

## **RULE 6:5. Trials**

### **6:5-1. Applicability of Part IV Rules; Sanctions**

R. 4:37 (dismissal of actions), R. 4:38 (consolidation), R. 4:39 (verdicts) and R. 4:40 (motion for judgment) are applicable to the Special Civil Part. The court may order a party whose complaint is dismissed pursuant to R. 1:2-4 or R. 4:37-1(b) for failure to appear for trial or who seeks to refile such a complaint pursuant to R. 4:37-4 to pay to the aggrieved party costs, reasonable attorney's fees and expenses related to the dismissed action.

Note: Source --1969 Revision; amended November 7, 1988 to be effective January 2, 1989; caption and text amended July 12, 2002 to be effective September 3, 2002; amended July 9, 2008 to be effective September 1, 2008.

### **6:5-2. Notice of Trial; Assignment for Trial**

- **(a) Notice by Clerk.** Except for summary actions brought under R. 6:2-1, the clerk shall inform the parties or their attorneys of the trial date at least 30 days before trial. For good cause shown, the court may order a longer or shorter notice in any action.
- **(b) Landlord and Tenant Actions.** Summary actions between landlord and tenant shall be placed on a separate list on the calendar and shall be heard on the return day unless adjourned by the court, or by consent with the approval of the court. At the beginning of the calendar call and again at the end of the calendar call for latecomers, the judge presiding at the call shall provide instructions substantially conforming with the announcement contained in Appendix XI-S to these rules. Written copies of that announcement also shall be available to litigants in the courtroom. A videotape, prepared either by the Administrative Office of the Courts or by the vicinage, may be used for the second reading when the judge deems its use necessary. In those counties having a significant Spanish-speaking population, the announcement also shall be given in Spanish both orally and in writing; the oral presentation may be given by videotape or other audio-visual device or by the judge presiding at the call.
- **(c) Assignment to Particular Judge; Common Issues.** If common issues of law or fact are involved in 2 or more actions pending in the Special Civil Part, all such actions shall be assigned for hearing or trial to the same judge. If issues previously determined are involved in a subsequent action, such subsequent action shall be assigned for hearing or trial to the same judge who previously determined such issues unless otherwise ordered by the Assignment Judge or designee.
- **(d) Avoidance of Multiple Appearances.** Multiple appearances in cases that have been scheduled for trial shall be avoided and, consistent with R. 1:40-7, cases should be disposed of on the trial date by a complementary dispute resolution event, trial, dismissal, or entry of default (with a proof hearing if requested).

Note: Source-R.R. 7:7-3, 7:7-4, 7:7-11, 7:7-12; paragraph (a) amended November 27, 1974 to be effective April 1, 1975; amended July 17, 1975 to be effective September 8, 1975; paragraph (c) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraph (a) caption and text amended July 5, 2000 to be effective September 5, 2000; paragraph (b) amended July 18, 2001 to be effective November 1, 2001; paragraph (a) caption and text amended and new paragraph (d) added July 12, 2002 to be effective September 3, 2002.

### **6:5-3. Trial by Jury**

- **(a) How Demanded.** In actions commenced in the Special Civil Part a written demand for trial by jury shall be filed with the clerk at the principal location of the court and served upon opposing parties not later than 10 days after the time provided for the defendant to answer; or in the case of a counterclaim the plaintiff may make such demand not later than 10 days after the time provided for the service of a defensive pleading to the counterclaim. In actions in the Small Claims Section the demand may be

filed and served by the defendant and the fee paid at least five days before the return day of the summons, whereupon the clerk shall transfer the action to the Special Civil Part.

- **(b) Waiver.** A trial by jury shall be deemed to be waived unless a demand therefor has been filed in the time and manner herein provided and unless the party demanding the same has, at the time of making such demand, paid the required fee therefor. Trial by jury shall also be deemed to be waived in actions in which a judgment is entered prior to a demand therefor.
- **(c) On Court's Order.** The court may, in its discretion, order a trial by jury at the plaintiff's expense, to be taxed in the costs of the action notwithstanding the failure of all parties to have made demand therefor.
- **(d) Mode of Trial.** If a jury is demanded and the demand is not withdrawn by consent, or if trial by jury is ordered by the court, the action shall be tried by jury.
- **(e) Consolidated Actions.** Where 2 or more actions are consolidated for trial, there need be only one demand for jury and only one jury fee shall be required.

**Note: Source-R.R. 7:8-2(a) (c) (d) (e) (f) (g) (h). Paragraph (a) amended June 29, 1973 to be effective September 10, 1973; paragraph**