

**RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY**  
**RULE 4:46. SUMMARY JUDGMENT**

**4:46-1. Time for Making, Filing, and Serving Motion**

A party seeking any affirmative relief may, at any time after the expiration of 35 days from the service of the pleading claiming such relief, move for a summary judgment or order on all or any part thereof or as to any defense. A party against whom a claim for such affirmative relief is asserted may move at any time for a summary judgment or order as to all or any part thereof. All motions for summary judgment shall be returnable no later than 30 days before the scheduled trial date, unless the court otherwise orders for good cause shown, and if the decision is not communicated to the parties at least 10 days prior to the scheduled trial date, an application for adjournment shall be liberally granted. Except as otherwise provided by R. 6:3-3 (motion practice in Special Civil Part) or unless the court otherwise orders, a motion for summary judgment shall be served and filed not later than 28 days before the time specified for the return date; opposing affidavits, certifications, briefs, and cross-motions for summary judgment, if any, shall be served and filed not later than 10 days before the return date; and answers or responses to such opposing papers or to cross-motions shall be served and filed not later than four days before the return date. No other papers may be filed without leave of court.

Note: Source – R.R. 4:58-1, 4:58-2. Caption and text amended November 1, 1985 to be effective January 2, 1986; amended November 5, 1986 to be effective January 1, 1987; amended November 7, 1988 to be effective January 2, 1989; amended July 13, 1994 to be effective September 1, 1994; amended June 28, 1996 to be effective September 1, 1996; amended July 10, 1998 to be effective September 1, 1998; amended July 27, 2006 to be effective September 1, 2006; amended July 9, 2008 to be effective September 1, 2008; amended July 19, 2012 to be effective September 4, 2012.

**4:46-2. Motion and Proceedings Thereon**

(a) Requirements in Support of Motion. The motion for summary judgment shall be served with a brief and a separate statement of material facts with or without supporting affidavits. The statement of material facts shall set forth in separately numbered paragraphs a concise statement of each material fact as to which the movant contends there is no genuine issue together with a citation to the portion of the motion record establishing the fact or demonstrating that it is uncontroverted. The citation shall identify the document and shall specify the pages and paragraphs or lines thereof or the specific portions of exhibits relied on. A motion for summary judgment may be denied without prejudice for failure to file the required statement of material facts.

(b) Requirements in Opposition to Motion. A party opposing the motion shall file a responding statement either admitting or disputing each of the facts in the movant's statement. Subject to R. 4:46-5(a), all material facts in the movant's statement which are sufficiently supported will be deemed admitted for purposes of the motion only, unless specifically disputed by citation conforming to the requirements of paragraph (a)

demonstrating the existence of a genuine issue as to the fact. An opposing party may also include in the responding statement additional facts that the party contends are material and as to which there exists a genuine issue. Each such fact shall be stated in separately numbered paragraphs together with citations to the motion record.

(c) Proceedings and Standards on Motions. The judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact. The court shall find the facts and state its conclusions in accordance with R. 1:7-4. A summary judgment or order, interlocutory in character, may be rendered on any issue in the action (including the issue of liability) although there is a genuine factual dispute as to any other issue (including any issue as to the amount of damages). Subject to the provisions of R. 4:42-2 (judgment upon multiple claims), a summary judgment final in character may be rendered in respect of any portion of the damages claimed.

Note: Source — *R.R.* 4:58-3. Amended July 14, 1972 to be effective September 5, 1972; amended June 29, 1973 to be effective September 10, 1973; amended and subparagraphs designated June 28, 1996 to be effective September 1, 1996; paragraph (b) amended July 10, 1998 to be effective September 1, 1998; paragraph (a) amended August 1, 2016 to be effective September 1, 2016.

#### **4:46-3. Case Not Adjudicated on Motion**

(a) Order Limiting Factual Controversy. If on motion under this rule judgment is not rendered upon the whole action or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall, if practicable, ascertain what material facts, including facts as to the amount of damages, exist without substantial controversy and shall thereupon make an order specifying those facts and directing such further proceedings in the action as are appropriate. Upon trial of the action the facts so specified shall be deemed established.

(b) Order for Trial. If after the inquiry prescribed by paragraph (a) of this rule it appears to the court at the hearing of the motion that the case may be fully or partially adjudicated upon limited testimony, with or without specific further discovery, the court shall, if practicable, enter an order fixing a date certain for the trial of specifically identified disputed factual issues and, if appropriate, fixing the subject, mode, and time for completion of discovery.

Note: Source-*R.R.* 4:58-4. Former rule redesignated as paragraph (a), paragraph (b) adopted July 26, 1984 to be effective September 10, 1984.

#### **4:46-4. Leave to Proceed Upon Terms**

Leave to proceed may be given unconditionally, or upon such terms as to giving security, or time or mode of trial, or otherwise, as is deemed just.

Note: Source-R.R. 4:58-5.

#### **4:46-5. Affidavits**

(a) **Specific Facts Required of Adverse Party Unless Affidavits Are Unavailable.** When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the pleading, but must respond by affidavits meeting the requirements of R. 1:6-6 or as otherwise provided in this rule and by R. 4:46-2(b), setting forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered unless it appears from the affidavits submitted, for reasons therein stated, that the party was unable to present by affidavit facts essential to justify opposition, in which case the court may deny the motion, may order a continuance to permit additional affidavits to be obtained, depositions to be taken or discovery to be had, or may make such other order as may be appropriate.

(b) **Affidavits Made in Bad Faith.** If the court is satisfied, at any time, that any of the affidavits submitted pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses resulting from the filing of the affidavits, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Note: Source-R.R. 4:58-7, 4:58-8(a)(b). Paragraph (a) caption and text amended June 29, 1973 to be effective September 10, 1973; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended June 28, 1996 to be effective September 1, 1996.

#### **4:46-6. Attorneys Fees**

In an action tried to conclusion in which the prevailing party had made a pretrial motion for summary judgment or partial summary judgment that was denied, the court may, on motion, award counsel fees to the prevailing party if it finds that the denial of the motion was based on a factual contention raised in bad faith by the party opposing the motion with knowledge that it was a palpable sham or predicated on facts known or which should have been known to be false. The motion shall be made to the trial court and shall be decided on the basis of the record made in the summary judgment motion and the trial of the cause. The award of counsel fees shall be limited to those legal services rendered on the motion for summary judgment and for such subsequent services as were compelled by its denial.

Note: Adopted July 22, 1983 to be effective September 12, 1983; amended July 13, 1994 to be effective September 1, 1994.