

Index

ADMINISTRATIVE REMEDIES, EXHAUSTION OF

Jurisdictional challenges, § 2:17, 2:29

AFFIDAVITS

Motion to dismiss, sample affidavit of plaintiff in opposition, § 5:74

Motion to strike pleadings for discovery abuse, affidavits in support and in opposition, § 3:38, 3:40

Personal jurisdiction, lack of, affidavit in support of motion to dismiss, § 4:38

Summary Judgment, this index

ANTI-SLAPP STATUTE

Dismissal, § 5:76

APPEARANCES

Personal jurisdiction, lack of, general and special appearances, § 4:5, 4:26

APPELLATE REVIEW

Failure to State Claim, this index

Forum non conveniens, dismissal based on, § 5:32, 5:33

Jurisdictional Challenges, this index

Lack of prosecution, dismissal for, § 5:50

Motion to Strike, this index

Personal Jurisdiction, Lack of, and Related Waivable Defenses, this index

Summary Judgment, this index

ASSUMPTION OF RISK

Summary judgment, § 1:90

BURDEN OF PROOF

Failure to state claim, § 5:7, 5:17

Forum Non Conveniens, Dismissal Based on, this index

Personal jurisdiction, lack of, § 4:12, 4:27

Summary Judgment, this index

CIRCUIT COURTS

Jurisdictional challenges, § 2:5, 2:7

COMPLAINT

Motion to strike, amended brief in support of motion, § 3:44

COMPLAINT—Cont'd

Motion to strike, amended—Cont'd filed without leave to amend, § 3:44

CONTINUANCES

Summary Judgment, this index

CONTRACTS

Summary judgment, § 1:10, 1:58

CRIMINAL PROCEEDINGS

Subject matter jurisdiction, § 2:9

DISCOVERY AND DEPOSITIONS

Jurisdiction issue, plaintiff's right to discovery, § 4:28

Motion to Strike, this index

Summary Judgment, this index

DISCRIMINATION CASES

Summary judgment, § 1:9, 1:57

DISMISSAL

Generally, § 5:1 to 5:79

Anti-SLAPP statute, § 5:76

Failure to State Claim, this index

Forum non Conveniens, this index

Indispensable Party, Failure to Join, this index

Lack of Prosecution, this index

Medical malpractice, § 5:72

DISTRICT COURTS

Jurisdictional Challenges, this index

DUE PROCESS

Personal jurisdiction, lack of, due process considerations, § 4:4

EMOTIONAL DISTRESS

Summary judgment, opposition to motion for, § 1:99

EMPLOYMENT CASES

Summary judgment, § 1:9, 1:57

EVIDENCE

Jurisdictional challenges, evidence on motion, § 2:19

Summary Judgment, this index

EXHIBITS

Summary judgment, improper exhibits, § 1:47

FAILURE TO STATE CLAIM

Generally, § 5:1 to 5:20
 Appellate review. Review of order, below
 Burden, § 5:7, 5:17
 Fraud, § 5:77
 Hearing, § 5:11
 Judicial review. Review of order, below
 Local government tort claims act, § 5:79
 Notice to dismiss, sample form, § 5:70
 Opposition citations
 generally, § 5:15 to 5:20
 burden, § 5:17
 overview, § 5:16
 representative cases, § 5:20
 review of order, § 5:18, 5:19
 standard of review, § 5:19
 Overview of motion to dismiss, § 5:3
 Points and authorities in support of motion to dismiss, § 5:71
 Procedural considerations, § 5:8 to 5:11
 Representative cases, § 5:14, 5:20
 Review of order
 opposition citations, § 5:18, 5:19
 supporting citations, § 5:12, 5:13
 Sample forms
 defendant's memorandum of points and authorities in support of motion to dismiss, § 5:71
 fraud pled with particularity, § 5:77
 local government tort claims act, § 5:79
 notice to dismiss, § 5:70
 statute of limitations, brief in support of motion to dismiss, § 5:75
 underinsured motorist, § 5:78
 Specifics of motion to dismiss, § 5:10
 Standard of review, § 5:13, 5:19
 Statute of limitations, brief in support of motion to dismiss, § 5:75
 Summary judgment, when treated as, § 5:9
 Summary of motions, § 5:1
 Supporting citations
 generally, § 5:4 to 5:14
 authority for motion to dismiss, § 5:6
 burden, § 5:7
 hearing, § 5:11
 overview, § 5:5
 procedural considerations, § 5:8 to 5:11
 representative cases, § 5:14
 review of order, § 5:12, 5:13
 specifics of motion to dismiss, § 5:10
 standard of review, § 5:13

