

Index

ADVERSE PARTY

Summary judgment, § 1:24, 1:25

AFFIDAVITS

Failure to issue summons, § 4:86
Forum non conveniens, § 4:88
Insufficiency of process and service,
§ 2:36
Merit, failure to file affidavit of,
§ 4:76-4:83
Personal jurisdiction, § 2:33
Prosecution delay, § 4:90
Summary judgment, § 1:43, 1:55

APPEAL

Summary judgment, § 1:47, 1:50
Voluntary dismissal, § 3:13

ATTORNEY'S FEES

Summary judgment, § 1:30

AUTHORITY

Involuntary dismissal, § 3:17
Judgment at trial, § 3:35
Judgment notwithstanding the
verdict, § 3:44
Summary judgment, § 1:3-1:5
Voluntary dismissal, § 3:3

BAD FAITH

Summary judgment, § 1:26

BRIEFS

Dismissal motions
failure to comply with the require-
ments of filing, § 4:52-4:60
failure to issue summons, § 4:84-
4:86
failure to submit required, § 4:52-
4:60
forum non conveniens, § 4:87,
4:88

BURDEN OF PROOF

Forum non conveniens, dismissal
motion, § 4:11

BURDEN OF PROOF—Cont'd

Summary judgment, § 1:31-1:33

CAUSE OF ACTION

Dismissal Motions (this index)

CONTINUANCE

Summary judgment, § 1:25

CONTRACTS

Summary judgment, § 1:15

DANGEROUS CONDITION OF PROPERTY

Summary judgment, § 1:11

DECLARATIONS

Summary judgment, incompetent
declarations, § 1:43

DEFAMATION

Summary judgment, § 1:18

DEFENDANT

Failure to issue summons, dismissal
motions, § 4:22
Summary Judgment (this index)

DEFENSES

Cause of action. Failure to state a
cause of action, below
Failure to issue summons, § 2:26,
4:26
Failure to state a cause of action
allegations, review of, § 2:13
amending of complaint as remedy,
§ 2:10
cases, § 2:14
complaint, amending of, § 2:10
facts deemed admitted, § 2:6
generally, § 2:4
infrequent grant of motion, § 2:11
memorandum of points and
authorities in support of
motion, § 2:28

DEFENSES—Cont’d

- Failure to state a cause of action
 - Cont’d
 - motion as summary judgment, § 2:7
 - notice of motion, § 2:27
 - plaintiff’s burden to withstand motion, § 2:8, 2:9
 - remedy, § 2:10
 - standard of review, § 2:5-2:7, 2:12
 - statute of limitations, § 2:15
- Insufficiency of process and service
 - generally, § 2:23, 2:25
 - affidavit, § 2:36
 - memorandum of points and authorities in support of motion, § 2:35
 - notice of motion, § 2:34
 - waiver, § 2:24
- Jurisdiction
 - personal
 - generally, § 2:19
 - affidavit, § 2:33
 - general appearance, § 2:21
 - lack of, § 2:21, 2:22
 - memorandum of points and authorities in support of motion, § 2:32
 - notice of motion, § 2:31
 - special appearance, § 2:22
 - waiver, § 2:20
 - subject matter
 - generally, § 2:16
 - memorandum of points and authorities in support of motion, § 2:30
 - notice of motion, § 2:29
 - preservation, § 2:18
 - procedure, § 2:17
- Personal jurisdiction. Jurisdiction, above
- Process. Insufficiency of process or service, above
- Service. Insufficiency of process or service, above
- Subject matter jurisdiction. Jurisdiction, above

DELAY IN PROSECUTION

- Dismissal motions
 - generally, § 4:32
 - affidavit, § 4:90
 - cases tried on merits, § 4:41
 - discretionary motion, § 4:35
 - discretion of court, § 4:43
 - dismissal by party, § 4:37
 - effect, § 4:38
 - factors considered, § 4:44
 - grounds, § 4:36
 - memorandum of points and authorities, § 4:89
 - no inference of prejudice, § 4:42
 - primary authorities, § 4:33-4:35
 - procedural considerations, § 4:45
 - purpose, § 4:34
 - reinstatement, § 4:39, 4:92
 - suggested text, § 4:31
 - supporting citations, § 4:33-4:40
 - timing, § 4:40

