

Amendments to the New Jersey Court Rules that Impact Motions to Dismiss and Motions in Limine Take Effect September 1, 2020

August 27, 2020

On September 1, 2020, several amendments to the New Jersey Court Rule will go into effect. New Jersey litigants should take particular note of the following two rule changes.

Modification of the Timing of Motion to Dismiss for Failure to State a Claim

Previously, motions to dismiss for failure to state a claim under Rule 4:6-2(e) were filed in accordance with the general motion rule. Under the new, amended rule, a Rule 4:6-2(e) motion to dismiss for failure to state a claim must be filed in accordance with the longer time frame established for summary judgment motions under Rule 4:46-1. In other words, litigants are now required to move no later than 28 days before the anticipated return date and oppositions are due no later than 10 days before the return date. The amendment does not affect motions to dismiss filed solely pursuant to Rule 4:6-2(a) through (d), and (f).

New Motion in Limine Rule

In its adoption of new Rule 4:25-8, the Court provides a framework for motion *in limine* filings by including motions *in limine* as part of the pretrial exchange; establishing page limitations; and most importantly, notifying litigants of the potential negative consequences in the event of noncompliance with the Rule.

The new Rule essentially codifies the holding of Cho v. Trinitas Regional Medical Center, 443 N.J. Super. 461 (App. Div. 2015), certif. denied, 224 N.J. 529 (2016), which made clear that litigants may not file a dispositive motion, styled as a motion *in limine* on the eve of trial. The new Rule defines a motion *in limine* as “an application returnable at trial for a ruling regarding the conduct of trial, including admissibility of evidence, which motion, if granted, would not have a dispositive impact on a litigant’s case.” Rule 4:25-8(a)(1) specifies that dispositive motions, such as an application to bar an expert’s testimony in a case where such testimony is required to sustain a party’s burden of proof, filed under the guise of being *in limine* now fall outside the purview of *in limine* motions, and will not be considered. Dispositive motions must be filed timely and in accordance with Rule 4:46, which governs motions for summary judgment.

The Rule also significantly alters the practice of filing motions *in limine* by mandating that motions *in limine* be submitted as exhibits to the pretrial exchange under Rule 4:25-7(b), which requires that exchanges occur at least 7 days prior to the trial date. If multiple issues need to be resolved, multiple motions *in limine* must be filed as the new Rule limits one issue per motion (to the extent practicable). *In limine* motions are limited to five-page moving and opposition briefs, and there is a collective 50 page limit for all motions filed by a single party, exclusive of table of

contents and authorities. R. 4:25-8(a)(3). Reply briefs to *in limine* motions are not permitted without leave of court.

Failure to abide by this new Rule could result in the trial court's refusal to consider the motion, absent good cause shown for the non-compliance. It is therefore imperative that litigants familiarize themselves with the amended rules to understand how these changes may impact their cases. A full copy of Court's amendments can be found [here](#).