

JAMES J. CURRY, JR., LL.M.

18-CV-F

Attorney At Law

505 MAIN STREET
P.O. BOX 1225
TOMS RIVER, NJ 08754
(732) 240-4200

FAX (732) 349-2674
E-MAIL: JJCLEX@COMCAST.NET

WWW.CURRYLAWFIRM.NET

JAMES J. CURRY, JR., LL.M.
MEMBER NJ & NY BARS
CERTIFIED BY THE SUPREME COURT
OF NEW JERSEY AS A CIVIL TRIAL ATTORNEY

TIMOTHY J. PETRIN
MEMBER NJ BAR

Of Counsel:
Martin Weiser, Esq.
Weiser & Assoc.
150 E. 58th Street, 27th Floor
212-213-3111
New York, NY 10155

REPLY TO: TOMS RIVER

Our File

January 19, 2018

Administrative Office of the United States Courts
1 Columbus Circle N.E.
Washington, DC 20544
Attn: The Rules Committee Support Office

RE: Rule 68 FRCP

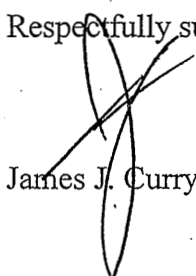
Dear Sir or Madam:

I am writing to you, once again, to respectfully suggest that the Federal Rule of Civil Procedure 68 be amended to have it applicable to both plaintiff and defendant. Why should only defendants be able to avail themselves of this Rule?

I would respectfully suggest that the Court consider adopting a Rule similar to New Jersey Offer of Judgment under the current N.J. Court Rules R. 4:58-1 to 4:58-6 (attached).

In the event that the Rules Committee is disinclined to have this Rule apply equally to plaintiff and defendants, then I would respectfully suggest that the Rule itself should be entirely eliminated.

Respectfully submitted,


James J. Curry, Jr.

JJC/tv
Enclosure

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 4:58. OFFER OF JUDGMENT

4:58-1. Time and Manner of Making and Accepting Offer

(a) Except in a matrimonial action, any party may, at any time more than 20 days before the actual trial date, serve on any adverse party, without prejudice, and file with the court, an offer to take a monetary judgment in the offeror's favor, or as the case may be, to allow judgment to be taken against the offeror, for a sum stated therein (including costs). The offer shall not be effective unless, at the time the offer is extended, the relief sought by the parties in the case is exclusively monetary in nature.

(b) If at any time on or prior to the 10th day before the actual trial date the offer is accepted, the offeree shall serve on the offeror and file a notice of acceptance with the court. The making of a further offer shall constitute a withdrawal of all previous offers made by that party. An offer shall not, however, be deemed withdrawn upon the making of a counter-offer by an adverse party but shall remain open until accepted or withdrawn as is herein provided. If the offer is not accepted on or prior to the 10th day before the actual trial date or within 90 days of its service, whichever period first expires, it shall be deemed withdrawn and evidence thereof shall not be admissible except in a proceeding after the trial to fix costs, interest, and attorney's fee. The fact that an offer is not accepted does not preclude a further offer within the time herein prescribed in the same or another amount or as specified therein.

Note: Source -- R.R. 4:73. Amended July 7, 1971 to be effective September 13, 1971; amended July 13, 1994 to be effective September 1, 1994; amended June 28, 1996 to be effective September 1, 1996; amended July 10, 1998 to be effective September 1, 1998; text allocated to paragraphs (a) and (b), and paragraphs (a) and (b) amended July 27, 2006 to be effective September 1, 2006.

4:58-2. Consequences of Non-Acceptance of Claimant's Offer

(a) In cases other than actions against an automobile insurance carrier for uninsured motorist/underinsured motorist benefits, if the offer of a claimant is not accepted and the claimant obtains a money judgment, in an amount that is 120% of the offer or more, excluding allowable prejudgment interest and counsel fees, the claimant shall be allowed, in addition to costs of suit: (1) all reasonable litigation expenses incurred following non-acceptance; (2) prejudgment interest of eight percent on the amount of any money recovery from the date of the offer or the date of completion of discovery, whichever is later, but only to the extent that such prejudgment interest exceeds the interest prescribed by R. 4:42-11(b), which also shall be allowable; and (3) a reasonable attorney's fee for such subsequent services as are compelled by the non-acceptance.

(b) In cases involving actions against automobile carriers for uninsured/underinsured motorist benefits, if the offer of a claimant is not accepted and the claimant obtains a monetary award by jury or non-jury verdict, (adjusted to reflect

comparative negligence, if any) in an amount that is 120% of the offer or more, excluding allowable prejudgment interest and counsel fees, the claimant shall be allowed, in addition to costs of suit: (1) all reasonable litigation expenses incurred following non-acceptance; (2) prejudgment interest of eight percent on the amount of any money recovery from the date of the offer or the date of completion of discovery, whichever is later, but only to the extent that such prejudgment interest exceeds the interest prescribed by R. 4:42-11(b), which also shall be allowable; and (3) a reasonable attorney's fee for such subsequent services as are compelled by the non-acceptance.