DISMISSAL

- Involuntary Dismissal** (this index)
- Stipulation, § 3:54
- Voluntary Dismissal** (this index)

DISMISSAL MOTIONS

- Generally, § 4:1
- Affidavit of merit, failure to file, § 4:76-4:83
- Applicability of affidavit of merit statute, § 4:83
- Authority, § 2:3
- Briefs
 - failure to comply with the requirements of filing, § 4:52-4:60
 - failure to issue summons, § 4:84-4:86
 - failure to submit required, § 4:52-4:60
 - forum non conveniens, § 4:87, 4:88
- Defenses** (this index)
- Delay in prosecution. Prosecution delay, below
- Discovery, plaintiff’s failure to make generally, § 4:62

INDEX

DISMISSAL MOTIONS—Cont'd

- Discovery, plaintiff's failure to make—Cont'd
 - burden to show failure not wilful, § 4:66
 - dismissal as drastic remedy, § 4:68
 - primary authorities, § 4:63-4:66
 - procedural considerations, § 4:67
 - sanction, § 4:65, 4:66, 4:69
 - suggested text, § 4:61
 - supporting citations, § 4:63-4:69
- Failure of plaintiff to comply with court order, § 3:56
- Failure of plaintiff to show a right to relief, § 3:57
- Failure to appear for required court proceeding, § 4:52-4:60
- Failure to comply with the requirements of filing briefs. Briefs, above
- Failure to file affidavit of merit, § 4:76-4:83
- Failure to furnish security for costs
 - cost bond, § 4:49
 - judicial discretion, § 4:50
 - nonresident, defined, § 4:48
 - purpose, § 4:47, 4:48
 - suggested text, § 4:46
 - waiver of right, § 4:51
- Failure to issue summons
 - generally, § 4:19
 - affidavit, § 4:86
 - briefs, § 4:84-4:86
 - cases tried on merits/no prejudice by delay, § 4:30
 - defenses, § 2:26, 4:26
 - description, § 4:21
 - discretion of court, § 4:23
 - expiration of time, determinations, § 4:24
 - limitation of actions, § 4:26
 - memorandum of points and authorities, § 4:85
 - notice, § 4:84
 - opposition citations, § 4:30
 - order, § 4:91
 - prejudice to defendant, § 4:22
 - primary authorities, § 4:20-4:22

DISMISSAL MOTIONS—Cont'd

- Failure to issue summons—Cont'd
 - purpose, § 4:21
 - review, § 4:28
 - suggested text, § 4:18
 - supporting citations, § 4:20-4:29
 - timing, § 4:25
 - waiver and estoppel, § 4:29
- Failure to join indispensable party, § 4:70-4:75
- Failure to submit required briefs. Briefs, above
- Forum non conveniens
 - generally, § 4:3
 - affidavit, § 4:88
 - alternative forum, suitability, § 4:13
 - authorities, § 4:4-4:12
 - briefs, § 4:87, 4:88
 - burden of proof, § 4:11
 - description, § 4:5
 - discretionary motion, § 4:6
 - factors weighed by court, § 4:7, 4:8
 - forum selection clauses, § 4:12, 4:15
 - memorandum of points and authorities in opposition to, § 4:87
 - opposition citations, § 4:13-4:17
 - presumptively convenient forum, § 4:14
 - stay of action, § 4:9, 4:16
 - suggested text, § 4:2
 - suitability of forum, § 4:8
 - supporting citations, § 4:4-4:12
 - timing, § 4:10
 - waiver, § 4:17
- Indispensable party, failure to join, § 4:70-4:75
- Order, notice of motion for, § 3:55
- Overview, § 2:2
- Plaintiff's failure to make discovery. Discovery, above
- Prosecution delay
 - generally, § 4:32
 - affidavit, § 4:90
 - cases tried on merits, § 4:41

