

Index

ABSENCE OF DEFENDANT

Dismissal for failure to state claim,
statute of limitations, 2:54

ABUSE OF DISCRETION

Dismissal motions, misuse by
plaintiff of discovery, 6:80

ADMISSIONS

Dismissal for failure to state claim,
2:21, 2:46
Summary judgment, 5:65, 5:75,
5:130

AFFIDAVITS

See index heading SUMMARY JUDG-
MENT
Sample supporting and opposition
briefs, 6:109, 6:110

AFFIRMATIVE DEFENSES

Motion to dismiss, 6:119
Summary judgment, burden of
proof, 5:54, 5:135

AGREEMENTS

See index heading CONTRACTS AND
AGREEMENTS

AMENDMENT OF PLEADINGS

Dismissal for failure to state claim,
2:14, 2:39, 2:40
Judgment on the pleadings, 4:27,
4:38
Strike, motion to, 3:8, 3:18, 3:27
Summary judgment, 5:39, 5:40,
5:106 to 5:108

ANSWERS

Summary judgment, burden of
proof on defect in answer,
5:57

APPEAL AND REVIEW

Dismissal
failure to state claim, 2:24, 2:55,
2:62

APPEAL AND REVIEW—Cont'd —Cont'd

motions. See index heading DIS-
MISSAL MOTIONS
Judgment on the pleadings, 4:40
Strike, motion to, 3:38
Summary judgment, 5:83

APPEARANCES

See index heading DISMISSAL
MOTIONS

ARBITRATION

Dismissal motions, delay in prose-
cution, 6:45, 6:52

ATTORNEY MALPRACTICE

Summary judgment, 5:21, 5:96

BAD FAITH

Summary judgment, motion for
expenses, 5:153

BANKS

Quash, motion to, 1:10

BURDEN OF PROOF

Dismissal motions, forum non con-
veniens, 6:17
Quash, motion to, 1:6, 1:41
Summary judgment. See index
heading SUMMARY JUDGMENT

CAPACITY

Dismissal for failure to state claim,
2:19, 2:42, 2:67
Judgment on the pleadings, 4:7
Strike, motion to, 3:13

CERTAINTY OF PLEADINGS

Dismissal for failure to state claim,
2:27, 2:58

CHILDREN

Quash, motion to, 1:36, 1:63

**CLAIM FOR WHICH RELIEF CAN
BE GRANTED, FAILURE TO
STATE**

See index heading DISMISSAL
MOTIONS

CLAIMS JUSTICIABLE

Dismissal motions, Underlying,
6:81

COLLATERAL ESTOPPEL

Dismissal for failure to state claim,
2:50

COMMON LAW

Judgment on the pleadings,
comparison, 4:9

CONCLUSIONS

Dismissal for failure to state claim,
2:9
Summary judgment, conclusory
statements, 5:132

CONCLUSIONS OF LAW

Dismissal for failure to state claim,
2:35

CONJECTURE OR SPECULATION

Summary judgment, 5:76, 5:128

CONSOLIDATION OF DEFENSES

Judgment on the pleadings, 4:6

CONSTITUTIONAL LAW

Due process, motion to quash, 1:5
Summary judgment, 5:22, 5:98

CONSTRUCTIVE SERVICE

Quash, motion to, 1:28

CONTINUANCES

Dismissal motions, delay in prose-
cution, 6:39
Summary judgment. See index
heading SUMMARY JUDGMENT

CONTRACTS AND AGREEMENTS

Dismissal for failure to state claim,
2:29
Quash, motion to, 1:45, 1:72
Summary judgment, 5:19, 5:94

CONVERSION

CONVERSION—Cont'd

—Cont'd

Dismissal for failure to state claim,
conversion to motion for sum-
mary judgment, 2:8
Judgment on the pleadings,
conversion to motion for sum-
mary judgment, 4:5
Summary judgment, conversion to
motion for, 5:10, 5:11, 5:85

CORPORATIONS

Quashal
personal jurisdiction, corporation
of nonresident where parties
agree Tennessee law governs,
1:44
service of process, 1:59, 1:60
Summary judgment, 5:99

COSTS AND EXPENSES

Quash, motion to, 1:83
Summary judgment, 5:45, 5:153

COUNTERCLAIMS

Dismissal motions, 6:112

CROSS-MOTIONS

Summary judgment, 5:4

DATE

See index heading TIME AND DATE

DECLARATIONS

See index heading SUMMARY JUDG-
MENT

DECLARATORY RELIEF

Judgment on the pleadings,
compared, 4:14

DEDUCTIONS

Dismissal for failure to state claim,
2:9

DEFAMATION

Summary judgment, 5:16, 5:91

**DEFAULT AND DEFAULT
JUDGMENTS**

Dismissal for failure to state claim,
2:60
Strike, motion to, 3:19

INDEX

DEFENSES

Strike, motion to, 3:6

DELAY IN PROSECUTION

See index heading DISMISSAL
MOTIONS

DEMURRER

Dismissal for failure to state claim.
See index heading DISMISSAL
FOR FAILURE TO STATE CLAIM
Judgment on the pleadings,
compared, 4:10

DEPARTMENT OF HUMAN SERVICES

Quash, motion to, 1:13

DILIGENCE

Dismissal motions, delay in prose-
cution, 6:51

DIRECTED VERDICTS

Dismissal motions, 6:3

DISCOVERY

Dismissal motions. See index
heading DISMISSAL MOTIONS
Quash, motion to, 1:22, 1:52
Strike, motion to, 3:7
Summary judgment. See index
heading SUMMARY JUDGMENT

DISCRETION

Dismissal motions. See index
heading DISMISSAL MOTIONS
Summary judgment, continuances,
5:46

DISCRIMINATION

Summary judgment, 5:15, 5:92

DISMISSAL FOR FAILURE TO STATE CLAIM

Generally, 2:1 to 2:70
Abolition of demurrer, 2:2, 2:3
Absence of defendant, statute of
limitations, 2:54
Admissions, 2:21, 2:46
Allegations, 2:9
Amendment of pleadings, 2:14,
2:39, 2:40
Appellate review, 2:24, 2:55, 2:62