FAILURE TO STATE CLAIM—Cont'd

Supporting citations—Cont'd
 summary judgment, when treated as, § 5:9
 timing of motion, § 5:8
 Text of motion to dismiss, suggested, § 5:2
 Timing of motion, § 5:8
 Underinsured motorist, § 5:78

FIRST AMENDMENT EXERCISE OF RELIGION

Jurisdictional challenges, § 2:37

FORESEEABLE RISK

Lack of, summary judgment, supporting citations, § 1:93

FORUM NON CONVENIENS, DISMISSAL BASED ON

Generally, § 5:21 to 5:40
 Appellate review, § 5:32, 5:33
 Burden
 forum selection clauses, § 5:31
 opposition citations, § 5:38
 procedural considerations, § 5:27
 Description, § 5:24
 Discretionary decision, § 5:25, 5:36
 Factors weighed by court, § 5:26, 5:37
 Forum selection clauses
 generally, § 5:30
 burden, § 5:31
 opposition citations, § 5:39
 Hearing not required, § 5:29
 Motion required, § 5:28
 Opposition citations
 generally, § 5:35 to 5:40
 burden, § 5:38
 discretionary decision, § 5:36
 factors weighed by court, § 5:37
 forum selection clauses, § 5:39
 representative cases, § 5:40
 Overview of motion, § 5:1, 5:22
 Plaintiff's opposition to motion to dismiss, sample form, § 5:73
 Primary authorities, § 5:23
 Purpose, § 5:24
 Representative cases, § 5:34, 5:40
 Review of order, § 5:32, 5:33
 Standard of review, § 5:33
 Summary of motions, § 5:1
 Supporting citations
 generally, § 5:23 to 5:34
 burden, § 5:27
 description, § 5:24
 discretionary decision, § 5:25
 factors weighed by court, § 5:26

INDEX

FORUM NON CONVENIENS,

DISMISSAL BASED ON—Cont'd

- Supporting citations—Cont'd
 - forum selection clauses, § 5:30, 5:31
 - hearing not required, § 5:29
 - motion required, § 5:28
 - primary authorities, § 5:23
 - procedural considerations, § 5:27 to 5:29
 - purpose, § 5:24
 - representative cases, § 5:34
 - review of order, § 5:32, 5:33
 - standard of review, § 5:33
- Text of motion, suggested, § 5:21

FRAUD

- Failure to state claim, dismissal for, § 5:77

GOVERNMENTAL IMMUNITY

- Summary judgment, § 1:98

HYPOTHETICAL QUESTIONS

- Jurisdictional challenges, § 2:15, 2:27

INDISPENSABLE PARTY, MOTION TO DISMISS BASED ON FAILURE TO JOIN

- Generally, § 5:57 to 5:69
- Appellate review, § 5:65
- Dismissal disfavored, § 5:68
- Grounds for motion, § 5:63, 5:64
- Opposition citations
 - generally, § 5:67 to 5:69
 - dismissal disfavored, § 5:68
 - relevant cases, § 5:69
- Overview of motion, § 5:1, 5:58
- Primary authorities, § 5:60 to 5:62
- Purposes of mandatory joinder rule, § 5:64
- Relevant cases, § 5:66, 5:69
- Rules, § 5:60 to 5:62
- Statutory factors, § 5:63
- Summary of motions, § 5:1
- Supporting citations
 - generally, § 5:59 to 5:66
 - appellate review, § 5:65
 - grounds for motion, § 5:63, 5:64
 - primary authorities, § 5:60 to 5:62
 - purposes of mandatory joinder rule, § 5:64
 - relevant cases, § 5:66
 - rules, § 5:60 to 5:62
 - statutory factors, § 5:63
- Text of motion, suggested, § 5:57

