

## **RULE 4:67. Summary Actions**

### **4:67-1. Applicability**

This rule is applicable (a) to all actions in which the court is permitted by rule or by statute to proceed in a summary manner, other than actions for the recovery of penalties which shall be brought pursuant to R. 4:70; and (b) to all other actions in the Superior Court other than matrimonial actions and actions in which unliquidated monetary damages are sought, provided it appears to the court, on motion made pursuant to R. 1:6-3 and on notice to the other parties to the action not in default, that it is likely that the matter may be completely disposed of in a summary manner.

Note: Source-R.R. 4:85-1; amended July 24, 1978, to be effective September 11, 1978; amended July 26, 1984 to be effective September 10, 1984.

### **4:67-2. Complaint; Order to Show Cause; Motion**

- **(a) Order to Show Cause.** If the action is brought in a summary manner pursuant to R. 4:67-1(a), the complaint, verified by affidavit made pursuant to R. 1:6-6, may be presented to the court ex parte and service shall be made pursuant to R. 4:52-1(b), except that if the action is pending in the Law Division of the Superior Court, it shall be presented to the Assignment Judge or to such other judge as the Assignment Judge designates. The proceeding shall be recorded verbatim provided that the application is made at a time and place where a reporter or sound recording device is available. The court, if satisfied with the sufficiency of the application, shall order the defendant to show cause why final judgment should not be rendered for the relief sought. No temporary restraints or other interim relief shall be granted in the order unless the defendant has either been given notice of the action or consents thereto or it appears from the specific facts shown by affidavit or verified complaint that immediate and irreparable damage will result to the plaintiff before notice can be served or informally given. The order shall be so framed as to notify the defendant fully of the terms of the judgment sought, and subject to the provisions of R. 4:52, it may embody such interim restraint and other appropriate intermediate relief as may be necessary to prevent immediate and irreparable damage. The order to show cause may be in the form set forth in Appendix XII-F through XII-H to the extent applicable.
- **(b) Motion for Order to Proceed Summarily.** Actions referred to in R. 4:67-1(b) shall be commenced, and proceedings taken therein, as in other actions, except as herein provided. The notice of motion to proceed summarily shall be supported by affidavits made pursuant to R. 1:6-6 and, if addressed to the defendant, may be served with the summons and complaint; but it shall not be returnable until after the expiration of the time within which the defendant is required to answer the complaint. If the court is satisfied that the matter may be completely disposed of on the record (which may be supplemented by interrogatories, depositions and demands for admissions) or on minimal testimony in open court, it shall, by order, fix a short date for the trial of the action, which shall proceed in accordance with R. 4:67-5, insofar as applicable.

Note: Source-R.R. 4:85-2. Paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended July 9, 2008 to be effective September 1, 2008.

### **4:67-3. Service of Order to Show Cause**

If the order to show cause issues ex parte pursuant to R. 4:67-1(a), no summons shall issue unless the court otherwise orders. Process shall be a copy of the order to show cause, certified by the plaintiff's attorney to be a true copy. The order to show cause, together with a copy of the

complaint and affidavits similarly certified, shall be served within this State at least ten days before the return day and in the manner prescribed by R. 4:4-3 and R. 4:4 for the service of a summons, unless the court orders shorter or longer service or some other manner of service. Service may be made outside this State, or by mail, publication, or otherwise, all as the court by order directs, provided the nature of the action is such that the court may thereby acquire jurisdiction.

**Note:** Source-R.R. 4:85-3. Amended July 5, 2000 to be effective September 5, 2000.

#### **4:67-4. Answers; Objections; Demand for Jury Trial**

- (a) Ex Parte Order to Show Cause. If the order to show cause is issued ex parte pursuant to R. 4:67-1(a), the defendant shall, not later than 3 days before the return date, or within such further time as the court may allow, serve and file either an answer, an answering affidavit, or a motion returnable on the return day; in default thereof, the action may proceed ex parte. No counterclaim or cross-claim shall be asserted without leave of court.
- (b) Motion for Order to Proceed Summarily. A plaintiff proceeding pursuant to R. 4:67-1(b) shall be deemed to have waived any right to trial by jury to which plaintiff would otherwise have been entitled whether or not the motion is granted. A defendant entitled to trial by jury shall make demand therefor in accordance with R. 4:35, except that if the motion is returnable prior to the expiration of the time for demand therein provided, the demand shall be served and filed not later than 3 days before the return date of the motion and may be appended to any paper served and filed by the defendant in response to the motion. If the defendant has a right to and has demanded a trial by jury, the court, upon finding the existence of a genuine issue to a material fact, shall order the action to proceed as in a plenary action in accordance with R. 4:67-5.

