

Civil Litigation II

I. NJ Courts Discussed in Civil Litigation II

A. Trial Courts Within the Court System (By Constitution and Rule)

1. Superior Court – Law Division

- a. R. 4:3-1(a)(4)
- b. Generally Money – Any Amount
- c. Also Prerogative Writs – See *Winberry v. Salisbury*, 5 N.J. 240 (1950), *cert. denied*, 340 U.S. 877 (1950); R. 4:69
- d. Trial By Jury Upon Demand – R. 4:35-1

2. Superior Court - Law Division, Special Civil Part

- a. R. 6:1-2(a)(1)
- b. Generally Money - \$15k or less – See *Andriola v. Galloping Hill Shopping Center*, 93 N.J. Super. 196 (Law Div. 1966)
- c. Trial By Jury Upon Demand – R. 6:5-3

3. Superior Court - Law Division, Special Civil Part, Small Claims Department

- a. R. 6:1-2(a)(2)
- b. Generally Money - \$3k or less or security deposits of \$5k or less – See *Andriola v. Galloping Hill Shopping Center*, 93 N.J. Super. 196 (Law Div. 1966)
- c. Trial By Jury Upon Demand – R. 6:5-3 – But the Case Will Then be Transferred to Special Civil Part

4. Superior Court – Chancery Division, General Equity

- a. R. 4:3-1(a)(1)
- b. Generally Injunctive Relief
- c. *Cf.* R. 4:69 – Prerogative Writs; See also, *Winberry v. Salisbury*, 5 N.J. 240 (1950), *cert. denied*, 340 U.S. 877 (1950)
- d. Generally Speaking, No Trial By Jury
- e. *Cf. Brennan v. Orban*, 145 N.J. 282 (1996), which permits trial by jury of a marital tort joined to a dissolution action in the Chancery Division, Family Part

B. One Example of an OAL Trial Court (By Statute)

1. Worker's Compensation Court

2. Benefits Collectible

- a. Medical
- b. Temporary Total Disability
- c. Permanent Partial Disability
- d. No Trial By Jury

C. Initial Appeals (By Constitution and Rule) – Superior Court, Appellate Division

- 1. Appeal as of Right from Final Orders or Judgments – R. 2:2-3**
- 2. Appeal by Leave from Interlocutory Decisions or Orders – R. 2:2-4**
- 3. Possible Outcomes**
 - a. Refuse of Request for Leave to Appeal**
 - b. Remand for Further Proceedings at the Trial Level**
 - c. Affirm the Lower Court Decision**
 - d. Reverse the Lower Court Decision (in Whole or in Part)**
 - e. Reverse (in Whole or in Part) and Remand**

D. Court of Last Resort in NJ (By Constitution and Rule) – Supreme Court

- 1. Appeals as of Right vs. Appeals by Leave**
- 2. Appeals as of Right**
 - a. R. 2:2-1 (a)**
 - b. All Appeals as of Right are From Final Judgments**
 - c. Examples of Appeals as of Right are:**
 - 1) Where the Case Presents a Substantial Question under the US or NJ Constitution**
 - 2) Where There Was a Dissent at the Appellate Division**
 - 3) Although not a *Civil* Litigation Example, Appeals Directly from the Trial Court Where the Death Penalty Was Imposed;**
 - 4) Such Other Cases as Provided by Law**
- 3. Appeals on Certification**
 - a. R. 2:2-1 (b)**
 - b. None of Such Appeals are as of Right**
 - c. All of Such Appeals are From Final Judgments – *Cf. I, D, 3, below***
- 4. Appeals from Interlocutory Orders**
 - a. R. 2:2-2**
 - b. None of Such Appeals are as of Right – All Require Leave**
 - c. Types of Interlocutory Orders for Which Leave May Be Sought for the Supreme Court to Hear:**
 - 1) From the Appellate Division When Necessary to Prevent Irreparable Injury;**
 - 2) On Certification *from* the Supreme Court to the Appellate Division**
 - 3) Although not a *Civil* Litigation Example, Appeals Directly from the Trial Court Where the Death Penalty Was Imposed**

II. Rule Making Authority of the New Jersey Supreme Court

A. New Jersey Constitution, Article VI, Section 2, Paragraph 3 – “The Supreme Court shall make rules governing the administration of all courts in the State and, subject to law, the practice and procedure in all such courts.”