INFERENCES

- Summary judgment, evidence on motion, § 1:41, 1:79

INSURANCE

- Summary judgment, § 1:10, 1:58

INVOCATION OF JURISDICTION

- Failure to properly invoke. jurisdictional challenges due to, § 2:18

JOINDER OF PARTIES

- Indispensable Party, Dismissal Based on Failure to Join, this index

JUDICIAL NOTICE

- Summary judgment, request for judicial notice, § 1:42, 1:85

JURISDICTIONAL CHALLENGES

- Generally, § 2:1 to 2:39
- Administrative remedies, exhaustion of, § 2:17, 2:29
- Appellate review. Review of motion, below
- Authorities for motion, § 2:3, 2:4
- Circuit courts, § 2:5, 2:7
- Civil proceedings in district courts, § 2:11
- Criminal proceedings in district courts, § 2:9
- Direct appeal, § 2:21
- District courts. Subject matter jurisdiction, below
- Evidence on motion, supporting citations, § 2:19
- Exclusive jurisdiction in other court, § 2:16, 2:28
- Exhaustion of administrative remedies, § 2:17, 2:29
- First Amendment exercise of religion, memorandum of law in support of motion, § 2:37
- Interlocutory appeal, § 2:22
- Invocation of jurisdiction, failure to properly invoke, § 2:18
- Judicial review. Review of motion, below
- Juvenile proceedings in district courts, § 2:10
- Memorandum of law in support of motion, § 2:35, 2:37, 2:38
- Monetary limit, § 2:39
- Moot, hypothetical or abstract questions, § 2:15, 2:27
- Nonjusticiable questions, § 2:15
- Notice of motion to dismiss, § 2:34
- Opposition citations
 - generally, § 2:24 to 2:33

JURISDICTIONAL CHALLENGES

—Cont’d

Opposition citations—Cont’d
 authorities, § 2:24
 exhaustion of administrative remedies, § 2:29
 moot, hypothetical or abstract questions, § 2:27
 nonjusticiable questions, § 2:27
 other court with exclusive jurisdiction, § 2:28
 political questions, § 2:31
 procedural considerations, § 2:32
 properly invoking jurisdiction, § 2:30
 religion, § 2:26
 review, § 2:33
 separation of powers, § 2:31
 standing, lack of, § 2:27
 subject matter within court’s jurisdiction, § 2:25
 Order of dismissal, § 2:36
 Overview of motion, § 2:2
 Personal Jurisdiction, Lack of, and Related Waivable Defenses, this index
 Political questions, § 2:31
 Procedural considerations, opposition citations, § 2:32
 Proper invocation of jurisdiction, failure as to, § 2:18
 Properly invoking jurisdiction, § 2:30
 Religion, § 2:14, 2:26, 2:37
 Review of motion
 generally, § 2:20 to 2:23, 2:33
 direct appeal, § 2:21
 interlocutory appeal, § 2:22
 opposition citations, § 2:33
 standard of review, § 2:23
 Sample documents and suggested text
 generally, § 2:34 to 2:38
 First Amendment exercise of religion, memorandum of law in support of motion, § 2:37
 memorandum of law in support of motion, § 2:35, 2:37, 2:38
 notice of motion to dismiss, § 2:34
 order of dismissal, § 2:36
 text of motion, suggested, § 2:1
 Separation of powers, § 2:31
 Small claims, § 2:12
 Standard of review, § 2:23
 Standing, lack of, § 2:15, 2:38
 Subject matter jurisdiction
 generally, § 2:5 to 2:12, 2:25
 case authorities, § 2:13

JURISDICTIONAL CHALLENGES

—Cont’d

Subject matter jurisdiction—Cont’d
 circuit courts
 constitutional provisions, § 2:5
 statutory provisions, § 2:7
 constitutional provisions, circuit and district courts, § 2:5, 2:6
 criminal proceedings, § 2:9
 district courts
 civil proceedings, § 2:11
 constitutional provisions, § 2:6
 criminal proceedings, § 2:9
 juvenile proceedings, § 2:10
 small claims, § 2:12
 statutory provisions, § 2:8 to 2:12
 juvenile proceedings, § 2:10
 monetary limit, § 2:39
 opposition citations, § 2:25
 small claims, § 2:12
 standing, lack of, § 2:15
 statutory provisions
 circuit courts, § 2:7
 district courts, § 2:8 to 2:12
 Supporting citations
 generally, § 2:3 to 2:23
 authorities for motion, § 2:3, 2:4
 evidence on motion, § 2:19
 exhaustion of administrative remedies, § 2:17
 invocation of jurisdiction, failure to properly invoke, § 2:18
 moot, hypothetical or abstract questions, § 2:15
 nonjusticiable questions, § 2:15
 other court with exclusive jurisdiction, § 2:16
 religion, § 2:14
 review of motion, above
 subject matter jurisdiction, above
 Text of motion, suggested, § 2:1

JUVENILE PROCEEDINGS

Subject matter jurisdiction, § 2:10

LACK OF PROSECUTION, DISMISSAL FOR

Generally, § 5:41 to 5:56
 Appellate review, § 5:50
 Authority, § 5:44, 5:45
 Deferral of dismissal, § 5:46, 5:47, 5:54
 Factors against deferral, § 5:47
 No motion required, § 5:48
 Notice of dismissal, § 5:49, 5:55
 Opposition citations
 generally, § 5:52 to 5:56

