

1 **SUMMARY JUDGMENT**

2 **RULE 47**

3 **A For claimant.** A party seeking to recover upon [a] any type of claim[, *counterclaim, or*
4 *cross-claim*] or to obtain a declaratory judgment may, at any time after the expiration of 20
5 days from the commencement of the action or after service of a motion for summary judgment
6 by the adverse party, move, with or without supporting affidavits or declarations, for a
7 summary judgment in that party's favor [upon] as to all or any part [thereof] of any claim or
8 defense.

9 **B For defending party.** A party against whom a claim, counterclaim, or cross-claim is
10 asserted or a declaratory judgment is sought may, at any time, move, with or without
11 supporting affidavits or declarations, for a summary judgment in that party's favor as to all or
12 any part [thereof] of any claim or defense.

13 **C Motion and proceedings thereon.** The motion and all supporting documents shall be
14 served and filed at least 60 days before the date set for trial. The adverse party shall have 20
15 days in which to serve and file opposing affidavits or declarations and supporting documents.
16 The moving party shall have five days to reply. The court shall have discretion to modify these
17 stated times. The court shall grant the motion if the pleadings, depositions, affidavits,
18 declarations and admissions on file show that there is no genuine issue as to any material fact
19 and that the moving party is entitled to prevail as a matter of law. No genuine issue as to a
20 material fact exists if, based upon the record before the court viewed in a manner most
21 favorable to the adverse party, no objectively reasonable juror could return a verdict for the
22 adverse party on the matter that is the subject of the motion for summary judgment. The
23 adverse party has the burden of producing evidence on any issue raised in the motion as to
24 which the adverse party would have the burden of persuasion at trial. The adverse party may
25 satisfy the burden of producing evidence with an affidavit or a declaration under section E of
26 this rule. A summary judgment, interlocutory in character, may be rendered on the issue of

1 liability alone although there is a genuine issue as to the amount of damages.

2 **D Form of affidavits and declarations; defense required.** Except as provided by section
3 E of this rule, supporting and opposing affidavits and declarations shall be made on personal
4 knowledge, shall set forth such facts as would be admissible in evidence, and shall show
5 affirmatively that the affiant or declarant is competent to testify to the matters stated therein.
6 Sworn or certified copies of all papers or parts thereof referred to in an affidavit or a
7 declaration shall be attached thereto or served therewith. The court may permit affidavits or
8 declarations to be supplemented or opposed by depositions or further affidavits or
9 declarations. When a motion for summary judgment is made and supported as provided in this
10 rule an adverse party may not rest upon the mere allegations or denials of that party's pleading,
11 but the adverse party's response, by affidavits, declarations or as otherwise provided in this
12 section, must set forth specific facts showing that there is a genuine issue as to any material
13 fact for trial. If the adverse party does not so respond, the court shall grant the motion if
14 appropriate.

15 **E Affidavit or declaration of attorney when expert opinion required.** Motions under
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17 expert witnesses or to obtain their facts or opinions. If a party, in opposing a motion for
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19 of material fact, an affidavit or a declaration of the party's attorney stating that an unnamed
20 qualified expert has been retained who is available and willing to testify to admissible facts or
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8 **G Affidavits or declarations made in bad faith.** Should it appear to the satisfaction of
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11 party employing them to pay to the other party the amount of the reasonable expenses which
12 the filing of the affidavits or declarations caused the other party to incur, including reasonable
13 attorney fees, and any offending party or attorney may be subject to sanctions for contempt.

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15 for less than all parties and claims in an action, a limited judgment may be entered if the court
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19 of material fact, an affidavit or a declaration of the party's attorney stating that an unnamed,
20 qualified expert has been retained who is available and willing to testify to admissible facts or
21 opinions creating a question of fact[,] will be deemed sufficient to controvert the allegations of
22 the moving party and an adequate basis for the court to deny the motion. The affidavit or
23 declaration [*shall*] **must** be made in good faith based on admissible facts or opinions obtained
24 from a qualified expert who has actually been retained by the attorney, who is available and
25 willing to testify, and who has actually rendered an opinion or provided facts [*which*] **that**, if
26 revealed by affidavit or declaration, would be a sufficient basis for denying the motion for

1 summary judgment.

2 **F When affidavits or declarations are unavailable.** Should it appear from the affidavits
3 or declarations of a party opposing the motion that *[such]* **the** party cannot, for reasons stated,
4 present by affidavit or declaration facts essential to justify the opposition of that party, the
5 court may deny the motion or may order a continuance to permit affidavits or declarations to
6 be obtained or depositions to be taken or discovery to be had, or may make *[such]* **any** other
7 order as is just.

8 **G Affidavits or declarations made in bad faith.** Should it appear to the satisfaction of
9 the court at any time that *[any of the affidavits or declarations]* **an affidavit or declaration**
10 presented *[pursuant to]* **under** this rule *[are]* **was** presented in bad faith or solely for the
11 purpose of delay, the court shall *[forthwith]* order the party *[employing them]* **filing the**
12 **affidavit or declaration** to pay to the other party the amount of the reasonable expenses
13 *[which]* **that** the filing of the *[affidavits or declarations]* **affidavit or declaration** caused the
14 other party to incur, including reasonable attorney fees, and any offending party or attorney
15 may be subject to sanctions for contempt.

