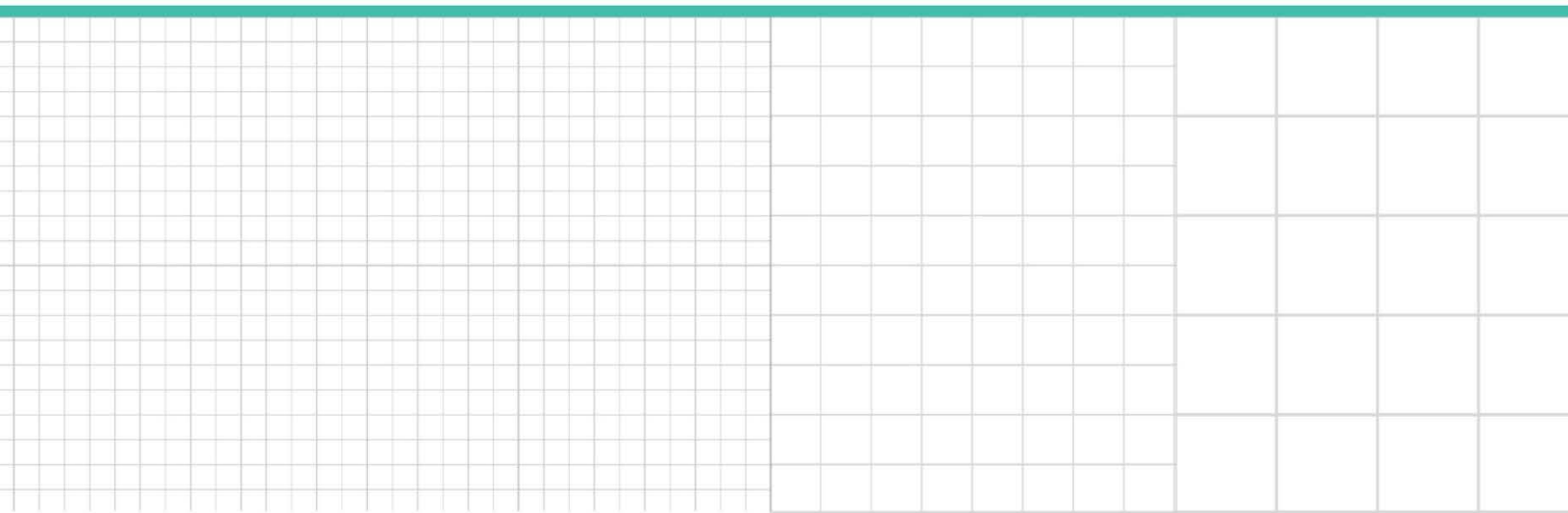


Professional Perspective

New Jersey Civil Rule Changes to Motion Practice

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New Jersey Civil Rule Changes to Motion Practice

Contributed by [Daniel F. Thornton](#), Post & Schell

Amendments to the New Jersey Rules of Court, effective Sept. 1, 2020, include several changes to the civil rules. This article focuses on how these changes impact New Jersey civil practice—particularly dispositive motions and motions in limine.

Motions to Dismiss (Rule 4:6-2)

As of Sept. 1, 2020, any “motion to dismiss based on defense (e) [failure to state a claim upon which relief can be granted], and any opposition thereto, shall be filed and served in accordance with the time frames set forth in R. 4:46-1.” R. 4:6-2 (as amended); accord R. 1:6-3(a) (as amended).

This amendment removes most motions to dismiss from the 16-day general motion cycle and places them under the same 28-day cycle as motions for summary judgment. Thus, the non-moving party will now have 18 days (up from eight) to file opposition, and the moving party will have six days (up from four) to reply.

This extended motion schedule resulted from a proposal by the Conference of Civil Presiding Judges, [which noted](#) that Rule 4:6-2(e) motions “are often complex and routinely adjourned.” The Supreme Court Civil Practice Committee [unanimously agreed](#), “as the complexity and importance of these types of motions require more than a 16-day cycle.”