INDEX

LACK OF PROSECUTION,

DISMISSAL FOR—Cont'd

- Opposition citations—Cont'd
 - deferral of dismissal, factors in favor, § 5:54
 - notice, § 5:55
 - procedural considerations, § 5:55
 - representative cases, § 5:56
- Overview, § 5:42
- Procedural considerations, § 5:48, 5:49, 5:55
- Representative cases, § 5:51, 5:56
- Rule, § 5:44, 5:45
- Summary of motions, § 5:1
- Supporting citations
 - generally, § 5:43 to 5:51
 - appellate review, § 5:50
 - authority, § 5:44, 5:45
 - deferral of dismissal, § 5:46, 5:47
 - factors against deferral, § 5:47
 - no motion required, § 5:48
 - notice of dismissal, § 5:49
 - procedural considerations, § 5:48, 5:49
 - representative cases, § 5:51
 - rule, § 5:44, 5:45
- Text, suggested, § 5:41

LEGAL MALPRACTICE

- Summary judgment, § 1:11, 1:59

MALPRACTICE

- Dismissal, § 5:72

MEDICAL MALPRACTICE

- Dismissal, § 5:72
- Summary judgment, § 1:12, 1:60

MEMORANDUM

- Summary Judgment, this index

MOOT QUESTIONS

- Jurisdictional challenges, § 2:15, 2:27

MOTION TO STRIKE

- Generally, § 3:1 to 3:41
- Affidavits, supporting and in opposition to motion, § 3:38, 3:40
- Amendments to pleadings, § 3:16, 3:33
- Appellate review
 - generally, § 3:24
 - direct appeal, § 3:25
 - interlocutory appeal, § 3:26
 - opposition citations, § 3:35
 - standard of review
 - generally, § 3:27
 - discovery sanctions, § 3:29

MOTION TO STRIKE—Cont'd

- Appellate review—Cont'd
 - standard of review—Cont'd
 - not in compliance with rules, § 3:28
- Complaint
 - amended, brief in support of motion, § 3:44
 - amended, filed without leave to amend, § 3:44
 - brief in support of motion, § 3:43
- Defense, insufficient
 - generally, § 3:4
 - grounds and authority, § 3:10
 - opposition citations, § 3:31
 - timing, § 3:20
- Direct appeal, § 3:25
- Discovery abuse and sanctions
 - generally, § 3:7
 - grounds and authority, § 3:17, 3:18
 - opposition citations, § 3:34
 - sample forms, below
 - standard of review, § 3:2
 - timing, § 3:23
- Filings, untimely, § 3:15, 3:32
- Forms. Sample forms, motion to strike for discovery abuse, below
- Improper, immaterial, impertinent or scandalous material
 - generally, § 3:5
 - authority, § 3:11
 - cases, § 3:12
 - timing, § 3:21
- Interlocutory appeal, § 3:26
- Notice of motion, § 3:37
- Opposition citations
 - generally, § 3:30 to 3:35
 - amendments to pleadings, § 3:33
 - appellate review, § 3:35
 - discovery sanctions, § 3:34
 - insufficient defense, § 3:31
 - late filings, § 3:32
 - rules, not in compliance, § 3:32, 3:33
 - signature requirement, § 3:30
- Order granting motion, § 3:41
- Overview of motion, § 3:2
- Pleadings and papers, signing, § 3:3
- Procedural requirements
 - generally, § 3:19
 - timing
 - discovery sanctions, § 3:23
 - improper, immaterial, impertinent or scandalous material, § 3:21
 - insufficient defense, § 3:20

MOTION TO STRIKE—Cont’d

- Procedural requirements—Cont’d
 - timing—Cont’d
 - rules, not in compliance with, § 3:22
- Rules, pleadings not in compliance
 - generally, § 3:6, 3:13 to 3:16
 - amendments, § 3:16, 3:33
 - opposition citations, § 3:32, 3:33
 - standard of review, § 3:28
 - untimely filings, § 3:15, 3:22, 3:32
- Sample forms, motion to strike for
 - discovery abuse
 - generally, § 3:36 to 3:41
 - affidavits, supporting and in opposition to motion, § 3:38, 3:40
 - notice of motion, § 3:37
 - order granting motion, § 3:41
 - response in opposition to motion, § 3:39
- Signing of pleadings and papers
 - generally, § 3:3
 - authority, § 3:8
 - cases, § 3:9
 - opposition citations, § 3:30
- Standard of review. Appellate review, above
- Supporting citations
 - generally, § 3:3 to 3:29
 - appellate review, above
 - defense, insufficient, § 3:4, 3:10
 - discovery abuse, above
 - improper, immaterial, impertinent or scandalous material, above
 - procedural requirements, above
 - rules, pleadings not in compliance, § 3:6, 3:13 to 3:16
 - signing of pleadings and papers, § 3:3, 3:8, 3:9
 - timing. Procedural requirements, above
- Text of motion, suggested, § 3:1
- Timing. Procedural requirements, above
- Untimely counterclaim
 - brief in support of motion, § 3:42
- Untimely filings, § 3:15