DISMISSAL FOR FAILURE TO STATE CLAIM—Cont'd

—Cont'd

Authority, 2:5, 2:9
Capacity to sue, 2:19, 2:42, 2:67
Certainty of pleadings, 2:27, 2:58
Collateral estoppel, 2:50
Complaint allegations deemed
true, 2:16
Complaint contents, 2:32
Conclusions, 2:9
Conclusions of law, 2:35
Construction, liberal, 2:7, 2:33
Construction, strict, 2:6
Contentions, 2:9
Contract actions, 2:29
Conversion to motion for summary
judgment, 2:8
Deductions, 2:9
Default judgment, relief from, 2:60
Distribution, action to enforce
claim to, 2:56
Documents, consideration of, 2:11
Equitable estoppel, statute of limi-
tations, 2:26
Equitable tolling, statute of limita-
tions, 2:25, 2:53
Evidence
generally, 2:15, 2:16, 2:36 to 2:38
exhibits, allegations contradicted
by, 2:38
judicial notice, 2:13, 2:36
truth of disputed facts, 2:37
Exhaustion of administrative reme-
dies, 2:49
Exhibits, allegations contradicted
by, 2:38
Federal jurisdiction, 2:18
Fraud actions, 2:48
Government tort claims
generally, 2:28, 2:59 to 2:61
claim filing requirements, 2:59 to
2:61
default judgment, relief from, 2:60
statute of limitations, 2:57, 2:61
tolling, 2:61
Grounds, 2:10
Joinder of parties, 2:43

**DISMISSAL FOR FAILURE TO
STATE CLAIM—Cont'd**

—Cont'd
 Judicial notice, 2:13, 2:36
 Jurisdiction, 2:17, 2:18, 2:41
 “Label” on pleadings, incorrect,
 2:34
 Liberal construction, 2:7, 2:33
 Limitation of actions. Statute of
 limitations, below
 Misjoinder of parties, 2:43
 Opposition citations, generally,
 2:30 to 2:61
 Party defect, 2:43
 Premature, 2:44
 Primary authority, 2:5
 Procedural requirements, 2:11 to
 2:16
 Ratification of commencement of
 action, substitution or joinder
 or dismissing action, 2:70
 Real party in interest, 2:22, 2:47,
 2:69
 Res judicata, 2:20, 2:45, 2:66
 Sample supporting and opposition
 briefs
 generally, 2:63 to 2:70
 capacity to sue, lack of, 2:67
 discovery, stay pending determina-
 tion of motion to dismiss,
 2:68
 ratification of commencement of
 action, substitution or joinder
 or dismissing action, 2:70
 real party in interest, status of
 plaintiff as, 2:69
 res judicata, 2:66
 statute of limitations, expiration of,
 2:64, 2:65
 Standing, 2:22, 2:47
 Statute of limitations
 generally, 2:23 to 2:26, 2:51 to
 2:57
 absence of defendant, 2:54
 appeal and reversal, 2:24, 2:55
 distribution, action to enforce
 claim to, 2:56
 equitable estoppel, 2:26
 equitable tolling, 2:25, 2:53

**DISMISSAL FOR FAILURE TO
STATE CLAIM—Cont'd**

—Cont'd
 expiration, 2:64, 2:65
 government tort claims, 2:57, 2:61
 tolling, 2:25, 2:52, 2:53, 2:61
 Stay of discovery pending determi-
 nation of motion to dismiss,
 2:68
 Strict rules of construction, 2:6
 Subject matter jurisdiction, 2:17,
 2:41
 Summary judgment, conversion to
 motion for, 2:8
 Supporting citations, generally, 2:4
 to 2:29
 Text of motion, suggested, 2:1
 Time for motion, 2:12, 2:44
 Tolling of statute of limitations,
 2:25, 2:52, 2:53, 2:61
 Torts. Government tort claims,
 above
 Truth of disputed facts, 2:16, 2:37
 Uncertain pleadings, 2:27, 2:58

DISMISSAL MOTIONS

Generally, 6:1 to 6:116
 Abuse of discretion, misuse by
 plaintiff of discovery, 6:80
 Appeal and review
 delay in prosecution, 6:44, 6:53
 dismissal of appeal, 6:8
 voluntary dismissal, 6:7
 Appearance for trial, failure
 regarding
 generally, 6:65 to 6:69
 excusable neglect, 6:70
 opposition citations, 6:68, 6:69
 service not required, 6:68
 supporting citations, 6:67
 text of motion, suggested, 6:65
 waiver of jury trial, 6:69
 Arbitration, delay in prosecution,
 6:45, 6:52
 Burden of proof, forum non conve-
 niens, 6:17
 Claim for which relief can be
 granted, failure to state
 generally, 6:91 to 6:93

INDEX

DISMISSAL MOTIONS—Cont'd

—Cont'd

- opposition citations, 6:97
- Overview of motion, 6:92
- supporting citations, 6:93
- text of motion, suggested, 6:91
- Compliance with rules or court order, failure regarding, 6:34
- Continuances, delay in prosecution, 6:39
- Counterclaim, dismissal of, 6:112
- Delay in prosecution
 - generally, 6:35 to 6:53
 - appeal delay, 6:53
 - arbitration, 6:45, 6:52
 - continuance, after denial of, 6:39
 - discovery, failure to comply with, 6:42
 - discretion of court, 6:47, 6:48
 - discretionary motion, 6:38
 - excuses for delay, 6:45, 6:51 to 6:53
 - factors considered, 6:49
 - grounds for motion, 6:39 to 6:42
 - hearings, 6:43
 - opposition citations, generally, 6:46 to 6:53
 - overcoming plaintiff excuses for delay, 6:45
 - policy to try cases on merits, 6:46
 - procedural considerations, 6:43, 6:44, 6:50
 - purpose of motion, 6:37
 - reasonable diligence, 6:51 to 6:53
 - review, 6:44
 - service of process, failure regarding, 6:40
 - supporting citations, generally, 6:36 to 6:45
 - trial, action not brought timely to, 6:41
- Directed verdicts, 6:3
- Discovery
 - delay in prosecution, 6:42
 - misuse by plaintiff
 - generally, 6:71 to 6:80
 - abuse of discretion, dismissal as, 6:80