As has been the trend in several recent amendments to the civil rules, this change brings New Jersey practice in closer conformity to local federal practice. The U.S. District Court for the District of New Jersey operates on a [24-day motion cycle](#) and permits [one automatic extension](#) of any motion to dismiss, effectively setting a 38/14/7-day briefing schedule. See D.N.J. L. Civ. R. 7.1(d)(5). With the latest amendments, New Jersey courts will now follow a 28/10/4-day briefing schedule for such motions.

Despite the limited intent expressed by the Committee, this amendment also raises an interesting issue of interpretation. As drafted, the revised Rule 4:6-2 appears to require that a dismissal motion be filed on the 35th day after the complaint is served—no sooner, no later. The amended Rule imports the “time frames” of Rule 4:46-1, which include a prohibition on motion practice until “after the expiration of 35 days from the service of the [complaint.]”

At the same time, Rule 4:6-2 requires a defendant to move for dismissal “before pleading if a further pleading is to be made[.]” while Rule 4:6-6 generally limits defendants to a single dismissal motion. If this interpretation is correct, then there would only be three ways to move for dismissal in compliance with the revised rule: either file any Rule 4:6-2(e) motion on the 35th day following service of the complaint, negotiate an extension with plaintiff’s counsel, or seek an extension from the court. See R. 4:6-1(c) (permitting extensions of a defendant’s time to respond on consent or for good cause shown).

Motions in Limine (Rule 4:25-8)

The pending amendments also include an entirely new rule regulating motions in limine to a much greater extent than previously seen in New Jersey.

By way of background, the Supreme Court in 2018 declined to adopt a similar proposal by the Civil Practice Committee. The Committee was [prompted by](#) the Appellate Division’s decision in *Cho v. Trinitas Regional Medical Center*, 443 N.J. Super. 461 (App. Div. 2015), cert. denied, 224 N.J. 529 (2016), wherein the panel considered a dispositive motion “in limine” filed the day before jury selection in a medical malpractice case. Under such circumstances, the appellate court held that the eleventh-hour consideration of the motion deprived the plaintiffs of their due-process rights.

Observing that Rule 4:25-7 permits motions in limine to be submitted at late as the commencement of trial, the Committee also [expressed concern](#) that, “[i]n some instances, the number and nature of the motions filed are inappropriate or overly burdensome, or the motions are filed too late to enable a fair opportunity for a response by opposing counsel and timely consideration by the trial court.” The Committee [intends](#) the new Rule to “maintain[] uniformity in the system, avoid[] the late filing of motions that might have a dispositive effect and encourag[e] prompt resolution of admissibility questions.”

Scope

"In general terms and subject to particular circumstances of a given claim or defense," the new rule defines a motion in limine "as an application returnable at trial for a ruling regarding the conduct of the trial, including admissibility of evidence, which motion, if granted, would not have a dispositive impact on a litigant's case." R. 4:25-8(a)(1). Echoing the Appellate Division's opinion in *Cho*, motions that do not qualify include any application "to bar an expert's testimony in a matter in which such testimony is required as a matter of law to sustain a party's burden of proof."

Brief Format & Page Limits

The new Rule also requires each in limine motion to "embrace one issue" "[t]o the extent practicable. R. 4:25-8(a)(3). Moving and opposition briefs are limited to five pages and no replies are permitted without the court's leave. Otherwise, motions in limine are subject to the same general formatting requirements as other motions (see R. 1:6-5).

If—as is often the case—a litigant submits more than one motion in limine, then they must comply with a 50-page collective limit on the supporting briefs. As with any other motion, a party may apply for permission to submit an over-length brief, but must do so prior to the briefing deadline. See R. 4:25-8(a)(3) (integrating the requirements of R. 1:6-5). The trial court has discretion to grant such an application "when appropriate in light of the complexity of the issues raised and without awaiting a response from any other party concerning the request." R. 1:6-5.