(c) No allowances shall be granted pursuant to paragraphs (a) or (b) if they would impose undue hardship. If undue hardship can be eliminated by reducing the allowance to a lower sum, the court shall reduce the amount of the allowance accordingly.

Note: Amended July 7, 1971 to be effective September 13, 1971; amended July 14, 1972 to be effective September 5, 1972; amended July 17, 1975 to be effective September 8, 1975; amended July 13, 1994 to be effective September 1, 1994; amended July 5, 2000 to be effective September 5, 2000; amended July 28, 2004 to be effective September 1, 2004; text amended and designated as paragraph (a), new paragraph (b) adopted July 27, 2006 to be effective September 1, 2006; paragraph (a) amended July 23, 2010 to be effective September 1, 2010; paragraph (a) amended, new paragraph (b) added, and previous paragraph (b) redesignated as paragraph (c) August 1, 2016 to be effective September 1, 2016.

4:58-3. Consequences of Non-Acceptance of Offer of Party Not a Claimant

(a) If the offer of a party other than the claimant is not accepted, and the claimant obtains a monetary judgment, or in the case of a claim for uninsured/underinsured motorist benefits, a verdict (molded to reflect comparative negligence, if any), that is favorable to the offeror as defined by this rule, the offeror shall be allowed, in addition to costs of suit, the allowances as prescribed by R. 4:58-2, which shall constitute a prior charge on the judgment or verdict in uninsured/underinsured motorist actions.

(b) A favorable determination qualifying for allowances under this rule is a money judgment or in the case of a claim for uninsured/underinsured motorist benefits, a verdict (molded to reflect comparative negligence, if any) in an amount, excluding allowable prejudgment interest and counsel fees, that is 80% of the offer or less.

(c) No allowances shall be granted if (1) the claimant's claim is dismissed, (2) a no-cause verdict is returned, (3) only nominal damages are awarded, (4) a fee allowance would conflict with the policies underlying a fee-shifting statute or rule of court, or (5) an allowance would impose undue hardship. If, however, undue hardship can be eliminated by reducing the allowance to a lower sum, the court shall reduce the amount of the allowance accordingly.

Note: Source — R.R. 4:73; amended July 13, 1994 to be effective September 1, 1994; amended July 5, 2000 to be effective September 5, 2000; amended July 28, 2004 to be effective September 1, 2004; text allocated into paragraphs (a), (b), (c), and paragraphs (a), (b), (c) amended July 27, 2006 to be

effective September 1, 2006; paragraphs (a) and (b) amended August 1, 2016 to be effective September 1, 2016.

4:58-4. Multiple Claims; Multiple Parties

(a) Multiple Plaintiffs. If a party joins as plaintiff for the purpose of asserting a per quod claim, the claimants may make a single unallocated offer.

(b) Multiple Defendants. If there are multiple defendants against whom a joint and several judgment is sought, and one of the defendants offers in response less than a pro rata share, that defendant shall, for purposes of the allowances under R. 4:58-2 and -3, be deemed not to have accepted the claimant's offer. If, however, the offer of a single defendant, whether or not intended as the offer of a pro rated share, is at least as favorable to the offeree as the determination of total damages to which the offeree is entitled, the single offering defendant shall be entitled to the allowances prescribed in R. 4:58-3, provided, however, that the single defendant's offer is at least 80% of the total damages determined.

(c) Multiple Claims. If a claimant asserts multiple claims for relief or if a counterclaim has been asserted against the claimant, the claimant's offer shall include all claims made by or against that claimant. If a party not originally a claimant asserts a counterclaim, that party's offer shall also include all claims by and against that party.

Note: Adopted July 5, 2000 to be effective September 5, 2000; caption amended, former text redesignated as paragraph (b) and amended, and new paragraphs (a) and (c) adopted July 28, 2004 to be effective September 1, 2004.

4:58-5. Application for Fee; Limitations

If an action is required to be retried, a party who made a rejected offer of judgement in the original trial may, within 10 days after the fixing of the first date for the retrial, serve the actual notice on the offeree that the offer then made is renewed and, if the offeror prevails, the renewed offer will be effective as of the date of the original offer. If the offeror elects not to so renew the original offer, a new offer may be made under this rule, which will be effective as of the date of the new offer.

Note: Former Rule 4:58-5 redesignated as Rule 4:58-6, and new Rule 4:58-5 caption and text adopted July 23, 2010 to be effective September 1, 2010.

4:58-6. Application for Fee; Limitations

Applications for allowances pursuant to R. 4:58 shall be made in accordance with the provisions of R. 4:42-9(b) within 20 days after entry of final judgment. A party who is

awarded counsel fees, costs, or interest as a prevailing party pursuant to a fee-shifting statute, rule of court, contractual provision, or decisional law shall not be allowed to recover duplicative fees, costs, or interest under this rule.

Note: Adopted July 27, 2006 as Rule 4:58-5 to be effective September 1, 2006; redesignated as Rule 4:58-6 July 23, 2010 to be effective September 1, 2010.