**Note:** Source-R.R. 4:85-4 (first two sentences), 4:85-5 (fourth sentence). Paragraph (b) amended July 7, 1971 to be effective September 13, 1971; paragraph (b) amended July 13, 1994 to be effective September 1, 1994.

#### **4:67-5. Hearing; Judgment; Briefs**

The court shall try the action on the return day, or on such short day as it fixes. If no objection is made by any party, or the defendants have defaulted in the action, or the affidavits show palpably that there is no genuine issue as to any material fact, the court may try the action on the pleadings and affidavits, and render final judgment thereon. If any party objects to such a trial and there may be a genuine issue as to a material fact, the court shall hear the evidence as to those matters which may be genuinely in issue, and render final judgment. At the hearing or on motion at any stage of the action, the court for good cause shown may order the action to proceed as in a plenary action wherein a summons has been issued, in which case the defendant, if not already having done so, shall file an answer to the complaint within 35 days after the date of the order or within such other time as the court therein directs. In contested actions briefs shall be submitted.

**Note:** Source-R.R. 4:85-4 (third sentence), 4:85-5 (first three sentences), 4:85-7; amended July 13, 1994 to be effective September 1, 1994.

#### **4:67-6. Summary Proceedings to Enforce Agency Orders**

- **(a) Applicability of Rule.** This rule is applicable to (1) all actions by a state administrative agency as defined by N.J.S.A. 52:14B-2(a) brought to enforce a written order or determination entered by it, whether final or interlocutory, and whether the order to be enforced requires the payment of money or imposes a non-monetary requirement or includes a combination of monetary and non-monetary remedies; and (2)

all such enforcement actions brought by a party to the administrative proceeding in whose favor a written order or determination was entered affording that party specific relief.

- **(b) Form of Action; Where Brought; Notice.**
  - **(1) Final Orders.** Actions pursuant to paragraph (a) of this rule shall be brought in accordance with R. 4:67 unless an applicable statute requires a plenary action in a specific matter. If the order sought to be enforced requires only the payment of money, it may be brought in the Superior Court, Law Division, or in any other court having statutory jurisdiction over the specific matter. If the order sought to be enforced provides in full or in part for a non-monetary remedy, the action shall be brought in a trial division of the Superior Court subject to motion pursuant to R. 4:3-1(b) for transfer to the other trial division.
  - **(2) Interlocutory Orders.** An interlocutory order of an administrative agency to which R. 1:9-6 applies shall be enforced pursuant to the provisions of that rule in either trial division of the Superior Court. All other interlocutory orders shall be enforced as provided by subparagraph (b)(1) hereof.
  - **(3) Notice to Agency; Intervention.** Unless the action is brought by an agency seeking to enforce its own judgment or order, the plaintiff shall serve a copy of the complaint and order to show cause on the agency whose judgment or order is the subject of the action. The agency shall be permitted to intervene in the action on application made on or prior to the return date of the order to show cause.
- **(c) Review of Agency Orders; Stay of Enforcement.**
  - **(1) Generally.** Except as otherwise provided by subparagraph (c)(2) hereof, if a party appeals pursuant to R. 2:2-3(a)(2) from a final agency order or, pursuant to R. 2:2-4, seeks leave to appeal from an interlocutory agency order, an enforcement action may be stayed, before or after its commencement, only by the Appellate Division, which shall enter such order respecting a stay, conditions thereof, the order of proceedings, or otherwise as it deems appropriate.
  - **(2) Enforcement Pursuant to R. 1:9-6.** If enforcement of an order is sought pursuant to R. 1:9-6 and no proceeding is pending in the Appellate Division to review or seeking to review its validity, such review shall be had in the trial court by way of defense to enforcement. If there is already pending a review proceeding in the Appellate Division when the enforcement proceeding is instituted, the Appellate Division, on motion, may enter an order transferring the review proceeding to the trial court for consolidation with the enforcement proceeding or may enter any such order respecting the order of proceedings as it deems appropriate.
  - **(3) Nature of Proceedings.** Except as otherwise provided by subparagraph (c)(2) of this rule the validity of an agency order shall not be justiciable in an enforcement proceeding.

**Note:** Adopted July 22, 1983 to be effective September 12, 1983; paragraph (a), paragraph (b) caption, and paragraph (b)(2) amended, and paragraph (b)(3) adopted June 29, 1990 to be effective September 4, 1990.