DISMISSAL MOTIONS—Cont'd

—Cont'd

- misuse by plaintiff—Cont'd
 - lesser sanction, consideration of, 6:74
 - notice before dismissal, 6:75
 - opposition citations, generally, 6:77 to 6:80
 - substantial justification, 6:78
 - supporting citations, generally, 6:73 to 6:76
 - text of motion, suggested, 6:71
 - willful failure to comply, 6:76
 - willfulness, prerequisites to dismissal, 6:79
- Discretion of court
 - delay in prosecution, 6:47, 6:48
 - discovery, misuse by plaintiff of, 6:80
- Discretionary motion
 - delay in prosecution, 6:38
 - forum non conveniens, 6:14
- Estoppel. Waiver and estoppel, below
- Excusable neglect, appearance for trial, 6:70
- Excuses for delay
 - prosecution, delay of, 6:45, 6:51 to 6:53
 - service of summons, failure regarding, 6:26 to 6:29, 6:31 to 6:33
- Federal courts, 6:9
- Federal Rule 41, violations of local rules, 6:90
- Forum non conveniens
 - generally, 6:11 to 6:19
 - burden of proof, 6:17
 - discretionary motion, 6:14
 - factors weighed by court, 6:15
 - forum selection clauses, 6:18
 - opposition citations, 6:19
 - sample supporting and opposition briefs, 6:108
 - stay of action, 6:16
 - suitability of alternative forums, 6:19
 - supporting citations, generally, 6:14 to 6:18

DISMISSAL MOTIONS—Cont'd

—Cont'd

text of motion, suggested, 6:11
 Forum selection clauses, 6:18
 General appearance, failure regarding service of summons, 6:28, 6:32
 Health care liability claims, 6:95
 Hearings
 delay in prosecution, 6:43
 service of summons, failure regarding, 6:27
 Joinder of indispensable party, failure regarding
 generally, 6:82 to 6:87
 affidavits, 6:109, 6:110
 grounds for motion, 6:86
 opposition citations, 6:87
 sample supporting and opposition briefs, 6:109, 6:110
 supporting citations, 6:85, 6:86
 text of motion, suggested, 6:82
 Overview of motion, 6:83
 time to raise as defense, 6:84
 Lesser sanctions, misuse by plaintiff of discovery, 6:74
 Limitations, 6:94
 Local rules, violations of
 generally, 6:88 to 6:90
 Federal Rule 41, 6:90
 text of motion, suggested, 6:88
 Mootness, 6:98
 Motion to dismiss
 affirmative defenses, 6:119
 res judicata, 6:118
 statute of limitations defenses, 6:119
 New actions, 6:6
 Notice
 discovery, misuse by plaintiff of, 6:75
 service of summons, failure regarding, 6:23
 One year, failure to bring to trial within
 generally, 6:54 to 6:64
 commenced, defined, 6:57, 6:63
 grounds for motion, 6:58

DISMISSAL MOTIONS—Cont'd

—Cont'd

opposition citations, generally, 6:61 to 6:64
 policy to try cases on merits, 6:62
 procedural error, 6:59
 service of process, failure regarding, 6:60
 supporting citations, generally, 6:56 to 6:60
 text of motion, suggested, 6:54
 tolling of statute of limitations, 6:64
 Policy to try cases on merits
 delay in prosecution, 6:46
 one year, failure to bring to trial within, 6:62
 service of summons, failure regarding, 6:30
 Prosecution, failure regarding, 6:34, 6:116
 Real party in interest, plaintiff not, 6:107
 Reasonable diligence
 appeal delay, 6:53
 arbitration, 6:52
 delay in prosecution, 6:51 to 6:53
 Sample supporting and opposition briefs
 generally, 6:100 to 6:114
 affidavit in support of motion for dismissal for failure to prosecute, 6:116
 affidavits, 6:109, 6:110
 counterclaim, dismissal of, 6:112
 court order, failure to comply with, 6:117
 description of basis for motion, 6:104
 dwelling or abode, copy not left at, 6:101
 forum non conveniens, 6:108
 joinder of indispensable party, failure regarding, 6:109, 6:110
 notice of motion for dismissal for failure to prosecute, 6:114
 prosecute, failure to, 6:114, 6:116
 real party in interest, plaintiff not, 6:107

INDEX

DISMISSAL MOTIONS—Cont'd

—Cont'd

- service of process, insufficiency of, 6:100, 6:101
- statute of limitations, 6:106
- supporting reasons, list, 6:105
- unauthorized issuance of process, 6:102
- various grounds for dismissal, 6:111
- voluntary dismissal, motion by defendant that dismissal be with prejudice, 6:113
- Sample supporting and opposition motions, 6:98
- Sample supporting and opposition motions, 6:99
- Savings statute, 6:6
- Service of process
 - appearance for trial, failure regarding, 6:68
 - delay in prosecution, 6:40
 - dwelling or abode, copy not left at, 6:101
 - insufficiency of service, 6:100, 6:100, 6:101
 - one year, failure to bring to trial within, 6:60
 - summons. Service of summons, failure regarding, below
 - unauthorized issuance, 6:100
 - Service of summons, failure regarding
 - generally, 6:20 to 6:33
 - excuse for delay, 6:26 to 6:29, 6:31 to 6:33
 - expiration of time, determination of, 6:24
 - general appearance, 6:28, 6:32
 - hearing, 6:27
 - notice requirement, 6:23
 - opposition citations, generally, 6:30 to 6:33
 - overcoming opposition excuses, 6:26 to 6:29
 - policy to try cases on merits, 6:30
 - procedural considerations, 6:23 to 6:25

DISMISSAL MOTIONS—Cont'd

—Cont'd

- supporting citations, generally, 6:22 to 6:29
- text of motion, suggested, 6:20
- time for motion, 6:25
- tolling, 6:26
- waiver and estoppel, 6:29, 6:33
- Statute of limitations, 6:106
- Statutory authority, 6:4, 6:5
- Stay of action, forum non conveniens, 6:16
- Substantial justification, misuse by plaintiff of discovery, 6:78
- Suitability of alternative forums, forum non conveniens, 6:19
- Time
 - joinder of indispensable party, failure regarding, 6:84
 - service of summons, failure regarding, 6:25
 - tolling, below
- Tolling
 - one year, failure to bring to trial within, 6:64
 - service of summons, failure regarding, 6:26
- Unauthorized issuance of process, 6:100
- Underlying claims justiciable, 6:81
- Voluntary dismissal
 - appeal, 6:7
 - prejudice, motion by defendant that dismissal be with, 6:113
- summary judgment motion pending, 5:25
- Voluntary dismissal, notice
 - Compromise and settlement, 6:115
 - service of answer or motion for summary judgment, 6:115
- Waiver and estoppel
- jury trial, failure regarding appearance for trial, 6:69
- service of summons, failure regarding, 6:29, 6:33
- Waiver of challenge to inconvenient venue, 6:13

