     Administrative remedies, failure to exhaust, § 2:89  
     Appellate review, § 2:114  
     Capacity to sue, lack of, § 2:79 to 2:81  
     Complaint, § 2:70 to 2:72

## INDEX

### **FAILURE TO STATE CAUSE OF ACTION, MOTION TO DISMISS—Cont'd**

#### **Opposition citations—Cont'd**

Contract actions, § **2:110 to 2:114**

Evidence on motion, § **2:75, 2:76**

Exhibits, allegations contradicted by, § **2:76**

Fraud actions, § **2:88**

Government tort claims, above

Judicial notice, § **2:75**

Laches, § **2:86**

Liberal construction, § **2:71**

Not real party in interest, § **2:87**

Party defect or misjoinder, § **2:82, 2:83**

Premature action, § **2:84**

Questions of law, § **2:73**

Res judicata, § **2:85**

Sanctions, § **2:74**

Standing, lack of, § **2:87**

Statute of limitations, below

Subject matter jurisdiction, improper, § **2:78**

Order of dismissal, sample, § **2:118**

#### **Overview of motion**

Generally, § **2:3**

More definite statement motion distinguished, § **2:4**

Summary judgment motion distinguished, § **2:5**

Parental immunity, § **2:13**

Party defect or misjoinder, § **2:27, 2:28, 2:82, 2:83**

Pleading rules, § **2:14**

Premature action, § **2:34, 2:84**

Prisoners, indigent, § **2:29**

#### **Procedural requirements**

Generally, § **2:14 to 2:19**

Attaching documents, necessity of, § **2:15**

Judicial notice, § **2:18**

Opposition request to amend pleading, overcoming, § **2:19**

Pleading rules, § **2:14**

Timing of motion, § **2:16, 2:17**

Questions of law, § **2:73**

Real property, § **2:66**

### **FAILURE TO STATE CAUSE OF ACTION, MOTION TO DISMISS—Cont'd**

Res judicata, § **2:35, 2:85**

Rule authority, § **2:7, 2:8**

Sample documents and suggested text

Generally, § **2:115 to 2:118**

Motion, § **2:117**

Notice of motion, § **2:116**

Order of dismissal, § **2:118**

Sample motion, § **2:117**

Sanctions, § **2:74**

Sovereign immunity, § **2:12**

Standing, lack of, § **2:37, 2:87**

Statute of frauds, contract actions, § **2:63, 2:112**

#### **Statute of limitations**

Generally, § **2:40 to 2:53, 2:90 to 2:104**

Absent party, § **2:45, 2:98**

Appeal and reversal, § **2:50, 2:103**

Concealment, § **2:47, 2:100**

Death of person, § **2:48, 2:101**

#### **Delayed discovery of action**

Generally, § **2:41, 2:94**

Fraud actions, § **2:42, 2:95**

Legal malpractice actions, § **2:44, 2:97**

Medical malpractice actions, § **2:43, 2:96**

Equitable estoppel, § **2:53**

Equitable tolling, § **2:90, 2:93**

False name, party use of, § **2:46, 2:99**

Fraud, delayed discovery of action, § **2:42, 2:95**

Incapacity, § **2:49, 2:102**

Legal malpractice, delayed discovery of action, § **2:44, 2:97**

#### **Medical malpractice**

Delayed discovery of action, § **2:43**

Notice of intent to sue, service of, § **2:51, 2:104**

Tolling, § **2:52, 2:53, 2:90 et seq.**

Subject matter jurisdiction, improper, § **2:23, 2:78**



**FAILURE TO STATE CAUSE OF ACTION, MOTION TO DISMISS—Cont’d**

Summary judgment motion distinguished, § 2:5

Supporting citations

Generally, § 2:6 to 2:65

Administrative remedies, failure to exhaust, § 2:33

Appellate review, § 2:65

Capacity to sue, lack of, above

Complaint insufficient, § 2:31

Conspiracy actions, § 2:39

Contract actions, § 2:61 to 2:65

Default judgment, § 2:32

Evidence on motion, above

Fraud actions, § 2:38

Government tort claims, above

Grounds for motion, § 2:11

Insurance, § 2:60

Laches, § 2:36

Leave to amend, § 2:10

Liberal construction, § 2:9

No facts in support of claim, § 2:30

Not real party in interest, § 2:37

Parental immunity, § 2:13

Party defect or misjoinder, § 2:27, 2:28

Premature action, § 2:34

Prisoners, indigent, § 2:29

Procedural requirements, above

Res judicata, § 2:35

Rule authority, § 2:7, 2:8

Sovereign immunity, § 2:12

Standing, lack of, § 2:37

Statute of limitations, above

Subject matter jurisdiction, improper, § 2:23

Text of motion, suggested, § 2:1

Tolling statute of limitations, § 2:52, 2:53, 2:90 et seq.

**FINANCIAL INSTITUTIONS**

Banks and Other Financial Institutions, this index

**FORUM NON CONVENIENS, DISMISSAL BASED ON**

Generally, § 6:2 to 6:17

Alternative forum, suitability, § 6:14

Burden of proof, § 6:11

Contract actions, suitability, § 6:8

Discretionary nature of motion, § 6:5

Factors weighed by court, § 6:6

Forum selection clauses, § 6:12, 6:17

Home venue privilege, § 6:13

No evidence in support, § 6:15

Notice of motion, sample, § 6:118

Opposition citations

Generally, § 6:14 to 6:18

Alternative forum, suitability, § 6:14

Due process, § 6:19

Forum selection clauses, § 6:17

No evidence in support, § 6:15

Presumptively convenient forum, § 6:16

Waiver, § 6:18

Overview of motion, § 6:3

Presumptively convenient forum, § 6:16

Primary authorities, § 6:4 to 6:8

Procedural considerations, § 6:9 to 6:11

Rule 1.061, § 6:7

Sample documents and suggested text

Motion to dismiss, § 6:119

Notice of motion to dismiss, § 6:118

Sample motion, § 6:119

Statute 47.122, § 6:7

Stipulations, § 6:10

Suitability, § 6:8, 6:14

Supporting citations

Generally, § 6:4 to 6:12

Burden of proof, § 6:11

Contract actions, suitability of forum, § 6:8

Discretionary nature of motion, § 6:5

Factors weighed by court, § 6:6

Forum selection clauses, § 6:12

Primary authorities, § 6:7



## INDEX

### **FORUM NON CONVENIENS, DISMISSAL BASED ON**

#### **—Cont'd**

- Supporting citations—Cont'd
  - Procedural considerations, § 6:9 to 6:11
  - Rule 1.061, § 6:7
  - Statute 47.122, § 6:7
  - Stipulations, § 6:10
  - Timing of motion, § 6:9
- Test, § 6:20
- Text of motion, suggested, § 6:2
- Timing of motion, § 6:9
- Waiver, § 6:18

