

## **RULE 4:28. Joinder Of Parties**

### **4:28-1. Joinder of Persons Needed for Just Adjudication**

- **(a) Persons to Be Joined if Feasible.** A person who is subject to service of process shall be joined as a party to the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest in the subject of the action and is so situated that the disposition of the action in the person's absence may either (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or other inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant.
- **(b) Disposition by Court if Joinder Not Feasible.** If a person should be joined pursuant to R. 4:28-1(a) but cannot be served with process, the court shall determine whether it is appropriate for the action to proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, the extent to which a judgment rendered in the person's absence might be prejudicial to that person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.
- **(c) Pleading as to Non-joinder.** A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons described in R. 4:28-1(a) who are not joined and the reason why they are omitted.
- **(d) Party Refusing to Join as Plaintiff.** If a party who should be a plaintiff is joined in the complaint as a defendant, it shall state the reason therefor.
- **(e) Applicability; Exceptions.** This rule is applicable to the personal representatives of a deceased person described by R. 4:28-1(a). This rule is, furthermore, subject to the provisions of R. 4:32 (class actions).

Note: Source-R.R. 4:32-1, 4:32-3, 4:32-4, 4:32-5; paragraphs (a) and (e) amended June 29, 1990 to be effective September 4, 1990; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (e) amended July 10, 1998 to be effective September 1, 1998.

### **4:28-2. Claims by or Against Fiduciaries**

Claims by or against any fiduciary, as such, may be joined without leave of court with claims by or against the fiduciary personally in respect of or arising out of the fiduciaryship, and may, with leave of court, be joined with any other claims by or against the fiduciary personally.

Note: Source-R.R. 4:32-6; amended July 13, 1994 to be effective September 1, 1994.

### **4:28-3. Claims by or Against Spouse**

- **(a) Generally.** Claims by or against a husband and wife may be joined with claims by or against either of them separately.
- **(b) Mandatory Joinder of Spouses in Certain Negligence Actions.** All claims by spouses for physical injury and consortium losses resulting from the same course of negligent conduct of others shall be joined in a single action and shall be deemed to have been waived if not so joined unless the court, for good cause shown, otherwise orders.

Note: Source-R.R. 4:32-7.

#### **4:28-4. Notice to Attorney General and Attorneys for Other Governmental Bodies**

- **(a) Actions Involving Validity of Statute, Ordinance, etc.; Unknown Owners.**
  - **(1) State enactments; unknown owners.** If the validity of a State constitutional provision or of a statute, rule, regulation, executive order or franchise of this State is questioned in any action to which the State or an agency or officer thereof is not a party, the party raising the question shall give notice of the pendency of the action to the Attorney General. If the validity of an ordinance, regulation or franchise of a governmental subdivision of this State affecting the public interest is questioned in any action to which the subdivision or an agency or officer thereof is not a party, the party raising the question shall give notice of the pendency of the action to the attorney or chief legal officer of the governmental subdivision. The plaintiff in any action brought against unknown owners of or claimants to real property shall give notice of the pendency of the action to the Attorney General if the State is not already a party thereto.
  - **(2) Federal enactments.** If the constitutionality or validity of any federal statute, regulation, or other enactment of the federal government or any of its agencies is challenged in an action to which neither the federal government nor its agency or official is a party, the party raising the question shall give notice of the pendency of the action to the United States Attorney General or duly appointed designee for service.
- **(b) Actions Involving Charities, Trusts and Estates.** In addition to the notices to the Attorney General required by R. 4:80-3(c) (complaint for administration in absence of known next of kin) and 4:80-6 (notice of probate), the party seeking relief therein shall also give notice to the Attorney General of any action (except a negligence action) to which a charitable corporation or the trustee of an inter vivos charitable trust is a party and of any other action involving a will by which property is devoted to a present or future charitable use or purpose; but no notice need be given to the Attorney General in any such action involving a will unless the Attorney General has given written notice to the executor or administrator of a request to be notified of any action in connection with the estate.
- **(c) Form and Service of Notice.** The notice required by this rule shall have annexed to it a copy of all pleadings then filed. Notice to any official or agency of this State may be by ordinary mail. Notice to the United States Attorney General or duly appointed designee shall be by registered or certified mail with simultaneous ordinary mail service.
- **(d) Intervention; Judicial Action.** The federal, State or other government or its officials or agencies shall be permitted to intervene in the action by motion filed and served within 60 days following its receipt of the notice required by this rule, which time shall be enlargeable on motion filed and served during said 60-day period. Such motions shall be freely granted for good cause and in the interests of justice. Prior to expiration of the time to intervene, the court may reject the challenge or may grant interlocutory relief, but may not enter a final judgment declaring the enactment invalid.

**Note:** Source - R.R. 4:37-2, 4:117-6. Paragraph (a) amended July 7, 1971 to be effective September 13, 1971; paragraphs (a) and (b) amended June 29, 1990 to be effective September 4, 1990; paragraphs (b) and (c) amended July 13, 1994 to be effective September 1, 1994; text of paragraph (a) redesignated as paragraph (a)(1), paragraph (a)(2) adopted, paragraph (c) amended, and paragraph (d) caption and text amended July 27, 2006 to be effective September 1, 2006.