DISTRIBUTIONS

DISTRIBUTIONS—Cont'd

—Cont'd

Dismissal for failure to state claim,
2:56

DOCUMENTS

Dismissal for failure to state claim,
2:11

Summary judgment, evidence on
motion, 5:124

DUE PROCESS

Quash, motion to, 1:5

EDUCATIONAL RECORDS

Quash, motion to, 1:11

EMPLOYMENT

Summary judgment, 5:15, 5:92

ENTRY OF JUDGMENT

Judgment on the pleadings, 4:28

EQUITABLE ESTOPPEL

Dismissal for failure to state claim,
statute of limitations, 2:26

EQUITABLE TOLLING

Dismissal for failure to state claim,
statute of limitations, 2:25,
2:53

ESTOPPEL

See index heading WAIVER AND
ESTOPPEL

EVIDENCE

Admissions. See ADMISSIONS

Burden of proof. See index head-
ing BURDEN OF PROOF

Dismissal for failure to state claim.

See index heading DISMISSAL
FOR FAILURE TO STATE CLAIM

Judgment on the pleadings, 4:29,
4:30, 4:39

Judicial notice. See index heading
JUDICIAL NOTICE

Quash, motion to, 1:23

Strike, motion to, 3:12, 3:17, 3:24,
3:36

Summary judgment. See index
heading SUMMARY JUDGMENT

EXCUSABLE NEGLIGENCE

EXCUSABLE NEGLIGENCE—Cont'd

—Cont'd

Appearance for trial and dismissal
motions, 6:70

EXCUSES

See index heading DISMISSAL
MOTIONS

**EXHAUSTION OF
ADMINISTRATIVE
REMEDIES**

Dismissal for failure to state claim,
2:49

EXHIBITS

Dismissal for failure to state claim,
2:38

Summary judgment, 5:69

EXPENSES

See index heading COSTS AND
EXPENSES

EXPERT EVIDENCE

Strike, motion to, 3:12

FACSIMILE TRANSMISSIONS

Strike, motion to, 3:9

FAILURE TO STATE CLAIM

See index heading DISMISSAL FOR
FAILURE TO STATE CLAIM

FEDERAL JURISDICTION

Dismissal for failure to state claim,
2:18

FEDERAL RULE 41

Dismissal motions, violations of
local rules, 6:90

FEES

Summary judgment, continuances,
5:45

FINANCIAL INSTITUTIONS

Quash, motion to, 1:10

FOREIGN CORPORATIONS

Quash, motion to, 1:32

FORUM NON CONVENIENS

See index heading DISMISSAL
MOTIONS

INDEX

FORUM SELECTION CLAUSES

Dismissal motions, 6:18

FRAUD

Dismissal for failure to state claim,
2:48

FRIVOLOUS MOTIONS

Strike, motion to, 3:26

GOOD FAITH

Summary judgment, motion for
expenses, 5:153

GOVERNMENT TORT CLAIMS

See index heading DISMISSAL FOR
FAILURE TO STATE CLAIM

GUARDIANS

Quash, motion to, 1:64

HEALTH CARE LIABILITY

Claims, dismissal motions, 6:95

HEARINGS

See index heading DISMISSAL
MOTIONS

IMMATERIAL MATTER

Strike, motion to, 3:20, 3:28, 3:35

IMMUNITY

See index heading QUASH, MOTION
TO

IMPERTINENT MATTER

Strike, motion to, 3:20, 3:28, 3:33

INCOMPETENT PERSONS

Quash, motion to, 1:36, 1:63

INCORPORATION BY

REFERENCE

Summary judgment, evidence on
motion, 5:71

INDISPENSABLE PARTIES

See index heading DISMISSAL
MOTIONS

INFERENCES

Summary judgment, 5:68, 5:131

INSURANCE AND INSURANCE COMPANIES

Quash, motion to, 1:9

INSURANCE AND INSURANCE COMPANIES—Cont'd

—Cont'd

Summary judgment, 5:20, 5:95

INTERVENTION

Summary judgment, 5:41

JOINDER OF PARTIES

Dismissal for failure to state claim,
2:43

Dismissal motions. See index
heading DISMISSAL MOTIONS

Quash, motion to, 1:24

Summary judgment, 5:41

JUDGMENT ON THE PLEADINGS

Generally, 4:1 to 4:45

Amendment of pleadings, 4:27,
4:38

Answer fails to state defense, 4:19,
4:35

Appellate review, 4:40

Authority, generally, 4:3 et seq.,
4:31

Capacity, lack of, 4:7

Cause of action, failure to state,
4:18, 4:34

Combined notice of motion and
motion for judgment on the
pleadings, 4:42

Common law, comparison, 4:9

Consolidation of defenses, 4:6

Conversion to motion for summary
judgment, 4:5

Declaratory relief, compared, 4:14

Demurrer, compared, 4:10

Entire pleading or cause of action,
grounds for motion as to, 4:20

Entry of judgment, 4:28

Evidence on motion, 4:29, 4:30,
4:39

Face of pleadings, appearance of
grounds on, 4:30

Failure to state claim, 4:4

Grounds for motion, generally,
4:15 to 4:20, 4:33 to 4:37

Grounds must appear on face of
pleadings or judicially notice
matter, 4:30

JUDGMENT ON THE PLEADINGS

—Cont'd

—Cont'd

Judicially noticed matter, appearance of grounds on, 4:30
 Jurisdiction, lack of, 4:17, 4:33
 Leave to amend, 4:27, 4:38
 Liberal construction of pleadings, 4:32
 More definite statement motion, compared, 4:11
 Opposition citations, generally, 4:31 to 4:40
 Order granting judgment on the pleadings, 4:43, 4:44
 Preliminary hearings, 4:23, 4:45
 Presentation of defenses and objections, 4:26
 Presentation of motion, 4:21
 Procedural requirements, generally, 4:21 to 4:30, 4:38
 Relationship to other motions or actions, 4:10 to 4:14
 Res judicata, 4:37
 Sample supporting and opposition briefs
 generally, 4:41 to 4:45
 combined notice of motion and motion for judgment on the pleadings, 4:42
 order granting judgment on the pleadings, 4:43, 4:44
 preliminary hearing, motion for, 4:45
 Statute of limitations, 4:36
 Statutory grounds for motion, 4:16 to 4:19
 Strike, comparison to motion to, 4:12
 Summary judgment
 comparison, 4:13
 conversion to motion for summary judgment, 4:5
 Supporting citations, generally, 4:3 to 4:30
 Text of motion, suggested, 4:1
 Time for motion, 4:22 to 4:25
 Treatment of motions, 4:24
 Waiver of defenses, 4:8

