

RULE 4:38. Consolidation; Separate Trials

4:38-1. Consolidation

- **(a) Actions in the Superior Court.** When actions involving a common question of law or fact arising out of the same transaction or series of transactions are pending in the Superior Court, the court on a party's or its own motion may order the actions consolidated. If the actions are not triable in the same county or vicinage, the order shall be made by the Assignment Judge of the county in which the venue is laid in the action first instituted on a party's motion, the judge's own initiative, or on certification of the matter to the judge by a judge of the Law or Chancery Division. A motion to consolidate an action pending in the Special Civil Part with an action pending in the Chancery Division or the Civil Part of the Law Division shall be heard, regardless of which action was first filed, in the county in which venue is laid in the Chancery or Law Division, Civil Part action. If the motion is granted, the Special Civil Part action shall be consolidated with the Chancery or Law Division, Civil Part action.
- **(b) Actions in the Superior and Other Courts.** When an action is pending in the Superior Court, and another action involving a common question of law or fact arising out of the same transaction or series of transactions is pending in any other court, the Superior Court on a party's or its own motion may remove the action from the other court and consolidate it with the action in the Superior Court.
- **(c) Order; Further Proceedings.** Unless the court otherwise directs in the order of consolidation, all papers thereafter filed in the consolidated action shall (1) include the caption and docket number of each separate action, that of the earliest instituted action to be listed first, and (2) state with specificity the pleading or motion to which the paper is responsive. If actions pending in different venues are consolidated, the order shall specify the venue in which the consolidated action shall proceed and the party having the responsibility to file a copy of the order with the deputy clerk of the Superior Court in each county from which an action is being transferred. The order of consolidation may also include such terms as the court may prescribe to expedite further proceedings. In addition to the filing required by R. 1:6-4, a copy of the order of consolidation shall be included in the deputy clerk of the Superior Court's file of each separate action.

Note: Source-R.R. 4:43-1(a)(b)(c)(d)(e); paragraph (b) amended, paragraphs (c) and (d) deleted and former paragraph (e) redesignated as paragraph (c) July 26, 1984 effective September 10, 1984; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended July 9, 2008 to be effective September 1, 2008.

4:38-2. Separate Trials

- **(a) Severance of Claims.** The court, for the convenience of the parties or to avoid prejudice, may order a separate trial of any claim, cross-claim, counterclaim, third-party claim, or separate issue, or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.
- **(b) Separation of Liability and Damage Claims.** Whenever multiple parties, issues or claims are presented in individual or consolidated actions and the nature of the action or actions is such that a trial of all issues as to liability and damages may be complex and confusing, or whenever the court finds that a substantial saving of time would result from trial of the issue of liability in the first instance, the court may on a party's or its own motion, direct that the issues of liability and damages be separately tried. Except in extraordinary circumstances, the issue of liability shall be tried first, and if the order of bifurcation otherwise directs, the reasons therefor shall be explicitly stated therein.

Note: Source-R.R. 4:43-2(a)(b). Caption of paragraph (b) amended November 5, 1986 to be effective January 1, 1987; paragraph (b) amended January 19, 1989 to be effective February 1, 1989.