### **FRAUD ACTIONS**

- Failure to state cause of action, motion to dismiss, § 2:38, 2:88
- Judgment on pleadings, motion for, § 4:32
- Statute of limitations, delayed discovery of action, § 2:42, 2:95
- Summary judgment, § 5:89

### **FRAUDULENT INTENT**

- Summary judgment, opposition citations, § 5:74

### **GARNISHMENT AND COLLECTIONS**

- Summary judgment, § 5:86

### **GOVERNMENT TORT CLAIMS**

- Failure to State Cause of Action, Motion to Dismiss, this index

### **HAGUE CONVENTION**

- Service abroad, § 1:31

### **HEARSAY**

- Evidence on motion, supporting evidence, attacking, § 5:119

### **IMMUNITY**

- Motion to dismiss for failure to state a cause of action
  - Government tort claim, § 2:77
  - Parental immunity, § 2:13
  - Sovereign immunity, § 2:12
- Personal jurisdiction, lack of, § 1:46, 1:79

### **INCAPACITY**

- Statute of limitations, § 2:49, 2:102

### **INCOMPETENT PERSONS**

- Service on incompetent, defective, § 1:29, 1:71

### **INDISPENSABLE PARTIES**

- Contract actions, motion to dismiss for failure to state cause of action, § 2:64
- Failure to join, dismissal based on
  - Generally, § 6:102 to 6:108
  - Alleging failure to join, § 6:104
  - Grounds and support for motion, § 6:107
  - Opposition citations, § 6:108
  - Overview of motion, § 6:103
  - Primary authorities, § 6:103 to 6:106
- Sample motion, § 6:127
- Supporting citations
  - Generally, § 6:103 to 6:107
  - Alleging failure to join, § 6:104
  - Dismissal for failure to join, § 6:106
  - Grounds and support for motion, § 6:107
  - Waiver of defense or objection, § 6:105
- Text of motion, suggested, § 6:102
- Waiver of defense or objection, § 6:105
- Judgment on pleadings, failure to join, § 4:3

### **INSURANCE**

- Failure to state cause of action, motion to dismiss, § 2:60
- Summary judgment, § 5:16, 5:81

### **JOINDER OF PARTIES**

- Failure to state cause of action, motion to dismiss
  - Misjoinder, § 2:27, 2:82
  - Nonjoinder, § 2:28, 2:83
- Indispensable Parties, this index

### **JUDGMENT ON PLEADINGS, MOTION FOR**

- Generally, § 4:1 to 4:43

**JUDGMENT ON PLEADINGS,  
MOTION FOR—Cont'd**

Answer fails to state defense, § 4:15, 4:28  
 Appellate review, § 4:38  
 Certiorari, § 4:39  
 Common law compared, § 4:7  
 Declaratory relief actions compared, § 4:11  
 Defense, answer fails to state, § 4:15  
 Defense motion, sample, § 4:41  
 Demurrer compared, § 4:8  
 Discovery responses, § 4:22  
 Dismissal motion compared, § 4:12  
 Evidence on motion  
   Generally, § 4:21  
   Discovery responses, § 4:22  
   Judicial notice, § 4:23  
   Opposition citations, § 4:36, 4:37  
 Fraud, § 4:32  
 General authorities, § 4:5 to 4:12, 4:24, 4:25  
 Grounds for motion  
   Answer fails to state defense, § 4:15, 4:28  
   Fraud, § 4:32  
   Lack of jurisdiction, § 4:13, 4:26  
   Misrepresentation, § 4:31  
   No cause of action stated, § 4:14, 4:27  
   Res judicata, § 4:33  
   Splitting causes of action, § 4:34  
   Statute of frauds, § 4:30  
   Statute of limitations, § 4:29  
 Hearing, § 4:18  
 Indispensable party, failure to join, § 4:3  
 Judicial notice, § 4:23, 4:37  
 Jurisdiction, lack of, § 4:13, 4:26  
 Leave to amend, § 4:20, 4:35  
 Liberal construction of pleadings, § 4:25  
 Misrepresentation, § 4:31  
 Motion to strike, use after grant of judgment on pleadings, § 3:6  
 Motion to strike compared, § 4:9  
 Multiple claims, severance of, § 4:4

**JUDGMENT ON PLEADINGS,  
MOTION FOR—Cont'd**

No cause of action stated, § 4:14, 4:27  
 Notice, § 4:17  
 Opposition citations  
   Generally, § 4:24 to 4:39  
   Appellate review, § 4:38, 4:39  
   Certiorari, § 4:39  
   Evidence on motion, § 4:36, 4:37  
   General authorities, § 4:24, 4:25  
   Grounds for motion, above  
   Judicial notice, § 4:37  
   Leave to amend, § 4:35  
   Liberal construction of pleadings, § 4:25  
 Order granting motion, § 4:43  
 Preliminary hearing, sample motion, § 4:42  
 Privilege, § 4:16  
 Procedural requirements  
   Generally, § 4:17 to 4:20  
   Hearing, § 4:18  
   Leave to amend, § 4:20  
   Notice, § 4:17  
   Timing of motion, § 4:19  
 Res judicata, § 4:33  
 Rule authority, § 4:5  
 Sample documents and suggested text  
   Generally, § 4:40 to 4:43  
   Order, § 4:43  
   Preliminary hearing, motion for, § 4:42  
 Severance of multiple claims, § 4:4  
 Splitting causes of action, § 4:34  
 Statute of frauds, § 4:30  
 Statute of limitations, § 4:29  
 Summary judgment compared, § 4:10  
 Summary of motion, judgment on pleadings, § 4:2  
 Supporting authorities  
   Generally, § 4:5 to 4:23  
   Answer fails to state defense, § 4:15  
   Common law compared, § 4:7  
   Declaratory relief actions compared, § 4:11