JUDICIAL NOTICE

Dismissal for failure to state claim, 2:13, 2:36
 Judgment on the pleadings, 4:30
 Summary judgment, 5:70, 5:133, 5:146

JURISDICTION

Dismissal for failure to state claim, 2:17, 2:18, 2:41
 Judgment on the pleadings, 4:17, 4:33
 Quash, motion to. See index heading QUASH, MOTION TO

LEGAL MALPRACTICE

Summary judgment, 5:21, 5:96

LIBEL

Summary judgment, 5:16, 5:91

LIMITATION OF ACTIONS

Dismissal for failure to state claim.
 See index heading DISMISSAL FOR FAILURE TO STATE CLAIM
 Judgment on the pleadings, 4:36
 Motion to dismiss
 affirmative defenses, 6:119
 statute of limitations, 6:119

LIMITATIONS

Dismissal motions, 6:94

LOCAL RULES

See index heading DISMISSAL MOTIONS

MAIL, SERVICE BY

Quash, motion to, 1:29, 1:57

MALPRACTICE

Summary judgment, attorney malpractice, 5:21, 5:96

MATERIALITY

Summary judgment, 5:7

MINIMUM CONTACTS

Quash, motion to, 1:42, 1:70

MINORS

Quash, motion to, 1:36, 1:63

MISJOINDER OF PARTIES

INDEX

MISJOINDER OF PARTIES

—Cont'd

—Cont'd

Dismissal for failure to state claim,
2:43

MISTAKE

Summary judgment, 5:13, 5:88

MOOTNESS

Dismissal motions, 6:98

MORE DEFINITE STATEMENT

Judgment on the pleadings,
compared, 4:11

Strike, motion to, 3:10, 3:34

MOTOR VEHICLE ACCIDENTS

Quash, motion to, 1:37, 1:65

MOTORISTS

Quash, motion to, 1:65

NEGLECT

Summary judgment, 5:13

NONPROFIT CORPORATIONS

Quash, motion to, 1:60

NONSUIT

Summary judgment motion pend-
ing, 5:25

NOTICE

Dismissal motions. See index
heading DISMISSAL MOTIONS

Judicial notice. See index heading
JUDICIAL NOTICE

Quash, motion to, 1:51, 1:81

Summary judgment, 5:29, 5:139,
5:140

OBJECTIONS

Summary judgment, evidence on
motion, 5:75 to 5:79, 5:134

ORAL ARGUMENT

Summary judgment, 5:48, 5:105

ORDERS

Summary judgment, 5:111, 5:154

OUT-OF-STATE SERVICE

Quash, motion to, 1:31, 1:58

PARTIAL SUMMARY JUDGMENT

Generally, 5:2, 5:3, 5:144

Sample order

Generally, 5:154

PARTIES

Real party in interest. See index

heading REAL PARTY IN INTEREST

Standing. See index heading

STANDING

PARTNERSHIPS

Quash, motion to, 1:34, 1:61

PERSONAL INJURY

Summary judgment, 5:15, 5:90

PERSONAL JURISDICTION

See index heading QUASH, MOTION
TO

PERSONAL KNOWLEDGE

Summary judgment, 5:126

PERSONAL SERVICE

Quash, motion to, 1:26, 1:54

PLEADINGS

Amendment. See index heading

AMENDMENT OF PLEADINGS

Strike, motion to, 3:5, 3:37

Summary judgment, evidence on
motion, 5:62:60

PRELIMINARY HEARINGS

Judgment on the pleadings, 4:23,
4:45

PREMISES LIABILITY

Summary judgment, 5:18, 5:93

PRIVILEGES

Quash, motion to, 1:8

PROCESS SERVERS

Quash, motion to, 1:14

PRODUCTS LIABILITY

Quash, motion to, 1:46, 1:73

PROFESSIONALS

Quash, motion to, 1:12

PROPERTY DAMAGE

Summary judgment, 5:15, 5:90

**PROSECUTION, FAILURE
REGARDING**

Dismissal motions, 6:34, 6:116

PUBLIC ENTITIES

Quash, motion to, 1:35, 1:62

PUBLICATION, SERVICE BY

Quash, motion to, 1:39, 1:66

QUASH, MOTION TO

Generally, 1:1 to 1:83

Actual notice, 1:51

Authority for motion, 1:4

Banks, service of process, 1:10

Burden of proof, 1:6, 1:41

Constructive service of summons,
1:28

Contract actions, personal jurisdic-
tion, 1:45, 1:72

Corporations

personal jurisdiction, corporation
of nonresident where parties
agree Tennessee law governs,
1:44