B. Two Types of Rules

1. Administration of the Courts

- a. “The Supreme Court shall make rules governing the administration of the courts...” *N.J Const., Art. VI, Sec. 2, Para. 3*
- b. In the Area of Administration, the Rules are Paramount

2. Practice and Procedure

- a. “The Supreme Court shall make rules ... *subject to law*, [governing] ... practice and procedure...” *N.J Const., Art. VI, Sec. 2, Para. 3 (emphasis added)*
- b. *Contrary* “Law” is Paramount to a Practice and Procedure Rule. *Winberry v. Salisbury, 5 N.J. 240 (1950), cert. denied, 340 U.S. 877 (1950)*
- c. *Winberry v. Salisbury, 5 N.J. 240 (1950), cert. denied, 340 U.S. 877 (1950)* explains that the “law” in “subject to law” refers to *substantive law* so that *contrary substantive law* is paramount to a Practice and Procedure Rule.

3. The Analysis

- a. Is There Authority Contrary to an Applicable Rule?
- b. If the Subject of the Two is Administration of the Courts, the Rule Controls.
- c. If the Subject of the Two is Practice and Procedure
 - 1) If the Contrary Authority Constitutes Substantive Law, it Controls, but
 - 2) If the Contrary Authority Does Not Constitute Substantive Law, the Rule Controls.

III. Citation of the Rules – See R. 1:1-3

IV. Applicability and Scope of the Rules Discussed in Civil Litigation II

A. Part I Rules

- 1. Rules of General Application
- 2. Apply to All Courts
- 3. See R. 1:1-1

B. Part II Rules

- 1. Appellate Rules
- 2. Apply to the Supreme Court and Appellate Division
- 3. See R. 2:1

C. Part IV Rules

1. Rules Applying to the Trial Courts of Unlimited Jurisdiction and Equity Trial Courts
2. They Apply to the Law and Chancery Division, *except as otherwise* noted in IV, D, below
3. See R. 4:1

D. Part VI Rules

1. Rules Applying to the Trial Courts of Limited Jurisdiction
2. They Apply to the Law Division Special Civil Part, and to the Law Division, Special Civil Part, Small Claims Department
3. The Analysis
 - a. Is the Case in Special Civil Part or Small Claims?
 - b. If No, Part VI Rules Do Not Apply.
 - c. If the Case is in Special Civil Part or Small Claims
 - 1) If there is a Part VI Rule on the Subject, the Part VI Rule Applies
 - 2) If there is no Part VI Rule on the Subject, look to the Rules in the Other Parts, Particularly Part IV

V. Construction and Relaxation of the Rules

A. Construction

1. R. 1:1-2
2. Construe to secure
 - a. A Just Determination
 - b. Simplicity in Procedure
 - c. Fairness in Administration
 - d. Elimination of Unjustifiable Expense and Delay

B. Relaxation

1. R. 1:1-2
2. "Unless otherwise stated, any rule may be relaxed or dispensed with...if adherence to it would result in injustice.

VI. Absence of an Applicable Rule

A. R. 1:1-2

B. Proceed in a Way that is

1. Compatible With the Purposes of the Rules (See V, A, 2, above) AND
2. In Civil Cases, Consistent With the Case Management/Trial Management Guidelines of Appendix XX of the Rules

VII. Computation of Time Prescribed by Rule – R. 1:3-1

A. Do Not Count the First Day of the Period

1. The First Day is the Day of the Event that Triggers the Time Period the Length of Which is Being Computed
2. See also, *Paterson v. Monmouth Regional High School*, 222 N.J. Super. 448 (App. Div. 1987), which dealt with the issue of when a statute of limitations that is tolled during infancy begins to run

B. If the Time Period Being Computed is Less Than 7 Days, Do Not Count

1. Saturdays
2. Sundays or
3. Legal Holidays

C. Extend the Last Day of the Period to the First day that is not a

- a. Saturday
- b. Sunday or
- c. Legal Holiday

VIII. Commencement of Actions

A. The Date of Commencement Determines Whether There Has Been Compliance With the Statute of Limitations

B. A New Jersey Action is Commenced By Filing a Complaint - R. 4:2-2

C. Cf. A Pennsylvania Action May Be Commenced By Filing a Writ of Summons

D. Differences Between a Summons and a Complaint

1. A Summons Advises a Defendant
 - a. Of the Existence of a Cause of Action
 - b. Of His or Her Rights Concerning Defense