## INDEX

### **JUDGMENT ON PLEADINGS, MOTION FOR—Cont'd**

- Supporting authorities—Cont'd
  - Demurrer compared, § 4:8
  - Dismissal motion compared, § 4:12
- Evidence on motion, § 4:21 to 4:23
- Grounds for motion, above
- Jurisdiction, lack of, § 4:13
- Motion to strike compared, § 4:9
- No cause of action stated, § 4:14
- Procedural requirements, § 4:17 to 4:20
- Rule authority, § 4:5
- Summary judgment compared, § 4:10
- Typical use of motion, § 4:6
- Text of motion, suggested, § 4:1
- Timing of motion, § 4:19
- Typical use of motion, § 4:6

### **JUDICIAL NOTICE**

- Failure to state cause of action, motion to dismiss, § 2:18, 2:75
- Judgment on pleadings, § 4:23, 4:37
- Summary judgment, § 5:58, 5:129

### **JURISDICTION**

- Judgment on pleadings, lack of jurisdiction, § 4:13, 4:26
- Motion to quash, proof of jurisdiction, § 1:20
- Personal Jurisdiction, Lack of, this index
- Subject matter jurisdiction, improper, motion to dismiss for failure to state cause of action, § 2:23, 2:78

### **LACHES**

- Failure to state cause of action, motion to dismiss, § 2:36, 2:86

### **LEGAL MALPRACTICE**

- Delayed discovery of action, § 2:44, 2:97
- Summary judgment, § 5:17, 5:82

### **LIMITED PARTNERSHIPS**

- Service on limited partnership, defective, § 1:73

### **LOCAL RULES**

- Dismissal based on violation
  - Generally, § 6:109 to 6:111
  - Overview of motion, § 6:110
  - Primary authorities, § 6:111
  - Supporting citations, § 6:111
  - Text of motion, suggested, § 6:109
- Summary judgment, § 5:24, 5:100

### **MAIL**

- Service by mail, defective, § 1:28, 1:64

### **MALPRACTICE**

- Professional Malpractice, this index

### **MEDIATION**

- Failure to appear, dismissal based on, § 6:82

### **MEDICAL MALPRACTICE**

- Delayed discovery, § 2:43, 2:96
- Dismissal a drastic sanction, § 6:94
- Intent to sue, service of notice, § 2:51, 2:104
- Motion to strike, § 3:19, 3:34, 3:38
- Summary judgment, § 5:77

### **MINORS**

- Service of summons, defective, § 1:36, 1:70

### **MISREPRESENTATION**

- Judgment on pleadings, motion for, § 4:31

### **MISTAKE**

- Summary judgment, mistake in pleadings or discovery, § 5:73

### **MOTION TO QUASH**

- Generally, § 1:1 to 1:92
- Actual notice, opposition citations, § 1:57
- Appearance, general vs. special
  - Generally, § 1:9 to 1:14
  - Default or motion for relief from default, § 1:12, 1:13
  - Motion to dismiss, § 1:11
- Non-residents, § 1:10
- Opposition citations, general appearance, § 1:56

**MOTION TO QUASH—Cont’d**

- Appearance, general vs. special—Cont’d
  - Status conference, § 1:14
- Appellate review, § 1:53
- Burden of proof, § 1:6
- Clerical error, § 1:13
- Default or motion for relief from default, general vs. special appearance, § 1:12, 1:13
- Due process considerations, § 1:5
- Financial institutions, service on, § 1:34, 1:68
- General authorities
  - Opposition citations, § 1:55 to 1:57
  - Supporting citations, § 1:4 to 1:22
- Grounds for motion, § 1:15
- Joinder, § 1:21
- Jurisdiction
  - Personal Jurisdiction, Lack of, this index
  - Proof of, § 1:20
- Non-residents, general vs. special appearance, § 1:10
- Notice requirements, § 1:18
- Opposition citations
  - Generally, § 1:54 to 1:84
  - Actual notice, § 1:57
  - General appearance, § 1:56
  - General authorities, § 1:55 to 1:57
  - Personal Jurisdiction, Lack of, this index
  - Summons, Defective Service, this index
  - Waiver of jurisdictional defect claim, § 1:85
- Other means of relief, § 1:22
- Overview of motion to quash, § 1:2
- Personal Jurisdiction, Lack of, this index
- Procedural considerations
  - Generally, § 1:16 to 1:22
  - Jurisdiction, proof of, § 1:20
  - Notice requirements, § 1:18
  - Other means of relief, § 1:22
  - Service and joinder, § 1:21
  - Time to respond, effect on, § 1:19

**MOTION TO QUASH—Cont’d**

- Procedural considerations—Cont’d
  - Timing of motion, § 1:16, 1:17
- Process servers, § 1:7
- Sample documents and suggested text
  - Generally, § 1:1, 1:86
- Insufficient service
  - Generally, § 1:86 to 1:92
  - Motion, § 1:89
  - Nonresident, special appearance to contest process, § 1:88
  - Notice of hearing, § 1:87
  - Order denying motion, § 1:91
  - Order quashing service, § 1:90
- Jurisdiction, lack of, affidavit re motion, § 1:92
- Service of motion, § 1:21
- Status conference, general vs. special appearance, § 1:14
- Statutory authority for motion, § 1:4
- Summons, Defective Service, this index
- Summons, failure to serve, § 6:25
- Supporting citations
  - Generally, § 1:3 to 1:53
  - Appearance, general vs. special, above
  - Burden of proof, § 1:6
  - Due process considerations, § 1:5
  - Grounds for motion, § 1:15
  - Notice requirements, § 1:18
  - Personal Jurisdiction, Lack of, this index
  - Process servers, § 1:7
  - Service statutes, strict compliance, § 1:8
  - Statutory authority for motion, § 1:4
  - Summons, Defective Service, this index
  - Timing of motion, § 1:16, 1:17
- Text of motion, suggested, § 1:1
- Time to respond, effect on, § 1:19
- Timing of motion, § 1:16, 1:17
- Waiver, timing of motion, § 1:17
- Waiver of jurisdictional defect claim, § 1:85