service of process, 1:59, 1:60

Costs, denial of motion
conditioned on payment of,
1:83

Defective service of summons
generally, 1:25 to 1:39, 1:53 to
1:67

constructive service, 1:28

corporation, service on, 1:59, 1:60

foreign corporations, 1:32

guardian, persons with, 1:64

mail, service by, 1:29, 1:57

minors and incompetents, 1:36,
1:63

motor vehicle accidents, 1:37

motorists, nonresident, 1:65

nonprofit corporation, service on,
1:60

out-of-state service, 1:31, 1:58

personal service, 1:26, 1:54

public entities, 1:35, 1:62

publication, service by, 1:39, 1:66

sample supporting and opposition
briefs, 1:77

QUASH, MOTION TO—Cont'd

—Cont'd

secretary of state, service upon as
agent for service of process,
1:30

steamboats and watercraft, 1:38

substantial compliance, 1:67

substituted service, 1:27, 1:55,
1:56

transaction of business, 1:33

unincorporated associations and
partnerships, 1:34, 1:61

Department of Human Services,
service of process, 1:13

Discovery, 1:22, 1:52

Dismissal order quashing return of
summons, 1:80

Due process, 1:5

Educational records, service of
process, 1:11

Evidence of jurisdiction, 1:23

Failure to appear, 1:19

Financial institutions, service of
process, 1:10

Foreign corporations, defective
service of summons, 1:32

General appearance, 1:16, 1:50

Grounds for motion, 1:20

Guardian, persons with, 1:64

Immunity

personal jurisdiction, 1:69

service of process, 1:8

Incompetents, defective service of
summons, 1:36, 1:63

Insufficient service of summons,
1:78, 1:79

Insurance companies, service of
process, 1:9

Joinder and service, 1:24

Jurisdiction

evidence of jurisdiction, 1:23

personal jurisdiction, below

Mail, service by, 1:29, 1:57

Minimum contacts, personal juris-
diction, 1:42, 1:70

Minors, defective service of sum-
mons, 1:36, 1:63

INDEX

QUASH, MOTION TO—Cont'd

—Cont'd

- Motor vehicle accidents, defective service of summons, 1:37, 1:65
- Motorists, nonresident, 1:65
- Nonprofit corporation, service on, 1:60
- Notice, actual, 1:51
- Notice of motion to quash subpoena duces tecum, 1:81
- Opposition citations, generally, 1:48 to 1:75
- Out-of-state service, 1:31, 1:58
- Partnerships, defective service of summons, 1:34, 1:61
- Personal jurisdiction
 - generally, 1:40 to 1:46, 1:68 to 1:74
 - burden of showing lack of jurisdiction, 1:41
 - cause of action in Tennessee, 1:74
 - contract actions, 1:45, 1:72
 - corporation of nonresident where parties agree Tennessee law governs, 1:44
 - immunity, 1:69
 - minimum contacts, 1:42, 1:70
 - person, jurisdiction over, 1:43, 1:71
 - products liability actions, 1:46, 1:73
 - types of jurisdiction, 1:43 to 1:45, 1:71, 1:72
- Personal service, 1:26, 1:54
- Privileges, service of process, 1:8
- Procedural considerations, 1:21 to 1:24, 1:75
- Process servers, 1:14
- Products liability actions, personal jurisdiction, 1:46, 1:73
- Professionals, service of process, 1:12
- Public entities, defective service of summons, 1:35, 1:62
- Publication, service by, 1:39, 1:66
- Review of motion, 1:47
- Sample supporting and opposition briefs

QUASH, MOTION TO—Cont'd

—Cont'd

- generally, 1:76 to 1:83
- costs, denial of motion conditioned on payment of, 1:83
- defective service of summons, 1:77
- dismissal order quashing return of summons, 1:80
- insufficient service of summons, 1:78, 1:79
- notice of motion to quash subpoena duces tecum, 1:81
- subpoena duces tecum, 1:81, 1:82
- Secretary of state, service upon as agent for service of process, 1:30
- Service of process
 - generally, 1:7 to 1:15
 - banks and financial institutions, 1:10
 - defective service of summons, above
- Department of Human Services, 1:13
- educational records, 1:11
- insurance companies, 1:9
- joinder, 1:24
- privileges and immunities, 1:8
- process servers, 1:14
- professionals, 1:12
- strict compliance with service statutes, 1:15
- Special appearance, 1:17
- Steamboats, defective service of summons, 1:38
- Strict compliance with service statutes, 1:15
- Strict construction of time for appearance, 1:18
- Subpoena duces tecum, 1:81, 1:82
- Substantial compliance, defective service of summons, 1:67
- Substituted service, 1:27, 1:55, 1:56
- Supporting citations, generally, 1:3 to 1:47
- Text of motion, suggested, 1:1
- Time appearance, 1:18

QUASH, MOTION TO—Cont'd

- Cont'd
 - motion, 1:21
 - Transaction of business, defective service of summons, 1:33
 - Unincorporated associations, defective service of summons, 1:34, 1:61
 - Watercraft, defective service of summons, 1:38

RATIFICATION

- Commencement of action, substitution or joinder or dismissing action, dismissal for failure to state claim, 2:70

REAL PARTY IN INTEREST

- Dismissal for failure to state claim, 2:22, 2:47, 2:69
- Dismissal motions, 6:107

REASONABLE DILIGENCE

- Appeal delay, 6:53
- Arbitration, 6:52
- Dismissal motions, delay in prosecution, 6:51 to 6:53

REDUNDANT MATTER

- Strike, motion to, 3:20, 3:28

REDUNDANT MOTIONS

- Strike, motion to, 3:26

RELIANCE

- Summary judgment, burden of proof, 5:118

REPLIES

- Summary judgment, 5:31

RES JUDICATA

- Dismissal for failure to state claim, 2:20, 2:45, 2:66
- Judgment on the pleadings, 4:37
- Motion to dismiss, dismissal motions, 6:118

REVIEW

- See index heading APPEAL AND REVIEW

SANCTIONS

- Strike, motion to, 3:29

SANCTIONS—Cont'd

- Cont'd
 - Summary judgment, 5:80 to 5:82, 5:135, 5:136

SAVINGS STATUTE

- Dismissal motions, 6:6

SCANDALOUS MATTER

- Strike, motion to, 3:20, 3:28, 3:33

SCHOOL RECORDS

- Quash, motion to, 1:11

SECRETARY OF STATE

- Quash, motion to, 1:30

SEPARATE STATEMENT

- See index heading SUMMARY JUDGMENT

SERVICE OF PROCESS AND PAPERS

- Dismissal motions. See index heading DISMISSAL MOTIONS
- Quash, motion to. See index heading QUASH, MOTION TO
- Summary judgment, 5:30

SLANDER

- Summary judgment, 5:16, 5:91

SLAPP LAWSUITS

- Strike, motion to, 3:21, 3:30

SPECIAL APPEARANCE

- Quash, motion to, 1:17

SPECULATION OR CONJECTURE

- Summary judgment, 5:76, 5:128

STANDING

- Dismissal for failure to state claim, 2:22, 2:47
- Real party in interest. See index heading REAL PARTY IN INTEREST
- Strike, motion to, 3:13

STATE OF MIND

- Summary judgment, 5:146

STATUTE OF LIMITATIONS

- Defenses, motion to dismiss, dismissal motions, 6:119

INDEX

STATUTE OF LIMITATIONS

—Cont'd

—Cont'd

Dismissal for failure to state claim.

