

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 4:5. GENERAL RULES OF PLEADING

4:5-1. General Requirements for Pleadings

(a) Pleadings Allowed. There shall be a complaint and an answer; an answer to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint pursuant to R. 4:8; a third-party answer, if a third-party complaint is served; and a reply, if an affirmative defense is set forth in an answer and the pleader wishes to allege any matter constituting an avoidance of the defense. No other pleading is allowed.

(b) Requirements for First Pleadings.

(1) Case Information Statement. A Case Information Statement in the form prescribed by Appendix XII-B(1) (Civil Actions General) or Appendix XII-B(2) (Foreclosure Actions) shall be annexed as a cover sheet to each party's first pleading in all civil actions except civil commitment actions brought pursuant to Rule 4:74-7, probate actions, and all non-foreclosure general equity actions.

(2) Notice of Other Actions and Potentially Liable Persons. Each party shall include with the first pleading a certification as to whether the matter in controversy is the subject of any other action pending in any court or of a pending arbitration proceeding, or whether any other action or arbitration proceeding is contemplated; and, if so, the certification shall identify such actions and all parties thereto. Further, each party shall disclose in the certification the names of any non-party who should be joined in the action pursuant to R. 4:28 or who is subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts. Each party shall have a continuing obligation during the course of the litigation to file and serve on all other parties and with the court an amended certification if there is a change in the facts stated in the original certification. The court may require notice of the action to be given to any non-party whose name is disclosed in accordance with this rule or may compel joinder pursuant to R. 4:29-1(b). If a party fails to comply with its obligations under this rule, the court may impose an appropriate sanction including dismissal of a successive action against a party whose existence was not disclosed or the imposition on the noncomplying party of litigation expenses that could have been avoided by compliance with this rule. A successive action shall not, however, be dismissed for failure of compliance with this rule unless the failure of compliance was inexcusable and the right of the undisclosed party to defend the successive action has been substantially prejudiced by not having been identified in the prior action.

(3) Certification of Compliance with Rule 1:38-7(c). The first filed pleading of any party in an action in the Chancery Division, General Equity Part, the Chancery Division, Probate Part, or in the Law Division, Special Civil Part shall include a certification of compliance as required in R. 1:38-7(c) that states, "I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b)."

(c) Designation of Trial Counsel. Designation of trial counsel may be made in the party's first pleading. If trial counsel is not designated in the pleading, designation shall be made as required in R. 4:25-4.

Note: Source-R.R. 4:7-1; amended July 26, 1984 to be effective September 10, 1984; caption and text amended November 26, 1990 to be effective April 1, 1991; paragraph (c) added July 13, 1994 to be effective September 1, 1994; paragraph (b)(2) amended July 10, 1998 to be effective September 1, 1998; paragraph (b)(1) amended July 5, 2000 to be effective September 5, 2000; paragraph (b)(1) amended July 9, 2008 to be effective September 1, 2008; paragraph (b)(3) adopted July 16, 2009 to be effective September 1, 2009; paragraph (b)(3) amended June 23, 2010 to be effective July 1, 2010.

4:5-2. Claim for Relief

Except as may be more specifically provided by these rules in respect of specific actions, a pleading which sets forth a claim for relief, whether an original claim, counter-claim, cross-claim or third-party claim, shall contain a statement of the facts on which the claim is based, showing that the pleader is entitled to relief, and a demand for judgment for the relief to which the pleader claims entitlement. Relief in the alternative or of several different types may be demanded. If unliquidated money damages are claimed in any court, other than the Special Civil Part, the pleading shall demand damages generally without specifying the amount. If a pleading filed in the Special Civil Part states a demand in excess of the amount cognizable in that court, said pleading shall be filed by the clerk for the full cognizable amount and any amount in excess thereof shall be deemed waived unless the action is transferred pursuant to R. 6:4-1. The clerk of the Special Civil Part shall, in any pleading filed that does not set forth a cognizable amount, consider the demand to be for the maximum amount and the maximum filing fee shall be charged. Upon service of a written request by another party, the party filing the pleading shall within 5 days after service thereof furnish the requesting party with a written statement of the amount of damages claimed, which statement shall not be filed except on court order.

Note: Source-R.R. 4:8-1. Amended December 20, 1983 to be effective December 31, 1983; amended November 5, 1986 to be effective January 1, 1987; amended July 13, 1994 to be effective September 1, 1994.