DISMISSAL MOTIONS—Cont'd

Prosecution delay—Cont'd

discretionary motion, § 4:35

discretion of court, § 4:43

dismissal by party, § 4:37

effect, § 4:38

factors considered, § 4:44

grounds, § 4:36

memorandum of points and
authorities, § 4:89

no inference of prejudice, § 4:42

primary authorities, § 4:33-4:35

procedural considerations, § 4:45

purpose, § 4:34

reinstatement, § 4:39, 4:92

suggested text, § 4:31

supporting citations, § 4:33-4:40

timing, § 4:40

Qualification to file affidavit of merit,
§ 4:81

Right to relief, failure by plaintiff to
show, § 3:57

Security for costs. Failure to furnish
security for costs, above

Suggested text, § 2:1

Summons. Failure to issue summons,
above

EMPLOYMENT CASES

Summary judgment, § 1:13

ESTOPPEL AND WAIVER

Failure to furnish security for costs,
§ 4:51

Failure to issue summons, dismissal
motion, § 4:29

Forum non conveniens, dismissal
motion, § 4:17

Personal jurisdiction, motion to
dismiss, § 2:20

EVIDENCE

Involuntary dismissal, § 3:28, 3:29

Judgment at trial, § 3:39

Judgment notwithstanding the
verdict, § 3:49

Summary Judgment (this index)

FAILURE TO ISSUE SUMMONS

Dismissal Motions (this index)

**FAILURE TO STATE A CAUSE OF
ACTION**

Defenses (this index)

