

RULE 4:9. Amended And Supplemental Pleadings

4:9-1. Amendments

A party may amend any pleading as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is to be served, and the action has not been placed upon the trial calendar, at any time within 90 days after it is served. Thereafter a party may amend a pleading only by written consent of the adverse party or by leave of court which shall be freely given in the interest of justice. A motion for leave to amend shall have annexed thereto a copy of the proposed amended pleading. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 20 days after service of the amended pleading, whichever period is longer, unless the court otherwise orders.

Note: Source-R.R. 4:15-1; amended July 13, 1994 to be effective September 1, 1994; amended June 28, 1996 to be effective September 1, 1996.

4:9-2. Amendments to Conform to the Evidence

When issues not raised by the pleadings and pretrial order are tried by consent or without the objection of the parties, they shall be treated in all respects as if they had been raised in the pleadings and pretrial order. Such amendment of the pleadings and pretrial order as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend shall not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings and pretrial order, the court may allow the pleadings and pretrial order to be amended and shall do so freely when the presentation of the merits of the action will be thereby subserved and the objecting party fails to satisfy the court that the admission of such evidence would be prejudicial in maintaining the action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

Note: Source-R.R. 4:15-2; amended July 13, 1994 to be effective September 1, 1994.

4:9-3. When Amendments Relate Back

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading; but the court, in addition to its power to allow amendments may, upon terms, permit the statement of a new or different claim or defense in the pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party to be brought in by amendment, that party (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party to be brought in by amendment.

Note: Source-R.R. 4:15-3; amended July 13, 1994 to be effective September 1, 1994.

4:9-4. Supplemental Pleadings

On motion by a party the court may, upon reasonable notice and on terms, permit that party to serve a supplemental pleading setting forth transactions or occurrences which took place after

the date of the pleading sought to be supplemented. A motion for leave to file a supplemental pleading shall have annexed thereto a copy of the proposed pleading. The court may require the opposing party to plead thereto, specifying in its order the time therefor.

Note: Source-R.R. 4:15-4; amended July 13, 1994 to be effective September 1, 1994.