## **CHAPTER 1. SUMMARY JUDGMENT**

§	1:1	Suggested motion text—Summary judgment
§	1:2	Overview of motion
§	1:3	Key supporting citations—Summary judgment— Authority for motion [R. 4:46-2]
§	1:4	———Description and purpose
§	1:5	— — — Cautious measure
§	1:6	——"Genuine issues"
§	1:7	— — Triable issues re opposition to motion
§	1:8	——State of mind/credibility
§	1:9	———Discovery
§	1:10	———Conclusory assertions
§	1:11	——Summary judgment in specific cases—Dangerous
		condition of property
§	1:12	— — Personal injury/property damage
§	1:13	— — Employment cases
§	1:14	———Premises liability
§	1:15	———Contract
§	1:16	— — —Insurance
§	1:17	— — —Legal malpractice
§	1:18	— — — Defamation cases
§	1:19	—Procedural considerations—Generally
§	1:20	— — Timing—Making, filing, and serving motion
§	1:21	———Requirements in support of motion
§	1:22	— — — Statement of material facts
§	1:23	— — Requirements in opposition to motion
§	1:24	— — Affidavits—Specific facts required of adverse
		party unless affidavits are unavailable
	1:25	— — — Continuance
§	1:26	— — Bad faith
§	1:27	— — Oral argument
§	1:28	—Case not fully adjudicated on motion—Partial
		summary judgment
§	1:29	——Hearing on limited fact issues
§	1:30	—Attorney's fees
§	1:31	—Burden of proof—Generally
§	1:32	— —Burden where defendant brings motion
§	1:33	——Burden where plaintiff brings motion
§	1:34	—Evidence on motion—Generally
-	1:35	———Strict construction of movant's evidence/liberal
		treatment of annonent's evidence

§ 1:36	——Pleadings
§ 1:37	——Admissible supporting evidence—Generally
§ 1:38	———Discovery responses
§ 1:39	— — —Admissions
§ 1:40	— — —Inferences
§ 1:41	— — —Admissibility of evidence
§ 1:42	——Competent evidence required—Generally
§ 1:43	— — —Incompetent affidavits & declarations
§ 1:44	— — Speculation or conjecture
§ 1:45	—Effect of grant or denial of motion
§ 1:46	— No comment on empty chair defendant
§ 1:47	—Review of motion—Appeal
§ 1:48	——Standard of review
§ 1:49	———De novo review
§ 1:50	— — —Appealable orders
§ 1:51	Sample supporting and opposition briefs
§ 1:52	—Motion for summary judgment by defendant—Notice
	of motion for summary judgment
§ 1:53	——Memorandum of points and authorities in support
	of motion for summary judgment
§ 1:54	——Statement of undisputed material facts in support
	of motion for summary judgment
§ 1:55	——Affidavit in support of motion for summary
0 1 50	judgment
§ 1:56	—Plaintiff's opposition to motion for summary
	judgment—Memorandum of points and authorities in opposition to motion for summary judgment
§ 1:57	——Plaintiff's response to defendant's statement of
8 1.07	facts and plaintiff's additional statement of material
	facts at issue in opposition to motion for summary
	judgment
§ 1:58	—Sample orders—Order for entry of summary
_	judgment
§ 1:59	— Order denying summary judgment
§ 1:60	—Sample judgment

## CHAPTER 2. MOTIONS TO DISMISS BASED UPON SPECIFIC DEFENSES

§ 2:1 Suggested motion text
§ 2:2 Overview of motion
§ 2:3 Authority for motion [R. 4:6-2]
§ 2:4 Failure to state a cause of action—Overview
§ 2:5 —Standard of review
§ 2:6 — Facts deemed admitted
§ 2:7 —Treating motion as summary judgment

§ 2:8	—Plaintiff's burden to withstand motion
§ 2:9	——Plaintiff's failure to meet burden
§ 2:10	—Leave to amend complaint as remedy
§ 2:11	—Infrequent grant of motion
§ 2:12	—Standard of review—Appellate court standard
§ 2:13	—Review of allegations in total
$\S 2:14$	—Particular cases
$\S 2:15$	—Statute of limitations
§ 2:16	Subject matter jurisdiction—Overview
$\S 2:17$	—Procedure
§ 2:18	—Preservation of the defense of subject matter jurisdiction
§ 2:19	Personal jurisdiction—Overview
§ 2:20	—Waiver
§ 2:21	—Lack of personal jurisdiction—General appearance
§ 2:22	——Special appearance
§ 2:23	Insufficiency of process and service—Overview
§ 2:24	—Waiver
§ 2:25	—Insufficiency of process and service—General
§ 2:26	Waiver
§ 2:27	Notice of motion to dismiss for failure to state a claim
§ 2:28	Memorandum of points and authorities in support of motion to dismiss for failure to state a claim
§ 2:29	Notice of motion to dismiss complaint based upon lack of jurisdiction over the subject matter
§ 2:30	Memorandum of points and authorities in support of motion to dismiss based upon lack of jurisdiction over the subject matter
§ 2:31	Notice of motion to dismiss complaint based upon lack of jurisdiction over the person
§ 2:32	Memorandum of points and authorities in support of motion to dismiss based upon lack of jurisdiction over the person
§ 2:33	Affidavit in support of motion to dismiss complaint for lack of jurisdiction over the person
§ 2:34	Notice of motion to dismiss complaint based upon insufficiency of service of process
§ 2:35	Memorandum of points and authorities in support of motion to dismiss based upon insufficiency of service of process
§ 2:36	Affidavit in support of motion to dismiss complaint for insufficient service of process