## INDEX

### MOTION TO STRIKE

- Generally, § 3:1 to 3:50
- Allegation, improper, § 3:21, 3:22
- Amendment or answer on grant of motion, § 3:12
- Answer or cross-complaint, striking, § 3:26
- Appellate review, motion to strike, § 3:28
- Attorney, substitution of, § 3:14
- Attorney's fees, striking prayer for relief, § 3:25, 3:44
- Child custody cases, § 3:39
- Damages
  - Opposition citations, § 3:42, 3:43
  - Special damages, sample motion to strike, § 3:48
  - Supporting citations, § 3:23, 3:24
- Defense, insufficient, § 3:18
- Dental malpractice actions, § 3:34
- Discovery abuse, arising from, § 3:5
- Evidence on motion, § 3:15, 3:31
- General authorities, § 3:4 to 3:7, 3:29 to 3:34
- General form of motion, § 3:46
- Grant of motion: amendment or answer, § 3:12
- Grounds for motion, § 3:8
- Immaterial allegation, § 3:22
- Irrelevant, false or improper matter, § 3:36 to 3:39
- Judgment on pleadings
  - After grant of motion to strike, § 3:6
  - Compared, § 4:9
- Liberal construction, § 3:30
- Material allegations, § 3:41
- Medical malpractice actions, § 3:19, 3:34, 3:38
- No personal knowledge and bad faith, motion to strike affidavit, § 3:49
- Notice of motion, redundant, immaterial, impertinent and scandalous matter, § 3:47
- Opposition citations
  - Generally, § 3:29 to 3:44
  - Attorney's fees, striking prayer for relief, § 3:44

### MOTION TO STRIKE—Cont'd

- Opposition citations—Cont'd
  - Child custody cases, § 3:39
  - Damages, striking, § 3:42, 3:43
  - Evidence on motion, § 3:31
  - General authorities, § 3:29 to 3:34
  - Irrelevant, false or improper matter, § 3:36 to 3:39
  - Liberal construction, § 3:30
  - Material allegations, § 3:41
  - Medical and dental malpractice, § 3:34, 3:38
  - Motion improper, § 3:29
  - Pleading capable of amendment, § 3:33
  - Pleading defective in form only, § 3:40
  - Redundant, immaterial, or scandalous matter, § 3:35
  - Sham pleadings, § 3:36
  - Untimely motion, § 3:32
- Order striking pleading, § 3:50
- Overview of motion to strike, § 3:2
- Pleading capable of amendment, § 3:33
- Pleading defective in form only, § 3:40
- Procedural requirements
  - Generally, § 3:9 to 3:13
  - Default, effect on, § 3:13
  - Grant of motion: amendment or answer, § 3:12
  - Timing of motion, § 3:10, 3:11
- Punitive damage allegations, striking, § 3:24, 3:43
- Redundant, immaterial, or scandalous matter, § 3:16 to 3:19, 3:35, 3:47
- Sample documents and suggested text
  - Generally, § 3:45 to 3:50
  - General form, § 3:46
  - No personal knowledge and bad faith, motion to strike affidavit, § 3:49
  - Notice of motion, redundant, immaterial, impertinent and scandalous matter, § 3:47
  - Order striking pleading, § 3:50

**MOTION TO STRIKE—Cont'd**

Sample documents and suggested text—Cont'd  
 Special damages, motion to strike claim for, § 3:48  
 Sham pleadings, § 3:17, 3:36  
 SLAPP suits, § 3:27  
 Special damages, motion to strike claim for, § 3:48  
 Striking “all or any part of any pleading,” § 3:20  
 Substitution of attorney, § 3:14  
 Summary judgment, § 3:7  
 Supporting citations  
     Generally, § 3:3 to 3:38  
     Allegation, improper, § 3:21, 3:22  
     Answer or cross-complaint, striking, § 3:26  
     Appellate review, motion to strike, § 3:28  
     Attorney’s fees, striking prayer for relief, § 3:25  
     Damages, striking, § 3:23, 3:24  
     Default, effect on, § 3:13  
     Discovery abuse, arising from, § 3:5  
     Evidence on motion, § 3:15  
     General authorities, § 3:4 to 3:7  
     Grant of motion: amendment or answer, § 3:12  
     Grounds for motion, § 3:8  
     Immaterial allegation, § 3:22  
     Insufficient defense, § 3:18  
     Judgment on pleadings, after grant, § 3:6  
     Medical malpractice actions, § 3:19  
     Procedural requirements, § 3:9 to 3:13  
     Redundant, immaterial, or scandalous matter, § 3:16 to 3:19  
     Sham pleadings, § 3:17  
     SLAPP suits, § 3:27  
     Striking “all or any part of any pleading,” § 3:20  
     Substitution of attorney, § 3:14  
     Summary judgment, § 3:7  
     Timing of motion, § 3:10, 3:11  
     Typical use of motion, § 3:4 to 3:7

**MOTION TO STRIKE—Cont'd**

Text of motion, suggested, § 3:1  
 Typical use of motion, § 3:4 to 3:7  
 Untimely motion, § 3:32

**MOTORISTS**

Nonresident motorists, defective service of summons, § 1:37, 1:75

**NAMES**

False name, party use of, statute of limitations, § 2:46, 2:99

**NEGLIGENCE**

Summary judgment, § 5:20, 5:85

**NONPROFIT CORPORATIONS**

Lack of capacity to sue, motion to dismiss for failure to state cause of action, § 2:25, 2:80