NONJUSTICIABLE QUESTIONS

- Jurisdictional challenges, § 2:15

PARTIES

- Indispensable Party, Dismissal Based on
 - Failure to Join, this index

PERSONAL INJURY CASES

- Summary judgment, § 1:8, 1:56

PERSONAL JURISDICTION, LACK OF, AND RELATED WAIVABLE DEFENSES

- Generally, § 4:1 to 4:43
- Actual notice insufficient, § 4:23
- Appearances, general and special, § 4:5, 4:26
- Appellate review
 - opposition citations, § 4:35
 - supporting citations, § 4:24, 4:25
- Burden, § 4:12, 4:27
- Consent to jurisdiction, § 4:16, 4:30
- Discovery on jurisdiction issue,
 - plaintiff’s right to, § 4:28
- Due process considerations, § 4:4
- General jurisdiction, § 4:13
- Grounds for motion
 - lack of personal jurisdiction, § 4:6
 - process and service of process, § 4:7
- Lack of personal jurisdiction
 - generally, § 4:11
 - affidavit in support of motion to dismiss, § 4:38
 - burden of showing, § 4:12
 - consent to jurisdiction, § 4:16
 - general jurisdiction, § 4:13
 - grounds for motion, § 4:6
 - memorandum in opposition to
 - defendant’s motion to dismiss for lack of personal jurisdiction, § 4:39
 - minimum contacts, lack of, § 4:15
 - notice of motion to dismiss, § 4:36
 - order denying motion to dismiss for lack of personal jurisdiction, § 4:40
 - points and authorities in support of motion to dismiss, § 4:37
 - specific jurisdiction, § 4:14
 - waiver not effective, § 4:17
- Minimum contacts, § 4:15, 4:32
- Notice of motion to dismiss, lack of personal jurisdiction, § 4:36
- Opposition citations
 - generally, § 4:26 to 4:34
 - appearances, general and special, § 4:26
 - appellate review, § 4:35
 - burden, § 4:27
 - consent to jurisdiction, § 4:30
 - discovery on jurisdiction issue,
 - plaintiff’s right to, § 4:28
 - minimum contacts, existence of, § 4:32
 - procedural considerations, § 4:29

PERSONAL JURISDICTION, LACK OF, AND RELATED WAIVABLE DEFENSES—Cont’d

- Opposition citations—Cont’d
 - process and service of process, insufficiency, § 4:33, 4:34
 - representative cases, § 4:31
 - waiver of jurisdictional defect claim, § 4:29
- Overview of motion, § 4:2
- Points and authorities in support of motion to dismiss
 - lack of personal jurisdiction, § 4:37
 - service of process, insufficiency, § 4:42
- Procedural considerations
 - generally, § 4:8 to 4:10
 - proof of jurisdiction, § 4:9
 - timing of motion, § 4:8
 - waiver of jurisdictional defects, § 4:10
- Process and service of process, insufficiency
 - actual notice insufficient, § 4:23
 - grounds for motion, § 4:7
 - process, insufficiency
 - generally, § 4:18
 - opposition citations, § 4:33
 - waiver, § 4:19
 - service of process, insufficiency
 - generally, § 4:20
 - actual notice insufficient, § 4:23
 - examples of ineffective service, § 4:22
 - notice of motion to dismiss, § 4:41
 - opposition citations, § 4:34
 - points and authorities in support of motion to dismiss, § 4:42
 - waiver, § 4:21
- Proof of jurisdiction, § 4:9
- Representative cases, § 4:31
- Sample documents and suggested text
 - generally, § 4:36 to 4:45
 - affidavit in support of motion to dismiss, lack of personal jurisdiction, § 4:38
 - insufficiency of service of process (substituted service), § 4:43
 - memorandum in opposition to defendant’s motion to dismiss, § 4:43
 - memorandum in opposition to defendant’s motion to dismiss for lack of personal jurisdiction, § 4:39, 4:44