16 **H Multiple parties or claims; limited judgment.** If the court grants summary judgment
17 for *[less]* **fewer** than all parties *[and]* **or fewer than all** claims **or defenses** in an action, a limited
18 judgment may be entered if the court makes the determination required by Rule 67 B.

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SUMMARY JUDGMENT

RULE 47

A For claimant. A party seeking to recover [*upon a claim, counterclaim, or cross-claim*] **on any type of claim** or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move, with or without supporting affidavits or declarations, for a summary judgment in that party's favor [*upon*] **as to** all or any part [*thereof*] **of any claim or defense.**

B For defending party. A party against whom [*a claim, counterclaim, or cross-claim*] **any type of claim** is asserted or a declaratory judgment is sought may, at any time, move, with or without supporting affidavits or declarations, for a summary judgment in that party's favor as to all or any part [*thereof*] **of any claim or defense.**

C Motion and proceedings thereon. The motion and all supporting documents [*shall*] **must** be served and filed at least 60 days before the date set for trial. The adverse party shall have 20 days in which to serve and file opposing affidavits or declarations and supporting documents. The moving party shall have five days to reply. The court shall have discretion to modify these stated times. The court shall grant the motion if the pleadings, depositions, affidavits, declarations, and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law. No genuine issue as to a material fact exists if, based [*upon*] **on** the record before the court viewed in a manner most favorable to the adverse party, no objectively reasonable juror could return a verdict for the adverse party on the matter that is the subject of the motion for summary judgment. The adverse party has the burden of producing evidence on any issue raised in the motion as to which the adverse party would have the burden of persuasion at trial. The adverse party may satisfy the burden of producing evidence with an affidavit or a declaration under section E of this rule. A summary judgment, interlocutory in character, may be rendered on the

1 | issue of liability alone although there is a genuine issue as to the amount of damages.

2 | **D Form of affidavits and declarations; defense required.** Except as provided by section
3 | E of this rule, supporting and opposing affidavits and declarations [*shall*] **must** be made on
4 | personal knowledge, [*shall*] **must** set forth such facts as would be admissible in evidence, and
5 | [*shall*] **must** show affirmatively that the affiant or declarant is competent to testify to the
6 | matters stated therein. Sworn or certified copies of all [*papers*] **documents** or parts thereof
7 | referred to in an affidavit or a declaration [*shall*] **must** be attached thereto or served therewith.
8 | The court may permit affidavits or declarations to be supplemented or opposed by depositions
9 | or further affidavits or declarations. When a motion for summary judgment is made and
10 | supported as provided in this rule, an adverse party may not rest [*upon*] **on** the mere
11 | allegations or denials of that party's pleading[, *but*]; **rather**, the adverse party's response, by
12 | affidavits, declarations, or as otherwise provided in this section, must set forth specific facts
13 | showing that there is a genuine issue as to any material fact for trial. If the adverse party does
14 | not so respond, the court shall grant the motion, if appropriate.

15 | **E Affidavit or declaration of attorney when expert opinion required.** Motions under
16 | this rule are not designed to be used as discovery devices to obtain the names of potential
17 | expert witnesses or to obtain their facts or opinions. If a party, in opposing a motion for
18 | summary judgment, is required to provide the opinion of an expert to establish a genuine issue
19 | of material fact, an affidavit or a declaration of the party's attorney stating that an unnamed,
20 | qualified expert has been retained who is available and willing to testify to admissible facts or
21 | opinions creating a question of fact[,] will be deemed sufficient to controvert the allegations of
22 | the moving party and an adequate basis for the court to deny the motion. The affidavit or
23 | declaration [*shall*] **must** be made in good faith based on admissible facts or opinions obtained
24 | from a qualified expert who has actually been retained by the attorney, who is available and
25 | willing to testify, and who has actually rendered an opinion or provided facts [*which*] **that**, if
26 | revealed by affidavit or declaration, would be a sufficient basis for denying the motion for

1 summary judgment.

2 **F When affidavits or declarations are unavailable.** Should it appear from the affidavits
3 or declarations of a party opposing the motion that *[such]* **the** party cannot, for reasons stated,
4 present by affidavit or declaration facts essential to justify the opposition of that party, the
5 court may deny the motion or may order a continuance to permit affidavits or declarations to
6 be obtained or depositions to be taken or discovery to be had, or may make *[such]* **any** other
7 order as is just.

8 **G Affidavits or declarations made in bad faith.** Should it appear to the satisfaction of
9 the court at any time that *[any of the affidavits or declarations]* **an affidavit or declaration**
10 presented *[pursuant to]* **under** this rule *[are]* **was** presented in bad faith or solely for the
11 purpose of delay, the court shall *[forthwith]* order the party *[employing them]* **filing the**
12 **affidavit or declaration** to pay to the other party the amount of the reasonable expenses
13 *[which]* **that** the filing of the *[affidavits or declarations]* **affidavit or declaration** caused the
14 other party to incur, including reasonable attorney fees, and any offending party or attorney
15 may be subject to sanctions for contempt.

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18 judgment may be entered if the court makes the determination required by Rule 67 B.

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