**NONRESIDENTS**

Personal jurisdiction, lack of, corporation or nonresident where parties agree Florida law governs, § 1:49  
 Service of summons, defective  
     Hague Convention, service abroad, § 1:31  
     Motion to quash, general vs. special appearance, § 1:10  
     Motorists, nonresident, § 1:37, 1:75  
     Out-of-state defendant doing business in state, § 1:30, 1:65  
     Special appearance to contest process, § 1:88

**PARENT AND CHILD**

Child support, summary judgment, § 5:87  
 Parental immunity, motion to dismiss for failure to state cause of action, § 2:13  
 Paternity, summary judgment, § 5:87

**PARTIES**

Indispensable Parties, this index

**PARTNERSHIPS**

Service on partnership, defective, § 1:73

## INDEX

### **PATERNITY**

Summary judgment, § 5:87

### **PERSONAL INJURIES**

Summary judgment, § 5:12, 5:76

### **PERSONAL JURISDICTION, LACK OF**

Generally, § 1:44 to 1:53, 1:78 to 1:84

Affidavit re motion to quash due to lack of jurisdiction, § 1:92

Burden of showing, § 1:45

Causes in Florida, § 1:51, 1:84

Contract actions, § 1:52, 1:82

Corporation or nonresident where parties agree Florida law governs, § 1:49

Immunity, § 1:46, 1:79

Minimum contacts, § 1:47, 1:80

Opposition citations, motion to quash, § 1:78 to 1:84

Person, jurisdiction over, § 1:48, 1:81

Products liability actions, § 1:50, 1:83

Supporting citations, motion to quash, § 1:44 to 1:53

### **PLEADINGS**

Judgment on Pleadings, Motion for, this index

Motion to Strike, this index

### **POSSESSION OF PREMISES**

Service, defective, in action for possession, § 1:74

### **PREMATURE ACTION**

Failure to state cause of action, motion to dismiss, § 2:34, 2:94

### **PREMISES LIABILITY**

Summary judgment, § 5:14, 5:79

### **PRISONERS**

Failure to state cause of action, motion to dismiss, indigent prisoners, § 2:29

Service on prisoners, defective, § 1:72

### **PRIVILEGE**

Judgment on pleadings, motion for, § 4:16

### **PROCESS SERVERS**

Motion to quash, § 1:7

### **PRODUCTS LIABILITY ACTIONS**

Personal jurisdiction, lack of, § 1:50, 1:83

Summary judgment, § 5:19, 5:90

### **PROFESSIONAL MALPRACTICE**

Dental malpractice, motion to strike, § 3:34

Legal Malpractice, this index

Medical Malpractice, this index

Summary judgment, generally, § 5:84

### **PROPERTY DAMAGE**

Summary judgment, § 5:12, 5:76

### **PUBLIC ENTITIES**

Service of summons, defective, § 1:35, 1:69

### **PUBLICATION**

Summons, Defective Service, this index

### **PUNITIVE DAMAGES**

Motion to strike allegations, § 3:24, 3:43

### **QUASH**

Motion to Quash, this index

### **REAL PROPERTY**

Failure to state cause of action, motion to dismiss, § 2:66

### **REAL PROPERTY ACTIONS**

Summary judgment, § 5:14, 5:79

### **RES JUDICATA**

Failure to state cause of action, motion to dismiss, § 2:35, 2:85

Judgment on pleadings, motion for, § 4:33

### **RULES**

Local Rules, this index



**SAMPLE DOCUMENTS AND  
SUGGESTED TEXT**

Discovery, failure to make, motion to dismiss, § **6:125, 6:126**  
Dismissal Motions, this index  
Failure to Prosecute, this index  
Failure to State Cause of Action, Motion to Dismiss, this index  
Forum Non Conveniens, Dismissal Based on, this index  
Indispensable party, failure to join, motion to dismiss, § **6:127**  
Judgment on Pleadings, Motion for, this index  
Motion to Quash, this index  
Motion to Strike, this index  
Service of process, waiver of, § **6:120, 6:121**  
Service of summons. Motion to quash service of summons, above  
Summary Judgment, this index

**SANCTIONS**

Failure to state cause of action, motion to dismiss, § **2:74**  
Summary judgment, § **5:67, 5:120**

**SERVICE OF PROCESS**

Financial institutions, service on, § **1:34, 1:68**  
Summons, Defective Service, this index  
Summons, Failure to Serve, this index  
Waiver of service of process  
Generally, § **6:121**  
Notice of commencement of action and request for waiver of service, § **6:120**

**SLAPP SUITS**

Motion to strike, § **3:27**

**SOVEREIGN IMMUNITY**

Failure to state cause of action, motion to dismiss, § **2:12**

**STANDING, LACK OF**

Failure to state cause of action, motion to dismiss, § **2:37, 2:87**

**STATUTE OF FRAUDS**

Contract actions, motion to dismiss for failure to state cause of action, § **2:63, 2:112**  
Judgment on pleadings, motion for, § **4:30**

**STATUTE OF LIMITATIONS**

Failure to state cause of action, motion to dismiss for. Failure to State a Cause of Action, this index  
Judgment on pleadings, motion for, § **4:29**

**STATUTORY AGENT**

Opposing citations, defective service of summons, § **1:67**  
Supporting citations, defective service of summons, § **1:27**

**STIPULATIONS**

Forum non conveniens, dismissal based on, § **6:10**  
Summons, failure to serve, dismissal based on, § **6:32, 6:41**

**STRIKE**

Motion to Strike, this index

**SUBJECT MATTER  
JURISDICTION**

Motion to dismiss for failure to state cause of action, improper jurisdiction, § **2:23, 2:78**

**SUBSTITUTED SERVICE**

Summons, Defective Service, this index

**SUMMARY JUDGMENT**

Generally, § **5:1 to 5:140**  
Acceptable use, § **5:51**  
Admissions, evidence on motion, § **5:55, 5:62**  
Affidavits  
Continuance to file affidavit, § **5:96**  
Defense motion, sample affidavit in support, § **5:130**  
Evidence on motion, § **5:53, 5:61, 5:111, 5:112**

