

RULE 4:42. Judgment; Orders; Damages; Costs

4:42-1. Form; Settlement

- **(a) Form; Contents.** A judgment or order shall not contain a recital of the pleadings or the record of prior proceedings. It shall, however, include the following:
 - **(1)** A designation of the subject of the judgment or order (i.e., Summary Judgment Dismissing Complaint, Order Modifying Alimony);
 - **(2)** The date or dates on which the matter was heard or submitted;
 - **(3)** The appearances of counsel and parties appearing pro se;
 - **(4)** A separate numbered paragraph for each separate substantive provision of the judgment or order;
 - **(5)** The effective date of the judgment or order or of each provision if the effective date of any provision is different from the date of entry;
 - **(6)** A notation of whether the matter was opposed or unopposed as required by R. 1:6-2(a); and
 - **(7)** The notation prescribed by R. 1:6-2(f) respecting findings and conclusions and the annexation of a statement of reasons if required by that rule or by R. 1:7-4.
- **(b) Settlement by Motion or Consent.** Except as otherwise provided by paragraphs (c) and (d) of this rule, by other rule or by law, and except for ex parte matters, no judgment or order shall be signed by the court unless the form thereof has been settled on motion on notice to all parties affected thereby who are not in default for failure to appear, or unless the written approval of such attorneys or parties to the form thereof is endorsed thereon. Formal written judgments or orders shall be presented to the court for execution within 10 days after its decision is made known, unless such time is enlarged for good cause.
- **(c) Settlement on Notice.** In lieu of settlement by motion or consent, the party proposing the form of judgment or order may forward the original thereof to the judge who heard the matter and shall serve a copy thereof on every other party not in default together with a notice advising that unless the judge and the proponent of the judgment or order are notified in writing of specific objections thereto within 5 days after such service, the judgment or order may be signed in the judge's discretion. If no such objection is timely made, the judge may forthwith sign the judgment or order. If objection is made, the matter may be listed for hearing in the discretion of the court.
- **(d) Form of Consent Judgments and Orders.** The court may enter a consent judgment or order without the signatures of all counsel of record and parties pro se who have filed a responsive pleading or who have otherwise entered an appearance in the action, provided the form of judgment or order contains the recital that all parties have in fact consented to the entry of the judgment or order in the form submitted. If any party to be bound by the consent judgment has not filed a responsive pleading or entered an appearance in the action, the consent judgment must bear the signature of each such party or such party's attorney, indicating consent to the form and entry of the judgment. No supporting papers shall be required for the entry of a consent judgment unless the court specifically finds good cause to require the filing of such submissions. Consent judgments may be entered in accordance with this rule at any time following service of the complaint, whether or not an answer or any other responsive pleading has been served or filed.
- **(e) Submission and Filing of Orders and Judgments.** An original and one copy of all forms of orders and judgments shall be submitted to the judge together with a self-addressed, stamped envelope. The judge signing the order or judgment shall file the original in accordance with R. 1:5-6(b), and the copy shall be returned by the judge to the attorney submitting the order or judgment. The proponent may transmit the copy to the Clerk of the Superior Court, together with the fee prescribed by N.J.S.A. 22A:2-7, for

appropriate disposition pursuant to R. 4:101. In matrimonial matters such additional copies of the orders shall be submitted as required by the court.

Note: Source-R.R. 4:55-1; paragraph (b) amended July 29, 1977 to be effective September 6, 1977; new paragraph (c) adopted July 16, 1981 to be effective September 14, 1981; former paragraph (a) redesignated paragraph (b) with caption and text amended, former paragraph (b) redesignated paragraph (c), former paragraph (c) redesignated paragraph (e), and new paragraphs (a) and (d) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (d) and (e) amended July 13, 1994 to be effective September 1, 1994; paragraphs (c), (d) and (e) amended June 28, 1996 to be effective September 1, 1996.

4:42-2. Judgment Upon Multiple Claims

If an order would be subject to process to enforce a judgment pursuant to R. 4:59 if it were final and if the trial court certifies that there is no just reason for delay of such enforcement, the trial court may direct the entry of final judgment upon fewer than all the claims as to all parties, but only in the following circumstances: (1) upon a complete adjudication of a separate claim; or (2) upon complete adjudication of all the rights and liabilities asserted in the litigation as to any party; or (3) where a partial summary judgment or other order for payment of part of a claim is awarded. In the absence of such direction, any order or form of decision which adjudicates fewer than all the claims as to all the parties shall not terminate the action as to any of the claims, and it shall be subject to revision at any time before the entry of final judgment in the sound discretion of the court in the interest of justice. To the extent possible, application for reconsideration shall be made to the trial judge who entered the order.