Deadlines for Motions & Rulings

Under the new rule, motions in limine must generally be submitted and served "pursuant to the timeframes found under R. 4:25-7(b) and paragraph 4 of Appendix XXIII." R. 4:25-8(a)(2). In turn, Rule 4:25-7(b) and [Appendix XXIII](#) require all pretrial submissions to be submitted and exchanged "seven days prior to the initial trial date[.]" Although the parties may waive their right to a pretrial exchange, such waiver does not affect the seven-day deadline for motions in limine. Compare R. 4:25-7(d) with R. 4:25-8(a)(1) & (a)(2).

Once the motions have been submitted, the trial court must rule on each "in a timely manner based on the issue raised in the particular motion." R. 4:25-8(a)(4). In particular, the new rule requires the court to either decide all such applications prior to opening statements or "direct the litigants on whether or to what extent they may refer to the disputed evidence or other issue raised in the motion in the opening statements or otherwise, until such time as the motion is decided."

Preservation of Rights & Rulings

The new rule is not unlimited. Motions in limine regarding the admissibility of evidence are not mandatory: "The failure to submit a motion in limine under this rule shall not preclude a party from seeking to admit evidence, or objecting to the admission of evidence, during trial." R. 4:25-8(c); see R. 2:10-2 (delineating different standard of review for errors and omissions not brought to the trial court's attention).

Likewise, the trial court retains its inherent discretion to reconsider or modify in limine motion rulings as the trial progresses, either "sua sponte or at the request of a party, based on later developments at trial." R. 4:25-8(d).

Consequences of Non-Compliance

Under the new rule, the trial court need not decide any late-filed motion in limine prior to opening statements "unless good cause is shown for the non-compliance[.]" R. 4:25-8(b). By way of example, the Rule provides that good cause may exist where information received "as part of the pretrial exchange . . . forms a good faith basis regarding the admissibility of evidence." Whenever a motion in limine is filed late, the party opposing the late submission must be heard.

Other Rule Changes

The Supreme Court's amendments also include a number of minor changes making clarifications and addressing orthographical errors and inconsistencies among the civil rules. See R. 4:21A-2, 4:24-2, 4:86-6, 4:102-4, 4:102-5, 4:103-2, and 4:105-5.

Also among the amendments are several changes to the appellate rules, none of which impact civil appellate practice. See R. 2:2-3, 2:4-3, 2:9-3, 2:9-10, and 2:15-2.

What's Next

The Civil Practice Committee [also reports](#) that it has “formed a subcommittee to discuss whether social media may be used to serve process and to what extent it may be used for service of civil discovery.”

The Committee's Report [also includes](#) a new proposal still in the conceptual stage: A separate “Track V” for particularly intricate civil cases whose “complexities or nuances . . . present difficulties in the cases being resolved within the standardized time constraints and procedures of the existing tracks.” The new track's goal would be to address such cases “without completely eliminating court oversight [while] allow[ing] for a more collaborative case management option.”

Civil cases are [currently allocated](#) among four tracks: Track I (150 days discovery), Track II (300 days discovery), Track III (450 days discovery), and Track IV (450 days discovery and active case management). Cases likely to fall within the new Track V include those currently allocated to Tracks III and IV that present special discovery challenges—complex class actions, environmental coverage cases, products liability matters, multi-jurisdictional litigation, and the like.

The new Track V would include the following features:

- Cases in Track V would not have discovery end dates or other discovery time constraints
- Civil Presiding Judges would serve as “gatekeepers”—interested parties would have to file a motion with the P.J. seeking inclusion on Track V
- Each party—not just their counsel—would have to consent to inclusion on Track V
- Counsel in Track V cases would be required to file a case status report with the Civil Presiding Judge every six months
- Placement on the trial list would be at the Civil Presiding Judge's discretion in consultation with counsel

The Track V concept appears to be gaining significant traction. Responses from across the state's legal community—including comments by the [New Jersey State Bar Association](#) and the [New Jersey Association for Justice](#)—have been largely supportive of the proposal.