## INDEX

### SUMMARY JUDGMENT—Cont'd

#### Affidavits—Cont'd

Incompetent affidavits, § 5:61,  
5:111

Personal knowledge lacking,  
§ 5:112, 5:132

Required, § 5:33

Sample documents and suggested  
text, below

Unavailability, defense motion for  
continuance, § 5:133

Affirmative defenses, § 5:44, 5:105

Amendment of pleadings, § 5:29,  
5:98, 5:99

Appellate review, § 5:121

Authority for motion, § 5:4 to 5:10

#### Burden of proof

Generally, § 5:38 to 5:47, 5:101 to  
5:106

Affirmative defenses, § 5:44,  
5:105

Counterclaims, § 5:45

#### Defense motion

Generally, § 5:40, 5:102

Affirmative defenses, § 5:44,  
5:105

Incomplete discovery, § 5:41

Inferences, § 5:42

Moving party, burden on,  
§ 5:46, 5:104

Negating plaintiff's case, § 5:43,  
5:103

Moving party, burden on, § 5:46,  
5:104

Nonmoving party, grant for, § 5:39

Plaintiff's case, negating, § 5:43,  
5:103

Plaintiff's motion, § 5:47, 5:106

Child support, § 5:87

Conclusory statements, § 5:116

Conjecture, § 5:63, 5:113

Constitutional cases, § 5:18, 5:83

#### Continuances

Affidavits, § 5:96, 5:133

Opposition citations, § 5:94 to  
5:96

Supporting citations, § 5:30 to  
5:32

Contract cases, § 5:15, 5:80

### SUMMARY JUDGMENT—Cont'd

Contradictions in record, supporting  
evidence, attacking, evidence on  
motion, § 5:115

Counterclaims, § 5:45, 5:138

Court's function, § 5:3

Cross-defendant, sample motion  
against, § 5:127

Dangerous condition of property,  
§ 5:11, 5:75

#### Defense motion

Burden of proof, above

Sample documents and suggested  
text, below

Deposition testimony, repudiating,  
evidence on motion, supporting  
evidence, attacking, § 5:118

Description and purpose, § 5:5

#### Discovery

Continuance for additional  
discovery, § 5:95

Incomplete, § 5:41

Mistake in discovery, § 5:73

Responses, evidence on motion,  
§ 5:54

Discretion of court, § 5:34

Discrimination cases, § 5:13

Drastic but necessary measure, § 5:8,  
5:71

Due process, § 5:22

Employment and discrimination  
cases, § 5:13, 5:78

Estates, § 5:88

#### Evidence on motion

Generally, § 5:48 to 5:66, 5:107 to  
5:119

Admissions, § 5:55

Affidavits, § 5:53, 5:62, 5:111,  
5:112

Conclusory statements, § 5:116

Contradictions in record, support-  
ing evidence, attacking,  
§ 5:115

Discovery responses, § 5:54

Exhibits, § 5:57, 5:117

Inferences, § 5:56, 5:114

Judicial notice, request for, § 5:58

#### Objections

Generally, § 5:64 to 5:66

**SUMMARY JUDGMENT—Cont’d**

Evidence on motion—Cont’d

- Objections—Cont’d
  - Ruling on objections, § 5:65
  - Waiver of objections, § 5:66
  - Written objections, sample, § 5:135
- Opposition evidence, attacking
  - Generally, § 5:60 to 5:63
  - Admissions, § 5:62
  - Affidavits, incompetent, § 5:61
  - Speculation or conjecture, § 5:63
- Pleadings, acceptable and unacceptable use, § 5:51, 5:52
- Ruling on objections, § 5:65
- Speculation or conjecture, § 5:63, 5:113
- Strict construction of movant’s evidence, § 5:49
- Supporting evidence, admissible
  - Generally, § 5:53 to 5:58
  - Admissions, § 5:55
  - Affidavits, § 5:53
  - Discovery responses, § 5:54
  - Exhibits, § 5:57
  - Inferences, § 5:56
  - Judicial notice, request for, § 5:58
  - Video evidence, § 5:59
- Supporting evidence, attacking
  - Generally, § 5:109 to 5:119
  - Affiant lacks personal knowledge, § 5:112
  - Affidavits, incompetent, § 5:111
  - Conclusory statements, § 5:116
  - Contradictions in record, § 5:115
  - Deposition testimony, repudiating, § 5:118
  - Exhibits, improper reference to, § 5:117
  - Hearsay, § 5:119
  - Inferences, conflicting, § 5:114
  - Speculation or conjecture, § 5:113
- Triable issues, § 5:50, 5:108
- Unacceptable use, § 5:52

**SUMMARY JUDGMENT—Cont’d**

Evidence on motion—Cont’d

- Unauthenticated documents, § 5:110
- Video evidence, § 5:59
- Waiver of objections, § 5:66
- Exhibits, § 5:57, 5:117
- Failure to state cause of action motion distinguished, § 2:5
- Fraud, § 5:89
- Fraudulent intent, opposition citations, § 5:74
- Function of court, § 5:3
- Garnishment and collections, § 5:86
- Hearing, § 5:36, 5:134
- Hearsay, evidence on motion, supporting evidence, attacking, § 5:119
- Inferences, § 5:42, 5:56, 5:114
- Insurance cases, § 5:16, 5:81
- Judgment on pleadings compared, § 4:10
- Judgments for plaintiff and defendant, samples, § 5:139, 5:140
- Judicial notice, request for, § 5:58, 5:129
- Legal malpractice, § 5:17, 5:82
- Liberal construction of opposition papers, § 5:72
- Local rules, § 5:24, 5:100
- Medical malpractice, § 5:77
- Mistake in pleadings or discovery, § 5:73
- Motion to strike, § 3:7
- Moving and opposition papers
  - Generally, § 5:28
  - Liberal construction of opposition papers, § 5:72
- Negligence cases, § 5:20, 5:85
- Notice of hearing on motion, timing, § 5:26
- Notice of motion, sample, § 5:123
- Objections. Evidence on motion, above
- Opposition and reply, timing, § 5:27
- Opposition citations
  - Generally, § 5:70 to 5:117
- Appellate review, § 5:121