Note: Source-R.R. 4:55-2; amended July 16, 1981 to be effective September 14, 1981; amended November 1, 1985 to be effective January 2, 1986; amended November 7, 1988 to be effective January 2, 1989.

4:42-3. Declaratory Judgment

A judgment for declaratory relief, if appropriate, is not precluded by the existence of another appropriate remedy.

Note: Source-R.R. 4:92A (second sentence).

4:42-4. Effect of Unsatisfied Judgment Against One or More of Several Persons Jointly Liable

A judgment against a person jointly liable with another person shall not, unless it is satisfied, bar a judgment against the latter.

Note: Source-R.R. 4:55-3.

4:42-5. Effect of Judgment for Possession

A plaintiff who has obtained a judgment for possession of real property, or the plaintiff's personal representative, is not precluded from bringing a subsequent action for the recovery of mesne profits and damages.

Note: Source-R.R. 4:79-7; amended July 13, 1994 to be effective September 1, 1994.

4:42-6. Effect of Demand for Judgment

Every final judgment, except final judgments by default, shall grant the relief to which the party in whose favor it is rendered is entitled even though that party has not demanded such relief in

the pleadings, provided the parties have been given an adequate opportunity to be heard as to the relief granted.

Note: Source-R.R. 4:55-4 (second sentence); amended July 13, 1994 to be effective September 1, 1994.

4:42-7. Damages in Continuing Cause

If damages are to be determined in respect of any continuing cause of action, they shall be determined to the time of the trial or assessment.

Note: Source-R.R. 4:55-5.

4:42-8. Costs

- **(a) Parties Entitled.** Unless otherwise provided by law, these rules or court order, costs shall be allowed as of course to the prevailing party. The action of the clerk in taxing costs is reviewable by the court on motion.
- **(b) Defendants in Certain Actions.** Costs shall be allowed against a defaulting defendant in a replevin action only if the defendant has refused to deliver the subject goods and chattels pursuant to written demand therefor made before commencement of the action. Costs shall not be allowed against a defendant in a quiet title action who defaults or files an action disclaiming any right in the subject property, and a defendant in such action who denies in the answer claiming or ever having claimed any right in the subject property may, by court order, be allowed costs.
- **(c) Proof of Costs.** A party entitled to taxed costs shall file with the clerk of the court an affidavit stating that the disbursements taxable by law and therein set forth have been necessarily incurred and are reasonable in amount, and if incurred for the attendance of witnesses, shall state the number of days of actual attendance and the distance traveled, if mileage is charged. Such costs may include fees paid to a private person serving process pursuant to R. 4:4-3, but not in an amount exceeding allowable sheriff's fees for that service.
- **(d) Effective Date.** If a court allows costs to be taxed later than 6 months after entry of a judgment or order, or when the judgment or order becomes the subject of review or further litigation later than 6 months after it has been finally disposed of, the judgment for costs shall not take effect before the entry in the civil docket.

Note: Source-R.R. 4:55-6(a)(b)(c)(d)(e), 7:9-6 (last sentence); paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended July 12, 2002 to be effective September 3, 2002.

4:42-9. Attorney's Fees

- **(a) Actions in Which Fee Is Allowable.** No fee for legal services shall be allowed in the taxed costs or otherwise, except
 - **(1)** In a family action, a fee allowance both pendente lite and on final determination may be made pursuant to R. 5:3-5(c).
 - **(2)** Out of a fund in court. The court in its discretion may make an allowance out of such a fund, but no allowance shall be made as to issues triable of right by a jury. A fiduciary may make payments on account of fees for legal services rendered out of a fund entrusted to the fiduciary for administration, subject to approval and allowance or to disallowance by the court upon settlement of the account.
 - **(3)** In a probate action, if probate is refused, the court may make an allowance to be paid out of the estate of the decedent. If probate is granted, and it shall appear that the contestant had reasonable cause for contesting the validity of the

will or codicil, the court may make an allowance to the proponent and the contestant, to be paid out of the estate. In a guardianship action, the court may allow a fee in accordance with R. 4:86-4(e) to the attorney for the party seeking guardianship, counsel appointed to represent the alleged incapacitated person, and the guardian ad litem.