See index heading DISMISSAL
FOR FAILURE TO STATE CLAIM

Dismissal motions, 6:106

Judgment on the pleadings, 4:36

STAY OF ACTION

Dismissal motions, forum non con-
veniens, 6:16

STAY OF DISCOVERY

Dismissal for failure to state claim,
2:68

STEAMBOATS

Quash, motion to, 1:38

STIPULATED FACTS

Summary judgment, 5:72

STRIKE, MOTION TO

Generally, 3:1 to 3:38

Amendment of pleadings, 3:8,
3:18, 3:27

Appellate review, 3:38

Capacity to sue, 3:13

Combined notice of motion and
motion to strike insufficient
defense, 3:32

Default, effect of, 3:19

Defenses, striking of, 3:6

Discovery, abuse of, 3:7

Evidence, 3:12, 3:17, 3:24, 3:36

Expert evidence, striking of, 3:12

Facsimile transmission, failure to
produce original document
filed by, 3:9

Frivolous motion, 3:26

Grounds for motion, 3:14

Immaterial matter, 3:20, 3:28, 3:35

Impertinent matter, 3:20, 3:28,
3:33

Improper motion, 3:22

Judgment on the pleadings,
comparison, 4:12

Liberal construction, 3:23

More definite statement, failure to
serve, 3:10, 3:34

STRIKE, MOTION TO—Cont'd

—Cont'd

Opposition citations, generally,
3:22 to 3:30

Pleadings, striking of, 3:5, 3:37

Procedural requirements, 3:15 to
3:19

Redundant matter, 3:20, 3:28

Redundant motion, 3:26

Sample supporting and opposition
briefs

generally, 3:31 to 3:37

combined notice of motion and
motion to strike insufficient
defense, 3:32

evidence, lack of, 3:36

immateriality, 3:35

impertinent and scandalous matter,
3:33

more definite statement, failure to
serve, 3:34

pleading, improper, 3:37

Sanctions, 3:29

Scandalous matter, 3:20, 3:28, 3:33

SLAPP lawsuits, special motion to
strike, 3:21, 3:30

Standing, 3:13

Statutory authority, 3:3, 3:21

Supporting citations, generally, 3:3
to 3:21

Text of motion, suggested, 3:1

Third party claims, striking of,
3:11

Time for motion, 3:16, 3:17, 3:25

Typical use of motion, 3:4 to 3:13

SUA SPONTE MOTION

Summary judgment, 5:32

SUBJECT MATTER

JURISDICTION

Dismissal for failure to state claim,
2:17, 2:41

SUBPOENA DUCES TECUM

Quash, motion to, 1:81, 1:82

SUBSTANTIAL COMPLIANCE

Quash, motion to, 1:67

SUBSTANTIAL JUSTIFICATION

SUBSTANTIAL JUSTIFICATION

—Cont'd

—Cont'd

Dismissal motions, misuse by
plaintiff of discovery, 6:78

SUBSTITUTED SERVICE

Quash, motion to, 1:27, 1:55, 1:56

SUMMARY JUDGMENT

Generally, 5:1 to 5:155
Admissions, 5:65, 5:75, 5:130
Affidavits and declarations
generally, 5:65
continuances, 5:45
support of motion, 5:147
Affirmative defenses, burden of
proof, 5:54, 5:135
Amendment of pleadings, 5:39,
5:40, 5:106 to 5:108
Answer, burden of proof on defect
in, 5:57
Appeal, 5:83
Attorney malpractice, 5:21, 5:96
Authority for motion, generally,
5:5 to 5:25
Bad faith affidavits, motion for
expenses, 5:153
Burden of proof
generally, 5:50 to 5:57, 5:112 to
5:119
affirmative defenses, 5:54, 5:135
answer, defect in, 5:57
claimant bringing motion, 5:55
defendant bringing motion, 5:51 to
5:54, 5:115 to 5:118
elements of cause of action, 5:56
moving party, 5:51, 5:113
negating plaintiff's case, 5:53,
5:116
nonmoving party, 5:50, 5:114
plaintiff bringing motion, 5:56,
5:57, 5:119
reliance of defendant on plaintiff's
discovery, 5:118
shifting of burden based on
deficient discovery, 5:52
Conclusory statements, 5:132
Conflicting local rules, 5:25, 5:109

SUMMARY JUDGMENT—Cont'd

—Cont'd

Conjecture or speculation, 5:76,
5:128
Constitutional cases, 5:22, 5:98
Content of motion, 5:35, 5:38
Continuance
generally, 5:150
Continuances
generally, 5:42 to 5:45, 5:102 to
5:104
affidavits, 5:45
discovery, continuance for
additional, 5:104
discretion of court, 5:46
fees and costs imposed on request-
ing party, 5:45
opposing continuance, 5:44
Contracts, 5:19, 5:94
Conversion of other motions to
motion for summary judg-
ment, 5:10, 5:11, 5:85
Corporation, 5:99
Costs imposed on requesting party,
continuances, 5:45
Cross-motions, 5:4
Dangerous condition of property,
5:14, 5:89
Date. Time and date, below
Declarations. Affidavits and decla-
rations, above
Defamation, 5:16, 5:91
Description of motion, 5:6
Discovery
continuance for additional
discovery, 5:104
evidence on motion, 5:66, 5:129
Discretion of court, continuances,
5:46
Discrimination cases, 5:15, 5:92
Dismissal for failure to state claim,
conversion of motion for, 2:8
Documents, evidence on motion,
5:124
Drastic remedy, 5:86
Elements of cause of action,
burden of proof, 5:56
Employment cases, 5:15, 5:92
Evidence on motion

INDEX

SUMMARY JUDGMENT—Cont'd

—Cont'd

- generally, 5:58 to 5:79, 5:120 to 5:134
- admissible supporting evidence, 5:64 to 5:72
- admissions, 5:65, 5:75, 5:130
- affidavits and declarations, 5:65
- attacking supporting evidence, 5:123 to 5:133
- attacks on opposition evidence, 5:73 to 5:76
- burden of proof, above
- conclusory statements, 5:132
- discovery, 5:66, 5:129
- documents, 5:124
- exhibits, 5:69
- incompetent affidavits and declarations, 5:74, 5:125
- incorporation by reference, 5:71
- inferences, 5:68, 5:131
- judicial notice, 5:70, 5:133
- liberal construction of opposition evidence, 5:121
- objections, 5:75 to 5:79, 5:134
- personal knowledge of declarant, lack of, 5:126
- pleadings, 5:62:60
- ruling on objections, 5:78
- speculation or conjecture, 5:76, 5:128
- stipulated facts, 5:72
- triable issues, 5:59, 5:122
- waiver of objections, 5:79, 5:134
- Exhibits, 5:69
- Expenses, motion for, 5:153
- Failure to file opposition, 5:110
- Fees imposed on requesting party, continuances, 5:45
- Format of motion, 5:35, 5:38
- Incompetent affidavits and declarations, 5:74, 5:125
- Incorporation by reference, evidence on motion, 5:71
- Inferences, 5:68, 5:131
- Insurance, 5:20, 5:95
- Interpretation of restrictive covenants, 5:9
- Intervention, 5:41