4:5-3. Answer; Defenses; Form of Denials

An answer shall state in short and plain terms the pleader's defenses to each claim asserted and shall admit or deny the allegations upon which the adversary relies. A physician defending against a malpractice claim who admits to treating the plaintiff must include in his or her answer the field of medicine in which he or she specialized at that time, if any, and whether his or her treatment of the plaintiff involved that specialty. A pleader who is without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state and, except as otherwise provided by R. 4:64-1(c) (foreclosure actions), this shall have the effect of a denial. Denials shall fairly meet the substance of the allegations denied. A pleader who intends in good faith to deny only a part or a qualification of an allegation shall specify so much of it as is true and material and deny only the remainder. The pleader may not generally deny all the allegations but shall make the denials as specific denials of designated allegations or paragraphs.

Note: Source — R.R. 4:8-2; amended July 13, 1994 to be effective September 1, 1994; amended August 1, 2006 to be effective September 1, 2006; amended July 19, 2012 to be effective September 4, 2012.

4:5-4. Affirmative Defenses; Misdesignation of Defense and Counterclaim

A responsive pleading shall set forth specifically and separately a statement of facts constituting an avoidance or affirmative defense including but not limited to accord and satisfaction, arbitration and award, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, frustration of purpose, illegality, impossibility of performance, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, and waiver. If a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, on terms if the interest of justice requires, shall treat the pleading as if there had been a proper designation.

Note: Source — R.R. 4:8-3; amended August 1, 2016 to be effective September 1, 2016.

4:5-5. Effect of Failure to Deny

Allegations in a pleading which sets forth a claim for relief, other than those as to the amount of damages, are admitted if not denied in the answer thereto. In every action brought upon a negotiable instrument, the authenticity of any signature or endorsement thereon shall be taken to be admitted unless the same is put in issue by the pleadings. Allegations in any answer setting forth an affirmative defense shall be taken as denied if not avoided in a reply; issue shall be deemed to have been joined upon allegations in an answer setting forth other matters. Allegations in a reply shall be taken as denied or avoided, and any defense thereto in law or fact may be asserted at trial.

Note: Source-R.R. 4:8-4.

4:5-6. Consistency

A party may set forth 2 or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When 2 or more statements are made in the alternative and one of them, if made independently, would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. As many separate claims or defenses as the party has may be stated regardless of their consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in R. 1:4-8.

Note: Source-R.R. 4:8-5(b); amended July 13, 1994 to be effective September 1, 1994.

4:5-7. Pleadings to Be Concise and Direct; Construction

Each allegation of a pleading shall be simple, concise and direct, and no technical forms of pleading are required. All pleadings shall be liberally construed in the interest of justice.

Note: Source-R.R. 4:8-5(a), 4:8-6.

4:5-8. Pleading Special Matters

(a) Fraud; Mistake; Condition of Mind. In all allegations of misrepresentation, fraud, mistake, breach of trust, willful default or undue influence, particulars of the wrong, with dates and items if necessary, shall be stated insofar as practicable. Malice, intent, knowledge, and other condition of mind of a person may be alleged generally.

(b) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to allege generally that all such conditions have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, but when so made the party pleading the performance or occurrence has the burden of establishing it.

(c) Pleading According to Legal Effect. Acts and contracts may be stated according to their legal effect, but in so doing the pleading should be such as fairly to apprise the adverse party of the state of facts which it is intended to prove; thus, an act or promise of a principal other than a corporation, if in fact proceeding from an agent known to the pleader, should be so stated. In pleading an official document or official act it is sufficient to allege that the document was issued or the act done in compliance with law.

(d) Judgment. A judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or administrative agency or officer, may be alleged without stating matter showing jurisdiction to render it.

(e) Time and Place. For the purpose of testing the sufficiency of a pleading, allegations of time and place are material and shall be considered like all other allegations of material matter.

(f) Special Damage. Items of special damage claimed shall be specially stated, except that if a general demand for unliquidated damages is made pursuant to R. 4:5-2, the facts giving rise to any included claim for special damages shall be specially stated in lieu of the monetary claim therefor.

Note: Source-R.R. 4:9-1, 4:9-2, 4:9-3, 4:9-4, 4:9-5, 4:9-6.