- **(4)** In an action for the foreclosure of a mortgage, the allowance shall be calculated as follows: on all sums adjudged to be paid the plaintiff amounting to \$5,000 or less, at the rate of 3.5%, provided, however, that in any action a minimum fee of \$75 shall be allowed; upon the excess over \$5,000 and up to \$10,000 at the rate of 1.5%; and upon the excess over \$10,000 at the rate of 1%, provided that the allowance shall not exceed \$7,500. If, however, application of the formula prescribed by this rule results in a sum in excess of \$7,500, the court may award an additional fee not greater than the amount of such excess on application supported by affidavit of services. In no case shall the fee allowance exceed the limitations of this rule.
- **(5)** In an action to foreclose a tax certificate or certificates, the court may award attorney's fees not exceeding \$500 per tax sale certificate in any in rem or in personam proceeding except for special cause shown by affidavit. If the plaintiff is other than a municipality no attorney's fees shall be allowed unless prior to the filing of the complaint the plaintiff shall have given not more than 120 nor fewer than 30 days' written notice to all parties entitled to redeem whose interests appear of record at the time of the tax sale, by registered or certified mail with postage prepaid thereon addressed to their last known addresses, of intention to file such complaint. The notice shall also contain the amount due on the tax lien as of the day of the notice. A copy of the notice shall be filed in the office of the municipal tax collector.
- **(6)** In an action upon a liability or indemnity policy of insurance, in favor of a successful claimant.
- **(7)** As expressly provided by these rules with respect to any action, whether or not there is a fund in court.
- **(8)** In all cases where attorney's fees are permitted by statute.
- **(b) Affidavit of Service.** Except in tax and mortgage foreclosure actions, all applications for the allowance of fees shall be supported by an affidavit of services addressing the factors enumerated by RPC 1.5(a). The affidavit shall also include a recitation of other factors pertinent in the evaluation of the services rendered, the amount of the allowance applied for, and an itemization of disbursements for which reimbursement is sought. If the court is requested to consider the rendition of paraprofessional services in making a fee allowance, the affidavit shall include a detailed statement of the time spent and services rendered by paraprofessionals, a summary of the paraprofessionals' qualifications, and the attorney's billing rate for paraprofessional services to clients generally. No portion of any fee allowance claimed for attorneys' services shall duplicate in any way the fees claimed by the attorney for paraprofessional services rendered to the client. For purposes of this rule, "paraprofessional services" shall mean those services rendered by individuals who are qualified through education, work experience or training who perform specifically delegated tasks which are legal in nature under the direction and supervision of attorneys and which tasks an attorney would otherwise be obliged to perform.
- **(c) Statement of Fees Received.** All applications for the allowance of fees shall state how much had been paid to the attorney (including, in a matrimonial action, the amount, if any, received by the attorney from pendente lite allowances) and what provision, if any, has been made for the payment of fees to the attorney in the future.
- **(d) Prohibiting Separate Orders for Allowances of Fees.** An allowance of fees made on the determination of a matter shall be included in the judgment or order stating the determination.

Note: Source - R.R. 4:55-7(a) (b) (c) (d) (e) (f), 4:55-8, 4:98-4(c). Paragraphs (a) and (b) amended July 7, 1971 to be effective September 13, 1971; paragraph (a) amended November 27, 1974 to be effective April 1, 1975; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a)(1) amended December 20, 1983 to be effective December 31, 1983; paragraphs (a)(1) and (b) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended January 19, 1989 to be effective February 1, 1989; paragraph (a)(4) amended June 29, 1990 to be effective September 4, 1990; paragraph (a)(5) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(1), (2) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a)(5) amended June 28, 1996 to be effective September 1, 1996; paragraph (a)(1) amended January 21, 1999 to be effective April 5, 1999; paragraph (a)(5) amended July 28, 2004 to be effective September 1, 2004; paragraph (a)(3) amended July 27, 2006 to be effective September 1, 2006; caption amended and subparagraphs (a)(5) and (a)(8) amended July 23, 2010 to be effective September 1, 2010.

