

## **RULE 4:6. Defenses And Objections: When And How Presented; By Pleading Or Motion; Motion For Judgment On Pleadings**

### **4:6-1. When Presented**

(a) Time; Presentation. Except as otherwise provided by Rules 4:7-5(c) (crossclaims), 4:8-1(b) (third-party joinder), 4:9-1 (answer to amended complaint), and 4:64-1(i) (governmental answer in foreclosure actions), the defendant shall serve an answer, including therein any counterclaim, within 35 days after service of the summons and complaint on that defendant. If service is made as provided by court order, pursuant to R. 4:4-4(b)(3), the time for service of the answer may be specified therein. Service of the answer shall be complete as provided by R. 1:5-4. A party served with a pleading stating a counterclaim or crossclaim against that party shall serve an answer thereto within 35 days after the service upon that party. A reply to an answer, where permitted, shall be served within 20 days after service of the answer.

(b) Time; Effect of Certain Motions. Unless the court fixes a different time period, the time periods prescribed in paragraph (a) of this rule are altered by the filing and service of a motion under R. 4:6 or for summary judgment under R. 4:46 or R. 4:69-2 as follows: (1) if the motion is denied in whole or part or its disposition postponed until trial, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if a motion for a more definite statement is granted, the responsive pleadings shall be served within 10 days after the service of such statement. If notice is given a nonresident party demanding security for costs and the nonresident gives notice of the filing of the bond or the making of the deposit, the party making the demand shall then have the same time to plead as may have remained at the time of the service of the notice demanding the security.

(c) Time; Extension by Consent. The time for service of a responsive pleading may be enlarged for a period not exceeding 60 days by the written consent of the parties, which shall be filed with the responsive pleading within said 60-day period. Further enlargements shall be allowed only on notice by court order, on good cause shown therefor.

(d) Certificate of Service. The party filing the responsive pleading or the party's attorney shall certify thereon, or in an acknowledgment, proof or certificate of service, that the pleading was served within the time period allowed by R. 4:6 or other rule specified in the certificate.

**Note:** Source – R.R. 4:12-1(a)(b)(c)(e), 4:96-2(c); paragraph (a) amended July 29, 1977 to be effective September 6, 1977; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) amended June 29, 1990 to be effective September 4, 1990; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (d) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (c) amended June 28, 1996 to be effective September 1, 1996; paragraph (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended August 1, 2006 to be effective September 1, 2006.

#### **4:6-2. How Presented**

Every defense, legal or equitable, in law or fact, to a claim for relief in any complaint, counterclaim, cross-claim, or third-party complaint shall be asserted in the answer thereto, except that the following defenses, unless otherwise provided by R. 4:6-3, may at the option of the pleader be made by motion, with briefs: (a) lack of jurisdiction over the subject matter, (b) lack of jurisdiction over the person, (c) insufficiency of process, (d) insufficiency of service of process, (e) failure to state a claim upon which relief can be granted, (f) failure to join a party without whom the action cannot proceed, as provided by R. 4:28-1. If a motion is made raising any of these defenses, it shall be made before pleading if a further pleading is to be made. No defense or objection is waived by being joined with one or more other defenses in an answer or motion. Special appearances are superseded. A motion to dismiss based on defense (e), and any opposition thereto, shall be filed and served in accordance with the time frames set forth in R. 4:46-1. If, on a motion to dismiss based on defense (e), matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46, and all parties shall be given reasonable notice of the court's intention to treat the motion as one for summary judgment and a reasonable opportunity to present all material pertinent to such a motion.

**Note:** Source — *R.R. 4:12-2* (first, second and fourth sentences); amended July 23, 2010 to be effective September 1, 2010; amended July 27, 2018 to be effective September 1, 2018; amended July 31, 2020 to be effective September 1, 2020.

#### **4:6-3. Required Motions; Preliminary Hearings**

Defenses (a) (e) and (f) in R. 4:6-2, whether made in an answer or by motion, shall be heard and determined before trial on application of any party, unless the court for good cause orders that the hearing and determination thereof be deferred until the trial. Defenses (b) (c) and (d) in R. 4:6-2 shall be raised by motion within 90 days after service of the answer, provided that defense has been asserted therein and provided, further, that no previous motion to which R. 4:6-6 is applicable has been made.

**Note:** Source – *R.R. 4:12-4*.

#### **4:6-4. Motion for More Definite Statement or to Strike or Dismiss for Impropriety of Pleading**

(a) **More Definite Statement.** If a responsive pleading is to be made to a pleading which is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of

and the details desired. If the motion is granted and the order of the court not complied with within 10 days after notice of the order or within such other time as the court fixes, the court may strike the pleading to which the motion was directed or make such order as it deems appropriate. The statement shall become a part of the pleading which it supplements.

(b) **Impropriety of Pleading.** On the court's or a party's motion, the court may either (1) dismiss any pleading that is, overall, scandalous, impertinent, or, considering the nature of the cause of action, abusive of the court or another person; or (2) strike any such part of a pleading or any part thereof that is immaterial or redundant. The order of dismissal shall comply with R. 4:37-2(a) and may expressly require, as a condition of the refiling of a pleading asserting a claim or defense based on the same transaction, the payment by the pleading party of attorney's fees and costs incurred by the party who moved for dismissal.

**Note:** Source – R.R. 4:12-5. Caption amended, former rule redesignated paragraph (a) caption provided and paragraph (b) adopted November 2, 1987 to be effective January 1, 1988; paragraph (a) amended July 13, 1994 to be effective September 1, 1994.

#### **4:6-5. Motion to Strike for Insufficiency**

On motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, on motion made within 20 days after the service of the pleading upon the party, or upon the court's own initiative at any time, the court may order stricken from any pleading any defense insufficient in law.

**Note:** Source – R.R. 4:12-6. Caption and text amended November 2, 1987 to be effective January 1, 1988; amended July 13, 1994 to be effective September 1, 1994.

#### **4:6-6. Consolidation of Defenses**

A party making a motion under R. 4:6 may join with it the other motions herein provided for and then available. If such motion omits therefrom any defense or objections then available which R. 4:6 permits to be raised by motion, the party shall not thereafter make a motion based on any such omitted defenses or objections, except as provided in R. 4:6-7.

**Note:** Source – R.R. 4:12-7; amended July 13, 1994 to be effective September 1, 1994.

#### **4:6-7. Waiver or Preservation of Defenses**

Defenses (b) (c) and (d) in R. 4:6-2 are waived if not raised by motion pursuant to R. 4:6-3 or if omitted from a previously made motion to which R. 4:6-6 is applicable. Defenses (e) and (f) and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered, or by motion for summary judgment or at the trial on the merits. Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the matter except as otherwise provided by R. 1:13-4.

**Note:** Source – R.R. 4:12-8.