# CHAPTER 3. VOLUNTARY AND INVOLUNTARY DISMISSAL; JUDGMENT AT TRIAL

§ 3:1 Suggested motion text—Voluntary dismissal

#### NEW JERSEY SUMMARY JUDGMENT AND RELATED MOTIONS

§ 3:2 Overview of voluntary dismissal § 3:3 Authority for voluntary dismissal [R. 4:37-1] § 3:4 Voluntary dismissal—General comments § 3:5 —Construction and application § 3:6 — Purpose of rule and dismissal generally § 3:7 -Leave of court § 3:8 —Terms and conditions § 3:9 —A defendant's counterclaim —Dismissal without prejudice § 3:10 § 3:11 —Effect of dismissal —Denial of dismissal § 3:12 § 3:13 —Review on appeal § 3:14 —Entire controversy doctrine § 3:15 Suggested motion text—Involuntary dismissal § 3:16 Overview of involuntary dismissal § 3:17 Authority for involuntary dismissal motions [R. 4:37-2] § 3:18 Involuntary dismissal—General comments § 3:19 —Failure to comply with court order § 3:20 —Dismissal ---Dismissal on opening statement § 3:21 § 3:22 --- Dismissal at end of case § 3:23 ——Dismissal with prejudice § 3:24 —Effect of involuntary dismissal § 3:25 — Effect of involuntary dismissal without prejudice § 3:26 —Discretion of court § 3:27 —Determination of motion § 3:28 -Review of evidence on motion for dismissal § 3:29 — — Weighing of evidence § 3:30 —Disposition of motion § 3:31 —Appellate review § 3:32 —Dismissal as sanction § 3:33 Suggested motion text—Judgment at trial § 3:34 Overview of motion for judgment at trial § 3:35 Authority for motion for judgment at trial [R. 4:40-1] § 3:36 Motion for judgment at trial—General comments § 3:37 —The motion for judgment at trial—Generally § 3:38 —Determination of motion § 3:39 —Accepting evidence as true § 3:40 —Ruling upon motion § 3:41 -Review Suggested motion text—Motion for judgment § 3:42 notwithstanding the verdict Overview of motion for judgment notwithstanding the § 3:43 verdict

§ 3:44	Authority for motion for judgment notwithstanding the verdict [R. 4:40-2]
\$ 2.45	
§ 3:45	General comments
§ 3:46	Motion for judgment notwithstanding the verdict—
	Timing and renewal of motion
§ 3:47	—General principles
§ 3:48	—Determination of motion
§ 3:49	—Accepting evidence as true
§ 3:50	—Ruling upon motion
§ 3:51	—New trial motion
§ 3:52	—Review
§ 3:53	Sample forms
§ 3:54	—Stipulation of dismissal
§ 3:55	-Notice of motion for order dismissing action
§ 3:56	—Notice of motion to dismiss for failure of plaintiff to comply with court order
§ 3:57	—Notice of motion to dismiss for failure of plaintiff to show a right to relief
§ 3:58	—Order granting motion for judgment—Insufficiency of plaintiff's evidence
§ 3:59	—Notice of motion for judgment notwithstanding verdict

### CHAPTER 4. OTHER DISMISSAL MOTIONS

#### I. CHAPTER OVERVIEW

§ 4:1 Summary of motions

#### II. MOTION AUTHORITIES

## A. DISMISSAL BASED ON FORUM NON CONVENIENS

§ 4:2	Suggested motion text
§ 4:3	Overview of motion
$\S 4:4$	Key supporting citations—Authorities [Rule 4:3-3] and
	New Jersey Common Law
§ 4:5	——Description and purpose
§ 4:6	——Discretionary motion
§ 4:7	——Factors weighed by court
§ 4:8	— — Suitability of forum
§ 4:9	——Stay of action
§ 4:10	—Procedural considerations—Timing of motion
§ 4:11	——Burden of proof
8 4.12	—Forum selection clauses