4:42-10. Search Fees

- **(a) Fees Allowable.** In an action for the foreclosure of a mortgage or tax certificate or for partition and sale of realty, the court or the clerk may, as a matter of discretion, tax as part of the taxable costs all legal fees and reasonable charges necessarily paid or incurred in procuring searches relative to the title of the subject premises, provided that the minimum fee shall be \$75 and the maximum fee shall be \$500. If, however, 1% of the amount found due plaintiff is more than \$75 and less than \$500, such 1% shall be the maximum fee. In tax foreclosure actions brought to foreclose tax sale certificates on more than one parcel, the fees herein prescribed shall apply to each separate parcel, except, however, that in in rem tax foreclosure actions pursuant to R. 4:64-7, the fee shall be \$75 for each separate parcel, and the maximum fee herein prescribed shall not apply. The court or the clerk may also authorize inclusion of all legal fees and charges necessarily incurred for searches required for unpaid taxes or municipal liens and for searches required to enable the officer making public sale to insert in the notices, advertisements and conditions of sale, a description of the estate or interest to be sold and the defects in title and liens or encumbrances thereon, as authorized by law.
- **(b) Affidavit of Fees; Limitations.** Fees for searches shall not be taxed, unless prior to the taxing thereof the plaintiff or plaintiff's attorney has filed an affidavit setting forth an itemized statement of the fees and charges for which taxation is asked, and including only such fees and charges as were actually and necessarily paid or incurred for the purpose of the action. Without court order no search fees shall be certified or taxed for searches respecting the state of the title or encumbrances thereon prior to the commencement of the co-tenancy in partition actions, or prior to the date of the mortgage in foreclosure actions. In tax foreclosures where the plaintiff is other than a municipality a notice similar to that required by R. 4:42-9(a)(5) shall be sent where search fees are to be applied for.

Note: Source-R.R. 4:55-9(a)(b). Paragraph (a) amended November 27, 1974 effective April 1, 1975; paragraph (a) amended July 24, 1978 to be effective September 11, 1978; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994.

4:42-11. Interest; Rate on Judgments; in Tort Actions

- **(a) Post Judgment Interest.** Except as otherwise ordered by the court or provided by law, judgments, awards and orders for the payment of money, taxed costs and attorney's fees shall bear simple interest as follows:
 - **(i)** For periods prior to January 2, 1986, the annual rate of return shall be as heretofore provided by this rule, namely, 6% for the period prior to April 1, 1975; 8% for the period between April 1, 1975 and September 13, 1981; and 12% for the period between September 14, 1981 and January 1, 1986.
 - **(ii)** For judgments not exceeding the monetary limit of the Special Civil Part at the time of entry, regardless of the court in which the action was filed: commencing January 2, 1986 and for each calendar year thereafter, the annual rate of interest shall equal the average rate of return, to the nearest whole or

one-half percent, for the corresponding preceding fiscal year terminating on June 30, of the State of New Jersey Cash Management Fund (State accounts) as reported by the Division of Investment in the Department of the Treasury, but the rate shall be not less than 0.25%.

- **(iii)** For judgments exceeding the monetary limit of the Special Civil Part at the time of entry: in the manner provided for in subparagraph (a)(ii) of this Rule until September 1, 1996; thereafter, at the rate provided in subparagraph (a)(ii) plus 2% per annum.

Post-judgment interest may be included in the calculation of an attorney's contingency fee.

- **(b) Tort Actions.** Except where provided by statute with respect to a public entity or employee, and except as otherwise provided by law, the court shall, in tort actions, including products liability actions, include in the judgment simple interest, calculated as hereafter provided, from the date of the institution of the action or from a date 6 months after the date the cause of action arises, whichever is later, provided that in exceptional cases the court may suspend the running of such prejudgment interest. Prejudgment interest shall not, however, be allowed on any recovery for future economic losses. Prejudgment interest shall be calculated in the same amount and manner provided for by paragraph (a) of this rule except that for all periods prior to January 1, 1988 interest shall be calculated at 12% per annum. The contingent fee of an attorney shall not be computed on the interest so included in the judgment.

Note: Adopted December 21, 1971 to be effective January 31, 1972. Paragraph (b) amended June 29, 1973 to be effective September 10, 1973; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraphs (a) and (b) amended July 29, 1977 to be effective September 6, 1977; paragraphs (a) and (b) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended November 2, 1987 to be effective January 1, 1988; paragraph (a)(ii) amended and paragraph (a)(iii) added June 28, 1996 to be effective September 1, 1996; paragraph (b) amended April 28, 2003 to be effective July 1, 2003; paragraph (a) amended July 23, 2010 to be effective September 1, 2010; paragraph (a)(ii) amended July 22, 2014 to be effective September 1, 2014.