2. A Complaint States The Cause of Action

E. Why are NJ and PA Different as Regarding Commencement of Actions?

- a. PA requires Fact Pleading
- b. NJ allows Notice Pleading

F. A Discussion of the Differences Between Fact and Notice Pleading

IX. Subject Matter Jurisdiction

A. Subject Matter Jurisdiction is the Power (or Lack Thereof) of a Particular Court to Hear a Particular Case

B. Examples (We Have Already Discussed These, But Without Focus on the Concept of Subject Matter Jurisdiction)

1. Money Judgments vs. Injunctive Relief – See *I, A, above*
2. Am Unlimited Amount vs. 15k Limit vs. 3k (or 5k Security Deposit) Limit – See *I, A, above*
3. Trials vs. Appeals – Compare *I, A, above to I, C and D, above*
4. Constitutional Courts vs. Statutory Courts – Compare *I, A, C and D, above to I, B, above*

X. Venue

A. Where Properly Laid – R. 4:3-2(a)

1. The General Rule that Applies to Most Actions

- a. Where the Plaintiff Resides
- b. Where Any Defendant Resides
- c. Where Any Out of State Defendant Was Served, or
- d. Where the Cause of Action Arose

2. Actions Involving Title or a Possessory Interest in Real Property – Where the Property is Located

3. Actions Against Municipalities – Where the Cause of Action Arose

4. Actions On and Objections to DMV Surcharge Certificates of Debt – Where the Debtor Resides

B. Residency of a Corporation – R. 4:3-2(b)

1. Where Its Registered Agent Resides, or
2. Any County in Which It Does Business

C. Change of Venue – R. 4:3-3(a)

1. Request for Change of Venue is by Way of Motion Filed

- a. In the County Where the Action Was Filed and
- b. Addressed to

- 1) The Assignment Judge
- 2) The Presiding Judge in the Family Part
- 3) The Assignment Judge's Designee in the Chancery Division, General Equity, or
- 4) The Assignment Judge's Designee in the Special Civil Part

2. Grounds for Changing Venue

- a. Venue Was Improperly Laid
- b. Substantial Doubt that a Fair Trial Can Be Had
- c. For the Convenience of Parties or Witnesses

XI. Consolidation of Actions – R. 4:38-1(a)

A. The Purpose is to Have a Single Trial in Cases Involving Common Issues of Law or Fact

B. This Enables Parties to Avoid the Binding Effects of the Doctrines of

1. *res judicata* (a/k/a “issue estoppel”)

- a. A Decision Has Been Rendered in a Prior Action**
- b. The Prior Action Involved the Same Issues**
- c. The Prior Action Involved the Same Parties**

2. *stare decisis* (a/k/a “precedent”)

- a. A Decision Has Been Rendered in a Prior Action**
- b. The Prior Action Involved the Same Issues**

C. Consolidation Can Be Either

1. Ordered by The Court *suo sponte* (on its Own Initiative)

2. Requested By a Party

- a. This is Done By Motion**
- b. The Motion is Addressed to the Assignment Judge of the County of Venue of the First Action Filed**
- c. The General Rule is that the Actions Will be Consolidated in the County of Venue of the First Action Filed**
- d. *Cf. Winzinger v. Brennan Brothers*, 191 N.J. Super. 114 (1983), where the Court relaxed the rule as to the place of filing and as to the ultimate county of venue.**

XII. Transfer of Actions – R. 6:4-1

A. Reasons for Transfer

- 1. Recovery Will Likely Exceed the Jurisdictional Limit of the Court**
- 2. A Counterclaim Exceeds the Jurisdictional Limit of the Court**
- 3. In Order To Consolidate More Than One Action Pending – See XI, above for the reasons**

B. Transfer is Accomplished by Motion

C. The Motion Must be Filed Prior to Trial

D. As For the Reasons for Requiring the Motion to be Filed Prior to Trial, See *Andriola v. Galloping Hill Shopping Center*, 93 N.J. Super. 196 (Law Div. 1966)