SUMMARY JUDGMENT—Cont'd

—Cont'd

- Joinder, 5:41
- Judgment on pleadings. See index
 - heading JUDGMENT ON THE PLEADINGS
- Judicial notice, 5:70, 5:133, 5:146
- Legal malpractice, 5:21, 5:96
- Liberal construction of opposition papers and evidence, 5:85, 5:121
- Materiality of fact issue, 5:7
- Miscellaneous grounds, 5:95
- Mistake, 5:13, 5:88
- Motion, (based on deposition), 5:143
- Motion for extension of time to respond
 - generally, 5:151
- Motion for extension of time to respond, motion for, 5:151
- Motion for leave to renew motion, 5:152
 - generally, 5:152
- Motion to dismiss, complaint or in alternative, 5:148
- Motion to dismiss complaint, or in alternative, 5:148
- Neglect, 5:13
- Nonsuit when summary judgment pending, 5:25
- Notice of motion, 5:29, 5:139, 5:140
- Objections, evidence on motion, 5:75 to 5:79, 5:134
- Opposition, time for, 5:31
- Opposition briefs
 - generally, 5:149
- Opposition citations, generally, 5:84 to 5:136
- Oral argument, 5:48, 5:105
- Orders, 5:111, 5:154
- Partial summary judgment, 5:2, 5:3, 5:144, 5:154
- Personal injury, 5:15, 5:90
- Personal knowledge of declarant, lack of, 5:126
- Pleadings, evidence on motion, 5:62:60

SUMMARY JUDGMENT—Cont'd

—Cont'd

Premises liability, 5:18, 5:93
 Procedural considerations, generally, 5:26 et seq., 5:100 et seq.
 Property, dangerous condition of, 5:14, 5:89
 Property damage, 5:15, 5:90
 Proposed order, 5:49
 Purpose of motion, 5:6
 Reliance of defendant on plaintiff's discovery, burden of proof, 5:118
 Reply, time for, 5:31
 Request for amendment of pleadings, 5:40, 5:105
 Review of motion, 5:83
 Sample orders
 issue of liability, 5:155
 Order granting partial summary judgment, 5:155
 Sample supporting and opposition briefs
 generally, 5:138 to 5:151
 affidavit in support of motion, 5:147
 continuance, motion for, 5:149
 defendant, motion by, 5:144 to 5:147
 expenses, motion for, 5:153
 judicial notice in support of motion, request for, 5:146
 notice of motion for summary judgment, 5:139, 5:140
 orders, 5:154
 partial summary judgment, motion for, 5:144, 5:154
 plaintiff, motion by, 5:141, 5:142
 separate statement of undisputed material facts, 5:145
 Sanctions, 5:80 to 5:82, 5:135, 5:136
 Separate statement
 generally, 5:33 to 5:36, 5:100, 5:101
 failure to include separate statement, 5:36, 5:101
 moving party, 5:34
 opposition separate statement, 5:35

SUMMARY JUDGMENT—Cont'd

—Cont'd

sample supporting and opposition briefs, 5:145
 Separate statement of undisputed material facts, 5:145
 Service of motion and affidavits, time for, 5:30
 Shifting of burden based on deficient discovery, 5:52
 Speculation or conjecture, 5:76, 5:128
 State of mind, 5:146
 Statement of court's ruling, 5:49
 Statutory interpretation, 5:8
 Stipulated facts, 5:72
 Sua sponte motion, 5:32
 Supporting citations, generally, 5:5 to 5:85
 Text of motion, suggested, 5:1
 Time and date
 generally, 5:28 to 5:31
 bringing motion, 5:28
 notice of motion, 5:29
 opposition and reply, 5:31
 service of motion and affidavits, 5:30
 Triable issues, 5:12, 5:59, 5:122
 Unlawful detainer cases, 5:23
 Voluntary dismissal when summary judgment pending, 5:25
 Waiver of objections, evidence on motion, 5:79, 5:134
 Wrongful death, 5:15, 5:90

THIRD PARTY CLAIMS

Strike, motion to, 3:11

TIME AND DATE

Dismissal for failure to state claim, 2:12, 2:44
 Dismissal motions. See index heading DISMISSAL MOTIONS
 Judgment on the pleadings, 4:22 to 4:25
 Quash, motion to. See index heading QUASH, MOTION TO
 Statute of limitations, judgment on the pleadings, 4:36
 Strike, motion to, 3:16, 3:17, 3:25

INDEX

TIME AND DATE—Cont'd

—Cont'd

Summary judgment. See index
heading SUMMARY JUDGMENT

TOLLING

Dismissal for failure to state claim,
statute of limitations, 2:25,
2:52, 2:53, 2:61

Dismissal motions. See index
heading DISMISSAL MOTIONS

TORTS

Dismissal for failure to state claim.
See index heading DISMISSAL
FOR FAILURE TO STATE CLAIM

TRANSACTION OF BUSINESS

Quash, motion to, 1:33

TRIABLE ISSUES

Summary judgment, 5:12, 5:59,
5:122

UNINCORPORATED ASSOCIATIONS

UNINCORPORATED

ASSOCIATIONS—Cont'd

—Cont'd

Quash, motion to, 1:34, 1:61

UNLAWFUL DETAINER

Summary judgment, 5:23

VOLUNTARY DISMISSALS

See index heading DISMISSAL
MOTIONS

WAIVER AND ESTOPPEL

Dismissal motions. See index
heading DISMISSAL MOTIONS

Judgment on the pleadings,
defenses, 4:8

Summary judgment, evidence on
motion, 5:79, 5:134

WATERCRAFT

Quash, motion to, 1:38

WRONGFUL DEATH

Summary judgment, 5:15, 5:90