

Table of Contents

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 opponent’s evidence

NEW JERSEY SUMMARY JUDGMENT AND RELATED MOTIONS

- § 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 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 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

TABLE OF CONTENTS

§ 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
§ 2:14	—Particular cases
§ 2:15	—Statute of limitations
§ 2:16	Subject matter jurisdiction—Overview
§ 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
- § 3:10 —Dismissal without prejudice
- § 3:11 —Effect of dismissal
- § 3:12 —Denial of dismissal
- § 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
- § 3:21 — —Dismissal on opening statement
- § 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
- § 3:42 Suggested motion text—Motion for judgment
notwithstanding the verdict
- § 3:43 Overview of motion for judgment notwithstanding the
verdict

TABLE OF CONTENTS

§ 3:44	Authority for motion for judgment notwithstanding the verdict [R. 4:40-2]
§ 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
§ 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
§ 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

B. 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
- § 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
- § 4:44 —Factors considered

TABLE OF CONTENTS

§ 4:45 —Procedural 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

§ 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

NEW JERSEY SUMMARY JUDGMENT AND RELATED MOTIONS

- § 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]

TABLE OF CONTENTS

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

Table of Laws and Rules

Table of Cases

Index