#### NEW JERSEY SUMMARY JUDGMENT AND RELATED MOTIONS

§	4:13	Key opposition citations—Suitability of alternative forum			
§	4:14	—Presumptively convenient forum			
	4:15	—Forum selection clauses			
-	4:16	—Stay as alternative remedy			
-	4:17	—Waiver			
	В.	DISMISSAL BASED ON FAILURE TO ISSUE SUMMONS			
§	4:18	Suggested motion text			
§	4:19	Overview of motion			
§	4:20	Key supporting citations—Primary Authorities [R. 4:4-1 and R. 4:37-2(a)]			
§	4:21	——Description and purpose			
§	4:22	—Primary authorities [R. 4:4-1 and R. 4:37-2(a)]— Prejudice to defendant			
§	4:23	—Procedural considerations—Discretion of court			
§	4:24	——Determining expiration of time			
§	4:25	— —Timing of motion			
-	4:26	—Opposition defenses—Limitation of actions			
_	4:27	— —Failure to issue summons—Defense			
_	4:28	——Review			
-	4:29	— —Waiver and estoppel			
§	4:30	Key opposition citations—General authorities—Policy to try cases on merits/no prejudice by delay			
	C.	DISMISSAL BASED ON DELAY IN PROSECUTION			
§	4:31	Suggested motion text			
_	4:32	Overview of motion			
§	4:33	Key supporting citations—Primary authorities [Rule 1:13-7]			
§	4:34	——Purpose of motion			
-	4:35	——Discretionary motion			
_	4:36	—Grounds for motion			
_	4:37	—Procedural considerations—Dismissal by party			
	4:38	— Effect of dismissal of action			
-	4:39	——Reinstatement			
-	4:40	—Timing of motion			
Ü	4:41	Key citations for party prosecuting action—General authorities—Policy to try cases on merits			
	4:42	— —No inference of prejudice			
§	4:43	——Court's discretion			
Ş	4:44	—Factors considered			

O	4 4	TO 1 1	• 1
A	4:45	- Proceedural	considerations
~	4.40	— I I UCCUUI ai	considerations

## D. DISMISSAL BASED ON FAILURE TO FURNISH SECURITY FOR COSTS

- § 4:46 Suggested motion text
- § 4:47 Purpose of law
- § 4:48 —Nonresident defined
- § 4:49 Failure to file a cost bond
- § 4:50 Judicial discretion
- § 4:51 Waiver of right

# E. DISMISSAL BASED ON FAILURE TO APPEAR FOR REQUIRED COURT PROCEEDING OR FAILURE TO COMPLY WITH THE REQUIREMENTS OF FILING MOTIONS OR BRIEFS OR FAILURE TO SUBMIT REQUIRED BRIEFS

- § 4:52 Suggested motion text
- § 4:53 Overview of motion
- § 4:54 Key supporting citations—Primary authorities
- $\S 4:55$  ——Generally
- § 4:56 ——Dismissal of action
- § 4:57 —Procedural considerations
- § 4:58 Opportunity to litigate a case on the merits
- § 4:59 Failure to file an adequate brief
- § 4:60 Judicial sanctions

## F. DISMISSAL BASED ON PLAINTIFF'S FAILURE TO MAKE DISCOVERY

- § 4:61 Suggested motion text
- § 4:62 Overview of motion
- § 4:63 Key supporting citations—Primary authorities [R. 4:23-5 and R. 4:23-2]
- § 4:64 ——Generally
- § 4:65 ——Dismissal sanction
- § 4:66 ———Plaintiff's burden to show failure not willful
- § 4:67 —Procedural considerations
- § 4:68 —Dismissal as drastic remedy
- § 4:69 —Measure of conduct—Dismissal sanction

## G. DISMISSAL BASED ON FAILURE TO JOIN INDISPENSABLE PARTY

§ 4:70 Suggested motion text

- § 4:71 Overview of motion § 4:72 Purpose of rule
- § 4:73 Indispensable parties
- § 4:74 Effect of failure to join
- § 4:75 Discretionary motion

## H. DISMISSAL BASED ON FAILURE TO FILE AFFIDAVIT OF MERIT

- § 4:76 Suggested motion text
- § 4:77 Overview of motion
- § 4:78 Purpose of motion
- § 4:79 Effect of failure to file affidavit of merit
- § 4:80 Procedure
- § 4:81 Qualification to file affidavit of merit
- § 4:82 Qualification to file affidavit of merit in medical malpractice cases
- § 4:83 Applicability of affidavit of merit statute

#### III. SAMPLE PLEADINGS

# A. MOTION TO DISMISS PLAINTIFF'S ACTION [FAILURE TO ISSUE SUMMONS WITHIN STATUTORY PERIOD]

- § 4:84 Notice of motion to dismiss
- § 4:85 Memorandum of points and authorities in support of motion to dismiss
- § 4:86 Affidavit of defendant in support of motion to dismiss

## B. PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS ACTION [FORUM NON CONVENIENS]

- § 4:87 Memorandum of points and authorities in opposition to motion to dismiss action
- § 4:88 Affidavit of plaintiff in opposition to motion to dismiss action

## C. PLAINTIFF'S MOTION TO REINSTATE ACTION [DELAY IN PROSECUTION]

- § 4:89 Memorandum of points and authorities in motion to reinstate action
- § 4:90 Affidavit of plaintiff in motion to reinstate complaint

#### D. SAMPLE ORDERS

§ 4:91 Order to dismiss action [failure to issue summons]

§ 4:92 Order to reinstate action [delay in prosecution]

Table of Laws and Rules

Table of Cases

Index