PERSONAL JURISDICTION, LACK OF, AND RELATED WAIVABLE DEFENSES—Cont’d

- Sample documents and suggested text—Cont’d
 - notice of motion to dismiss
 - insufficiency of service of process, § 4:41
 - lack of personal jurisdiction, § 4:36
 - opposition to defendant’s motion to dismiss for insufficient service of process, § 4:45
 - opposition to motion to dismiss (substitute service of process), § 4:45
 - opposition to motion to dismiss (waiver), § 4:44
 - order denying motion to dismiss for lack of personal jurisdiction, § 4:40
 - points and authorities
 - insufficiency of service of process, motion to dismiss, § 4:42
 - lack of personal jurisdiction, motion to dismiss, § 4:37
 - text of motion, suggested, § 4:1
- Service of process. Process and service of process, insufficiency, above
- Specific jurisdiction, § 4:14
- Standard of review, § 4:25
- Supporting citations
 - generally, § 4:3 to 4:25
 - appearances, general and special, § 4:5
 - authorities
 - generally, § 4:3
 - appearances, general and special, § 4:5
 - due process considerations, § 4:4
 - due process considerations, § 4:4
 - lack of personal jurisdiction, above
 - procedural considerations, above
 - process and service of process, insufficiency, above
 - review of motion, § 4:24, 4:25
 - standard of review, § 4:25
- Text of motion, suggested, § 4:1
- Timing of motion, § 4:8
- Waiver
 - ineffective waiver, lack of personal jurisdiction, § 4:17
 - jurisdictional defects, waiver of, § 4:10, 4:29
 - process, insufficiency, § 4:18
 - service of process, insufficiency, § 4:21

POLITICAL QUESTIONS

Jurisdictional challenges, § 2:31

PREEMPTION

Summary judgment, supporting citations, § 1:92

PROCESS AND SERVICE OF PROCESS

Personal Jurisdiction, Lack of, and Related Waivable Defenses, this index

PROPERTY DAMAGES

Summary judgment, § 1:8, 1:56

PROSECUTION

Lack of Prosecution, Dismissal for, this index

RECREATIONAL USE IMMUNITY

Summary judgment, § 1:91

RELIGION

Jurisdictional challenges, § 2:14, 2:26, 2:37

RES JUDICATA

Summary judgment, brief of defendant in support of summary judgment, § 1:89

SAMPLE DOCUMENTS AND SUGGESTED TEXT

Failure to state claim, dismissal for, § 5:2

Forum non conveniens, dismissal based on, § 5:21

Indispensable party, motion to dismiss based on failure to join, § 5:57

Jurisdictional challenges generally, § 2:34 to 2:39

monetary limit, § 2:39

personal jurisdiction, below

Lack of prosecution, dismissal for, § 5:41

Motion to strike complaint brief in support of motion, § 3:43

brief in support of motion, amended, § 3:44

filed without leave to amend, amended, § 3:44

Motion to strike for discovery abuse generally, § 3:36 to 3:41

Motion to Strike, this index

Motion to strike untimely counterclaim brief in support, § 3:42

Personal jurisdiction, lack of generally, § 4:36 to 4:45

SAMPLE DOCUMENTS AND

SUGGESTED TEXT—Cont’d

Personal jurisdiction, lack of—Cont’d

Personal Jurisdiction, Lack of, and Related Waivable Defenses, this index

Summary judgment

generally, § 1:85 to 1:100

opposition to defendant’s motion

generally, § 1:85 to 1:100

Summary Judgment, this index

SANCTIONS

Discovery sanctions. Motion to Strike, this index

SEPARATION OF POWERS

Jurisdictional challenges, § 2:31

SERVICE OF PROCESS

Personal Jurisdiction, Lack of, and Related Waivable Defenses, this index

SMALL CLAIMS

Subject matter jurisdiction, § 2:12

STANDING

Lack of, jurisdictional challenges, § 2:38

STATUTE OF LIMITATIONS

Dismissal for failure to state a claim, brief in support of motion to dismiss, § 5:75