## INDEX

### **SUMMARY JUDGMENT—Cont'd**

- Opposition citations—Cont'd
  - Burden of proof, above
  - Constitutional cases, § 5:83
  - Contract cases, § 5:80
  - Dangerous condition of property, § 5:75
  - Drastic remedy, § 5:71
  - Employment and discrimination cases, § 5:78
  - Evidence on motion, above
  - Fraudulent intent, § 5:74
  - Insurance cases, § 5:81
  - Legal malpractice, § 5:82
  - Liberal construction of opposition papers, § 5:72
  - Mistake in pleadings or discovery, § 5:73
  - Negligence cases, § 5:85
  - Personal injury, wrongful death and property damage, § 5:76
  - Premises liability, § 5:79
  - Procedural considerations, above
  - Professional malpractice, § 5:84
  - Real property actions, § 5:79
  - Sanctions, § 5:120
- Oral motion, § 5:35, 5:97
- Orders granting and denying motion, § 5:136, 5:137
- Other rules affecting, § 5:6
- Overview of motion, summary judgment, § 5:2
- Partial summary judgment
  - Generally, § 5:7
  - Sample motion, § 5:125, 5:126
- Paternity, § 5:87
- Personal injury, § 5:12, 5:76
- Plaintiff's motion, form, § 5:131
- Plaintiff's motion on counterclaim, § 5:138
- Pleadings, acceptable and unacceptable use, § 5:51, 5:52
- Points and authorities in support of motion, § 5:128
- Premises liability, § 5:14
- Procedural considerations
  - Generally, § 5:21 to 5:37, 5:92 to 5:109

### **SUMMARY JUDGMENT—Cont'd**

- Procedural considerations—Cont'd
  - Affidavits required, § 5:33
  - Amendment of pleadings, § 5:29, 5:98, 5:99
  - Continuances, § 5:30 to 5:32, 5:94 to 5:96
  - Discretion of court, § 5:34
  - Grounds, § 5:23, 5:93
  - Hearing, § 5:36
  - Local rules, § 5:24, 5:100
  - Moving and opposition papers, § 5:28
  - Oral motion, § 5:35, 5:97
  - Ruling of court, § 5:37
  - Timing, § 5:25 to 5:27
- Products liability, § 5:19, 5:90
- Professional malpractice, § 5:84
- Property damage, § 5:12, 5:76
- Real property actions, § 5:14
- Review of motion, § 5:68, 5:69
- Ruling of court, § 5:37
- Ruling on objections, § 5:65
- Sample documents and suggested text
  - Generally, § 5:122 to 5:140
- Affidavits
  - Plaintiff's motion to strike, no personal knowledge, § 5:132
  - Unavailability, defense motion for continuance, § 5:132
- Counterclaim, § 5:138
- Cross-defendant, motion against, § 5:127
- Defense motion
  - Generally, § 5:123 to 5:130
  - Affidavit in support of motion, § 5:130
  - Cross-defendant, motion against, § 5:127
  - Judicial notice in support of motion, request for, § 5:129
  - Motion, § 5:124
  - Notice of motion, § 5:123
  - Partial summary judgment, § 5:125, 5:126
  - Points and authorities in support of motion, § 5:128