**FAILURE TO SUBMIT REQUIRED
BRIEFS**

Dismissal motions, § 4:52-4:60

FORUM NON CONVENIENS

Dismissal motions

generally, § 4:3

affidavit, § 4:88

alternative forum, suitability,
§ 4:13

authorities, § 4:4-4:12

briefs, § 4:87, 4:88

burden of proof, § 4:11

description, § 4:5

discretionary motion, § 4:6

factors weighed by court, § 4:7,
4:8

forum selection clauses, § 4:12,
4:15

memorandum of points and
authorities in opposition to,
§ 4:87

opposition citations, § 4:13-4:17
presumptively convenient forum,
§ 4:14

stay of action, § 4:9, 4:16

suggested text, § 4:2

suitability of forum, § 4:8

supporting citations, § 4:4-4:12

timing, § 4:10

waiver, § 4:17

INDISPENSABLE PARTY

Dismissal motions, failure to join
Indispensable party, § 4:70-4:75

**INSUFFICIENCY OF PROCESS
AND SERVICE**

Defenses

generally, § 2:23, 2:25

affidavit, § 2:36

memorandum of points and
authorities in support of
motion, § 2:35

notice of motion, § 2:34

waiver, § 2:24

INDEX

INSURANCE

Summary judgment, § 1:16

INVOLUNTARY DISMISSAL

Generally, § 3:16, 3:18

Appellate review, § 3:31

Authority, § 3:17

Determination of motion, § 3:27

Discretion of court, § 3:26

Dismissal

generally, § 3:20

end of case, § 3:22

opening statement, § 3:21

with prejudice, § 3:23

Disposition, § 3:30

Effect, § 3:24, 3:25

Evidence, review of, § 3:28, 3:29

Failure to comply with court order,
§ 3:18

Sanction, § 3:32

Suggested text, § 3:15

Without prejudice, § 3:25

JUDGMENT AT TRIAL

Generally, § 3:34, 3:37

Authority, § 3:35

Determination, § 3:38

Evidence accepted as true, § 3:39

Notice, form, § 3:58

Review, § 3:41

Ruling, § 3:40

Suggested text, § 3:33

JUDGMENT NOTWITHSTANDING VERDICT

Generally, § 3:43, 3:45, 3:47

Authority, § 3:44

Determination, § 3:48

Evidence accepted as true, § 3:49

New trial motion, § 3:51

Notice, § 3:59

Renewal, § 3:46

Review, § 3:52

Ruling, § 3:50

Suggested text, § 3:42

Timing, § 3:46

JURISDICTION

Defenses

personal

generally, § 2:19

affidavit, § 2:33

general appearance, § 2:21

lack of, § 2:21, 2:22

memorandum of points and
authorities in support of
motion, § 2:32

notice of motion, § 2:31

special appearance, § 2:22

waiver, § 2:20

subject matter

generally, § 2:16

memorandum of points and
authorities in support of
motion, § 2:30

notice of motion, § 2:29

preservation, § 2:18

procedure, § 2:17

MALPRACTICE

Summary judgment, § 1:17

MATERIAL FACTS

Summary judgment, statement of
material facts

generally, § 1:22, 1:54

additional, § 1:57

plaintiff's response to, § 1:57

MEMORANDUM OF POINTS AND AUTHORITIES

Failure to issue summons, dismissal
for, § 4:85

Failure to state a cause of action,
§ 2:28

Forum non conveniens, dismissal for,
§ 4:87

Prosecution delay, dismissal for,
§ 4:89

Subject matter jurisdiction, § 2:30

Summary judgment, § 1:53, 1:56

MERIT, AFFIDAVIT OF

Failure to file, § 4:76-4:83

MOTIONS

Dismissal Motions (this index)

Judgment at Trial (this index)

MOTIONS—Cont'd

Judgment Notwithstanding the Verdict (this index)
Summary Judgment (this index)

OPENING STATEMENT

Involuntary dismissal, § 3:21

ORAL ARGUMENT

Summary judgment, § 1:27

ORDER

Dismissal
generally, § 3:55
failure to issue summons, § 4:91
Summary Judgment (this index)

PERSONAL INJURY

Summary judgment, § 1:12

PERSONAL JURISDICTION

Defenses
generally, § 2:19
affidavit, § 2:33
general appearance, § 2:21
lack of, § 2:21, 2:22
memorandum of points and authorities in support of motion, § 2:32
notice of motion, § 2:31
special appearance, § 2:22
waiver, § 2:20

PLEADINGS

Evidence, summary judgment, § 1:36

PREMISES LIABILITY

Summary judgment, § 1:14

PROCESS

Defenses, insufficiency of process and service
generally, § 2:23, 2:25
affidavit, § 2:36
memorandum of points and authorities in support of motion, § 2:35
notice of motion, § 2:34
waiver, § 2:24

PROPERTY DAMAGE

Summary judgment, § 1:12

PROSECUTION DELAY

Dismissal motions
generally, § 4:32
affidavit, § 4:90
cases tried on merits, § 4:41
discretionary motion, § 4:35
discretion of court, § 4:43
dismissal by party, § 4:37
effect, § 4:38
factors considered, § 4:44
grounds, § 4:36
memorandum of points and authorities, § 4:89
no inference of prejudice, § 4:42
primary authorities, § 4:33-4:35
procedural considerations, § 4:45
purpose, § 4:34
reinstatement, § 4:39, 4:92
suggested text, § 4:31
supporting citations, § 4:33-4:40
timing, § 4:40

SANCTION

Involuntary dismissal, § 3:32
Plaintiff's failure to make discovery, § 4:65, 4:66, 4:69

SECURITY FOR COSTS

Dismissal motions, failure to furnish security for costs
cost bond, § 4:49
judicial discretion, § 4:50
nonresident, defined, § 4:48
purpose, § 4:47, 4:48
suggested text, § 4:46
waiver of right, § 4:51

SERVICE

Defenses (this index)

STATEMENT OF MATERIAL FACTS

Summary judgment
generally, § 1:22, 1:54
additional, § 1:57
plaintiff's response to, § 1:57

STATE OF MIND/CREDIBILITY

Summary judgment
generally, § 1:8

INDEX

STATE OF MIND/CREDIBILITY —Cont'd

Summary judgment—Cont'd
conclusory assertions, § 1:10
discovery, § 1:9

STATUTE OF LIMITATIONS

Failure to state a cause of action,
motion to dismiss for, § 2:15

STAY

Forum non conveniens, dismissal
motion, § 4:9, 4:16

STIPULATION

Dismissal, § 3:54

SUBJECT MATTER JURISDICTION

Defenses
generally, § 2:16
memorandum of points and
authorities in support of
motion, § 2:30
notice of motion, § 2:29
preservation, § 2:18
procedure, § 2:17

SUMMARY JUDGMENT

Generally, § 1:1
Adverse party, § 1:24, 1:25
Affidavits, § 1:43, 1:55
Appeal, § 1:47, 1:50
Attorney's fees, § 1:30
Authority, § 1:3-1:5
Bad faith, § 1:26
Burden of proof, § 1:31-1:33
Case not fully adjudicated on motion,
§ 1:28, 1:29
Cautious measure, § 1:5
Continuance, § 1:25
Contract cases, § 1:15
Dangerous condition of property
cases, § 1:11
Declarations, incompetent, § 1:43
Defamation cases, § 1:18
Defendant
affidavit in support of, § 1:55
burden of proof, § 1:32
memorandum of points and
authorities, § 1:53