STIPULATIONS

Summary judgment, evidence on motion, § 1:43

STRIKING

Motion to Strike, this index

SUBJECT MATTER JURISDICTION

Jurisdictional Challenges, this index

SUMMARY JUDGMENT

Generally, § 1:1 to 1:99

Memorandum, § 1:90 to 1:100

Affidavits and testimony

generally, § 1:21 to 1:24, 1:68 to 1:70

admissible supporting evidence, § 1:39

contradictory affidavits, § 1:24, 1:69

defects, § 1:22, 1:70

incompetent affidavits, § 1:45, 1:82

sample affidavit in support of motion, § 1:86

unavailability of affidavits, § 1:23

Affirmative defenses, § 1:32, 1:75

SUMMARY JUDGMENT—Cont’d

- Appellate review. Review of motion, below
- Assumption of risk defense, § 1:90
- Authority for motion, § 1:3
- Burden of proof
 - generally, § 1:30 to 1:35, 1:72 to 1:77
 - affirmative defenses, § 1:32, 1:75
 - counterclaim, defendant’s, § 1:77
 - defense motion
 - generally, § 1:31, 1:73
 - affirmative defenses, § 1:32, 1:75
 - negating plaintiff’s case, § 1:31, 1:74
 - shifting burden to plaintiff, § 1:33
 - negating plaintiff’s case, § 1:31, 1:74
 - plaintiff’s motion
 - generally, § 1:34, 1:76
 - on defendant’s counterclaim, § 1:77
 - shifting burden to defendant, § 1:35
 - to defendant, § 1:35
 - to plaintiff, § 1:33
- Caution, granted with, § 1:54
- Continuances
 - generally, § 1:25
 - court’s discretion, § 1:27
 - further discovery, conducting, § 1:71
 - opposing continuance, § 1:26
- Contract cases, § 1:10, 1:58
- Counterclaim, burden where plaintiff brings motion on, § 1:77
- Description, § 1:4
- Direct appeal, § 1:50
- Discovery
 - continuance to conduct further discovery, request for, § 1:71
 - evidence on motion, discovery and depositions, § 1:40
 - specific references to discovery or other instruments, § 1:20
- Discrimination cases, § 1:9, 1:57
- Emotional distress, opposition to motion for summary judgment, § 1:99
- Employment cases, § 1:9, 1:57
- Evidence on motion
 - generally, § 1:36 to 1:50, 1:78 to 1:83
 - admissible supporting evidence
 - generally, § 1:38 to 1:43
 - affidavits, § 1:39
 - attacking supporting evidence, § 1:81, 1:82
 - discovery and depositions, § 1:40

SUMMARY JUDGMENT—Cont’d

- Evidence on motion—Cont’d
 - admissible supporting evidence
 - Cont’d
 - inferences, § 1:41
 - judicial notice, request for, § 1:42
 - stipulations, § 1:43
 - affidavits
 - generally, § 1:39
 - incompetent affidavits, § 1:45, 1:82
 - attacking opposition evidence
 - generally, § 1:44 to 1:48
 - conjecture, § 1:46
 - exhibits, improper, § 1:47
 - incompetent affidavits, § 1:45
 - speculation, § 1:46
 - untimely filed evidence, § 1:48
 - attacking supporting evidence, § 1:81, 1:82
 - conjecture, § 1:46
 - discovery and depositions, § 1:40
 - exhibits, improper, § 1:47
 - genuine issue of material fact, § 1:80
 - inferences, § 1:41, 1:79
 - judicial notice, request for, § 1:42
 - nonmoving party, viewing in light most favorable to, § 1:37
 - objections to evidence, § 1:49, 1:83
 - speculation, § 1:46
 - stipulations, § 1:43
 - untimely filed evidence, § 1:48
- Exhibits, improper, § 1:47
- Failure to state claim, motion to dismiss treated as motion for summary judgment, § 5:9
- Foreseeable risk, sample documents and suggested text, § 1:93
- Format and content of motion and opposing papers
 - opposition citations, § 1:65, 1:66
 - supporting citations, § 1:18 to 1:20
- Forms. Sample documents and suggested text, below
- Genuine issues of material fact
 - opposition citations, § 1:55, 1:80
 - sample documents and suggested text, § 1:97
 - supporting citations, § 1:6, 1:7
- Governmental immunity, sample documents and suggested text, § 1:98
- Grounds, statement of, § 1:19, 1:66
- Inferences, evidence on motion
 - generally, § 1:41
 - nonmoving party, resolving in favor of, § 1:79
- Insurance, § 1:10, 1:58

SUMMARY JUDGMENT—Cont’d

Interlocutory appeal, § 1:51
 Judicial notice, request for, § 1:42, 1:85
 Judicial review. Review of motion, below
 Legal malpractice cases, § 1:11, 1:59
 Medical malpractice cases, § 1:12, 1:60
 Miscellaneous cases, § 1:13, 1:61
 Not to be disfavored, § 1:5
 Notice of motion
 inadequate notice, § 1:63
 timing, § 1:16, 1:62
 Objections to evidence, § 1:49, 1:83
 Opposition citations
 generally, § 1:53 to 1:84
 affidavits and testimony, above
 burden of proof, above
 caution, granted with, § 1:54
 continuance to conduct further
 discovery, request for, § 1:71
 contract cases, § 1:58
 discrimination cases, § 1:57
 emotional distress, § 1:99
 employment cases, § 1:57
 evidence, above
 failure to file opposition, § 1:67
 format and content of motion and
 opposing papers, § 1:65, 1:66
 genuine issues of material fact, existence of, § 1:55, 1:97
 governmental immunity, § 1:98
 grounds and authorities, statement of, § 1:66
 insurance cases, § 1:58
 legal malpractice cases, § 1:59
 medical malpractice cases, § 1:60
 miscellaneous cases, § 1:61
 personal injury cases, § 1:56
 procedural considerations, above
 property damage cases, § 1:56
 wrongful death cases, § 1:56
 Oral argument, § 1:28
 Orders granting and denying summary judgment, § 1:94, 1:95
 Overview of motion, § 1:2
 Partial adjudication of case, § 1:29
 Personal injury cases, § 1:8, 1:56
 Points and authorities in opposition to motion, plaintiff’s
 generally, § 1:96 to 1:100
 emotional distress, § 1:99
 employment contract, breach of, § 1:100
 governmental immunity, § 1:98
 material fact, genuine issue of, § 1:97