**SUMMARY JUDGMENT—Cont’d**

Sample documents and suggested text—Cont’d

Judgments for plaintiff and defendant, § 5:139, 5:140

Judicial notice in support of motion, request for, § 5:129

Notice of motion, § 5:123

Objections to evidence submitted in support of motion, § 5:135

Orders granting and denying motion, § 5:136, 5:137

Partial summary judgment, § 5:125, 5:126

Plaintiff’s motion

    Affidavit, motion to strike, no personal knowledge, § 5:132

    Form, § 5:131

    Objections to evidence submitted in support of motion, § 5:135

    Summary judgment hearing, § 5:134

Plaintiff’s motion on counterclaim, § 5:138

Points and authorities in support of motion, § 5:128

Summary judgment hearing, § 5:134

Sanctions, § 5:67, 5:120

Speculation or conjecture, § 5:63, 5:113

Strict construction of movant’s evidence, § 5:49

Supporting citations

    Generally, § 5:4 to 5:69

    Authority for motion, § 5:4 to 5:10

    Burden of proof, above

    Constitutional cases, § 5:18

    Contract cases, § 5:15

    Dangerous condition of property, § 5:11

    Description and purpose, § 5:5

    Drastic but necessary measure, § 5:8

    Employment and discrimination cases, § 5:13

    Evidence on motion, above

**SUMMARY JUDGMENT—Cont’d**

Supporting citations—Cont’d

    Insurance cases, § 5:16

    Legal malpractice, § 5:17

    Negligence cases, § 5:20

    Other rules affecting, § 5:6

    Partial summary judgment, below

    Personal injury, wrongful death and property damage, § 5:12

    Premises liability, § 5:14

    Procedural considerations, above

    Products liability, § 5:19

    Real property actions, § 5:14

    Review of motion, § 5:68, 5:69

    Sanctions, § 5:67

    Triable issues, § 5:9, 5:10

Text of motion, suggested, § 5:1

Timing

    Bringing motion, § 5:25

    Notice of hearing on motion, § 5:26

    Opposition and reply, § 5:27

Trade secrets, § 5:91

Triable issues, § 5:9, 5:10, 5:50

Wills, § 5:88

Wrongful death, § 5:12, 5:76

**SUMMONS, DEFECTIVE SERVICE**

Generally, § 1:23 to 1:32

Corporations, service on, § 1:32, 1:66

Due diligence, § 1:26

Failure to serve. Summons, Failure to Serve, this index

Good cause, delayed service, substituted service, § 1:62

Hague Convention, service abroad, § 1:31

Incompetent, service on, § 1:29, 1:71

Incomplete service, § 1:43

Limited partnerships, § 1:73

Mail, service by, § 1:28, 1:64

Minors, service on, § 1:36, 1:70

Motorists, nonresident, service on, § 1:37, 1:75

Nonresident, special appearance to contest process, § 1:88

Notice of hearing, § 1:87

## INDEX

### **SUMMONS, DEFECTIVE SERVICE—Cont'd**

- Opposing citations, service on statutory agent, § 1:67
- Orders quashing service and denying motion to quash, § 1:90, 1:91
- Other means, service by, § 1:33
- Out-of-state defendant doing business in state, § 1:30, 1:65
- Partnerships, § 1:73
- Personal service, § 1:24, 1:59
- Possession of premises, action for, § 1:74
- Prisoners, service on, § 1:72
- Public entity, service on, § 1:35, 1:69
- Publication
  - Generally, § 1:38, 1:76
  - Due diligence, § 1:41
  - Falsified information, § 1:42
  - Sworn statement required, § 1:40
  - Upon whom, § 1:39
- Sample supporting and opposition briefs, § 1:86 to 1:92
- Statutory agent, service on, § 1:27, 1:67
- Strict compliance with service statutes, § 1:8
- Substantial compliance, § 1:77
- Substituted service
  - Generally, § 1:25, 1:26, 1:60
  - Due diligence, § 1:26
  - Good cause, delayed service, § 1:62
  - Number of attempts, § 1:61
  - Proper and improper, examples, § 1:63
- Supporting citations
  - Motion to quash, § 1:23 to 1:32
  - Service on statutory agent, § 1:27

### **SUMMONS, FAILURE TO SERVE, DISMISSAL BASED ON**

- Generally, § 6:21 to 6:43
- Defective service. Summons, Defective Service, this index
- Defendant not amenable to process, § 6:30
- Description and purpose, § 6:24
- Excusable neglect, § 6:28

### **SUMMONS, FAILURE TO SERVE, DISMISSAL BASED ON**

#### **—Cont'd**

- Excuse for delay
  - Generally, § 6:38 to 6:43
  - Opposition excuses, overcoming, § 6:29 to 6:35
- Extension of time, good cause, § 6:28
- General appearance, § 6:33, 6:34, 6:42
- General authorities, § 6:36, 6:37
- Good cause for extension of time, § 6:28
- Impossibility, impracticability or futility, § 6:31, 6:40
- Motion to quash, § 6:25
- No good cause shown, § 6:38
- Notice required, § 6:26
- Opposition citations
  - Generally, § 6:36 to 6:43
  - Excuse for delay, § 6:38 to 6:43
  - General appearance, § 6:42
  - General authorities, § 6:36, 6:37
  - Impossibility, impracticability or futility, § 6:40
  - No good cause shown, § 6:38
  - Policy to try cases on merits, § 6:36
- Stay order, § 6:39
- Stipulation extending time for service, § 6:41
- Time not yet expired, § 6:37
- Tolling, § 6:39, 6:40
- Waiver and estoppel, § 6:43
- Opposition excuses, overcoming, § 6:29 to 6:35
- Overview of motion, § 6:22
- Policy to try cases on merits, § 6:36
- Primary authorities, § 6:23 to 6:25
- Stay order, § 6:39
- Stipulation
  - Generally, § 6:32
  - Extending time for service, § 6:41
- Supporting citations
  - Generally, § 6:23 to 6:35
  - Defendant not amenable to process, § 6:30
  - Description and purpose, § 6:24

**SUMMONS, FAILURE TO SERVE,  
DISMISSAL BASED ON**

**—Cont'd**

Supporting citations—Cont'd  
Excusable neglect, § 6:28  
General appearance, § 6:33, 6:34  
Good cause for extension of time,  
§ 6:28  
Impossibility, impracticability or  
futility, § 6:31  
Motion to quash, § 6:25  
Notice required, § 6:26  
Opposition excuses, overcoming,  
§ 6:29 to 6:35  
Primary authorities, § 6:23 to 6:25  
Stipulation, generally, § 6:32  
Timing of motion, § 6:27, 6:28  
Tolling, § 6:29 to 6:31  
Waiver and estoppel, § 6:35  
Text of motion, suggested, § 6:21  
Time not yet expired, § 6:37  
Timing of motion, § 6:27, 6:28  
Tolling, § 6:29 to 6:31, 6:39, 6:40  
Waiver and estoppel, § 6:35, 6:43

**TRADE SECRETS**

Summary judgment, § 5:91

**TRANSFER FEES, DISMISSAL  
BASED ON FAILURE TO PAY**

Generally, § 6:69 to 6:75  
No duty to dismiss by transferee  
court, § 6:74  
Notice of motion, § 6:72  
Opposition citations, § 6:74, 6:75  
Overview of motion, § 6:70  
Primary authorities, § 6:71  
Procedural considerations, § 6:72  
Review, § 6:75

**TRANSFER FEES, DISMISSAL  
BASED ON FAILURE TO PAY**

**—Cont'd**

Supporting citations, § 6:71 to 6:73  
Text of motion, suggested, § 6:69  
When payment of fee occurs, § 6:73

**TRIAL**

Failure to appear, dismissal based on.  
Appearances, this index

**VIDEO EVIDENCE**

Evidence on motion, § 5:59

**WAIVER**

Delay in prosecution, excuse for  
delay, § 6:68  
Forum non conveniens, dismissal  
based on, § 6:18  
Indispensable party, failure to join,  
waiver of defense or objection,  
§ 6:105  
Jurisdictional defect claim, § 1:85  
Service of process, waiver of  
Generally, § 6:121  
Notice of commencement of action  
and request for waiver of ser-  
vice, § 6:120  
Summons, failure to serve, dismissal  
based on, § 6:35, 6:43

**WILLS**

Summary judgment, § 5:88

**WORKERS COMPENSATION**

Dismissal based on failure to appear  
for trial, § 6:80

**WRONGFUL DEATH**

Summary judgment, § 5:12, 5:76