SUMMARY JUDGMENT—Cont'd

Defendant—Cont'd
notice, § 1:52
statement of undisputed material
facts, § 1:54
Denial
effect of, § 1:46, 1:47
order for, § 1:59
De novo review, § 1:49
Description, § 1:4
Discovery, evidence, § 1:38
Employment cases, § 1:13
Entry, order for, § 1:58
Evidence
generally, § 1:34
admissible supporting, § 1:37-1:41
admissions, § 1:39
competent, § 1:42-1:44
discovery responses, § 1:38
inferences, § 1:40
movant's, § 1:35
opponent's, § 1:35
pleadings, § 1:36
Filing, § 1:20
“Genuine issues,” § 1:6, 1:7
Granting, effect of, § 1:46, 1:47
Hearing on limited fact issues, § 1:29
Insurance cases, § 1:16
Legal malpractice cases, § 1:17
Material facts. Statement of material
facts, below
Memorandum of points and authori-
ties, § 1:53, 1:56
Notice, § 1:52
Opposition
memorandum of points and
authorities, § 1:56
requirements in, § 1:23
triable issues, § 1:7
Oral argument, § 1:27
Orders
appealable, § 1:50
denial of judgment, § 1:59
entry of judgment, § 1:58
sample, § 1:58, 1:59
Overview, § 1:2
Partial, § 1:28
Personal injury cases, § 1:12

SUMMARY JUDGMENT—Cont'd

Plaintiff brings motion, burden of proof, § 1:33
Premises liability, § 1:14
Procedural considerations, § 1:20-1:27
Property damage cases, § 1:12
Purpose, § 1:4
Requirements in support of, § 1:21, 1:22
Review, § 1:47-1:50
Sample, § 1:60
Serving, § 1:20
Statement of material facts
 generally, § 1:22, 1:54
 additional, § 1:57
 plaintiff's response to, § 1:57
State of mind/credibility
 generally, § 1:8
 conclusory assertions, § 1:10
 discovery, § 1:9
Supporting and opposition briefs, § 1:51-1:60
Timing, § 1:21-1:23

SUMMONS

Dismissal Motions (this index)

TIMING

Failure to issue summons, § 4:25
Forum non conveniens, § 4:10
Judgment notwithstanding the verdict, § 3:46
Prosecution delay, § 4:40
Summary judgment, § 1:21-1:23

TRIAL

Judgment at trial
 generally, § 3:34
 Generally, § 3:37
 authority, § 3:35
 determination, § 3:38
 evidence accepted as true, § 3:39
 notice, form, § 3:58
 review, § 3:41
 ruling, § 3:40

TRIAL—Cont'd

Judgment at trial—Cont'd
 suggested text, § 3:33

VERDICT

Judgment notwithstanding verdict
 Generally, § 3:43, 3:45, 3:47
 authority, § 3:44
 determination, § 3:48
 evidence accepted as true, § 3:49
 new trial motion, § 3:51
 notice, § 3:59
 renewal, § 3:46
 review, § 3:52
 ruling, § 3:50
 suggested text, § 3:42
 timing, § 3:46

VOLUNTARY DISMISSAL

Generally, § 3:2, 3:4
Appeal, review on, § 3:13
Application, § 3:5, 3:6
Authority, § 3:3
Construction, § 3:5, 3:6
Controversy doctrine, § 3:14
Counterclaim by defendant, § 3:9
Denial, § 3:12
Effect, § 3:11
Leave of court, § 3:7
Purpose, § 3:6
Review, on appeal, § 3:13
Suggested text, § 3:1
Terms and conditions, § 3:8
Without prejudice, § 3:10

WAIVER AND ESTOPPEL

Failure to furnish security for costs, § 4:51
Failure to issue summons, dismissal motion, § 4:29
Forum non conveniens, dismissal motion, § 4:17
Personal jurisdiction, motion to dismiss, § 2:20