SUMMARY JUDGMENT—Cont’d

Preemption, sample documents and suggested text, § 1:92
 Procedural considerations
 generally, § 1:14 to 1:29, 1:62 to 1:71
 affidavits and testimony, above
 burden of proof, above
 continuances, above
 discovery, above
 evidence on motion, above
 failure to file opposition, § 1:67
 form and content of motion and
 opposing papers
 generally, § 1:18 to 1:20, 1:65 to 1:67
 discovery or other instruments,
 specific references to, § 1:20
 failure to file opposition, § 1:67
 statement of grounds, § 1:19, 1:66
 grounds, statement of, § 1:19, 1:66
 inadequate notice, § 1:63
 notice of motion, § 1:16, 1:63
 oral argument, § 1:28
 partial adjudication of case, § 1:29
 statement of grounds, § 1:19, 1:66
 timing
 generally, § 1:15 to 1:17, 1:62 to 1:64
 bringing motion, § 1:15
 inadequate notice, § 1:63
 notice of motion, § 1:16, 1:63
 opposition, § 1:17, 1:64
 Property damage cases, § 1:8, 1:56
 Purpose, § 1:4
 Res judicata, brief of defendant in support of summary judgment, § 1:89
 Review of motion
 generally, § 1:50 to 1:52, 1:84
 direct appeal, § 1:50
 interlocutory appeal, § 1:51
 standard of review, § 1:52
 Sample documents and suggested text
 generally, § 1:85 to 1:100
 assumption of risk defense, § 1:90
 defense motion, § 1:85 to 1:88
 emotional distress, § 1:99
 foreseeable risk, § 1:93
 genuine issue of material fact, § 1:97
 governmental immunity, § 1:98
 orders granting and denying summary judgment, § 1:94, 1:95
 plaintiff’s opposition, § 1:96 to 1:100
 preemption, § 1:92
 recreational use immunity, § 1:91

INDEX

SUMMARY JUDGMENT—Cont'd

- Sample documents and suggested text—Cont'd
 - res judicata, brief of defendant in support of summary judgment, § 1:89
 - suggested motion text, § 1:1, 1:2
 - workers' compensation, § 1:88
- Speculation, § 1:46
- Standard of review, § 1:52
- Statement of grounds, § 1:19, 1:66
- Stipulations, evidence on motion, § 1:43
- Supporting citations
 - generally, § 1:3 to 1:52
 - affidavits and testimony, above
 - authority for motion, § 1:3
 - burden of proof, above
 - continuances, above
 - description, § 1:4
 - discrimination cases, § 1:9
 - employment cases, § 1:9
 - evidence on motion, above
 - foreseeable risk, sample documents and suggested text, § 1:93
 - genuine issues of material fact, § 1:6, 1:7
 - insurance, § 1:10
 - legal malpractice cases, § 1:11
 - medical malpractice cases, § 1:12
 - miscellaneous cases, § 1:13

SUMMARY JUDGMENT—Cont'd

- Supporting citations—Cont'd
 - not to be disfavored, § 1:5
 - oral argument, § 1:28
 - partial adjudication of case, § 1:29
 - personal injury cases, § 1:8
 - preemption, sample documents and suggested text, § 1:92
 - procedural considerations, above
 - property damage, § 1:8
 - purpose, § 1:4
 - review of motion, above
 - wrongful death cases, § 1:8
- Text of motion, suggested
 - generally, § 1:1
 - overview of motion, § 1:2
- Timing
 - Procedural considerations, above
 - untimely filed evidence, § 1:48
- Workers' compensation, sample briefs, § 1:88
- Wrongful death cases, § 1:8

WAIVER

- Personal Jurisdiction, Lack of, and Related Waivable Defenses, this index

WORKERS' COMPENSATION

- Summary judgment, sample briefs, § 1:88