

## Navigating The New Jersey Courts With Local Counsel



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Consider the following scenario:

*A high-powered Chicago litigator, directing a New Jersey litigation, is aware that discovery will not be completed by the Court-generated discovery end date. A full two weeks before discovery closes, the Chicago lawyer instructs local counsel, who had been serving merely as a New Jersey "mailbox" to this point, to extend discovery. Because the New Jersey Court Rules require motions to extend discovery to be filed on 16 days' notice, and returnable prior to the end of the discovery period, this prominent litigator must now show "exceptional circumstances" for the "late" extension request, or be foreclosed from taking basic discovery while being forced to reckon with an automatic trial date.*

No lawyer -- let alone one practicing in an unfamiliar jurisdiction -- wants to be placed in such an uncomfortable situation. Yet, given some peculiarities of New Jersey practice, in both State and Federal Court, this type of situation can befall even the most diligent out-of-state lawyer admitted pro hac vice.

Retaining local counsel to serve merely as a "mailbox" or filing assistant can transform the best prepared papers into objects of scorn. No lawyer wants to explain to a client that carefully-prepared (and expensive) papers have not been accepted for filing, or that deadlines established by Court rules, by oversight, were not met.

With this in mind, it is useful to consider a few nuances of New Jersey practice that may be unfamiliar to out-of-state lawyers, and

which demonstrate the importance of retaining competent, active local counsel in New Jersey.

A good starting point is the recent amendments to New Jersey's State Court rules concerning the form of Case Information Statement ("CIS") that all parties must file at the commencement of the case. The form was recently amended to require the filer to certify that he or she has removed or redacted personal-identifying information such as social security numbers or financial account numbers. While this new innovation may elude practitioners relying on outdated CIS forms, breach of this requirement could lead to the imposition of sanctions upon the filer.

Another nuance of New Jersey practice, illustrated above, involves the time period for concluding discovery and the requirement that a motion to extend discovery be filed and made returnable prior to the expiration of the discovery period. While this requirement may sound mundane and easily satisfied, it may be challenging in practice. Motion days in New Jersey are generally every other Friday, and the schedule is rigidly enforced. Couple that with the fact that motions must be filed at least 16 days in advance of the scheduled return date, the well-prepared practitioner, as a practical matter, must be thinking about extending the discovery period at least three weeks to a month prior to the discovery end date, depending on when the discovery period expires in relation to the court's motion schedule. If the discovery period ends without a motion to extend being timely filed and argued, the clerk's office automatically generates a trial date regardless of whether discovery is complete, and the lawyer

needing additional discovery must contend with adjourning a trial date (which, following the expiration of the discovery period, cannot be adjourned on the grounds that discovery is not complete).

Another noteworthy aspect of New Jersey practice involves expert discovery. The New Jersey Court rules protect from discovery draft expert reports and communications between the expert and the attorney, which is a practice that differs from the current Federal Rules of Civil Procedure. Consequently, familiarity with the New Jersey Court rules will enable counsel to remove draft reports and other communications between the attorney and the expert from production and avoid the potential waiver of applicable privileges.

A final nuance concerns practice in federal court in New Jersey. Three vicinages comprise the District of New Jersey, in Newark, Camden and Trenton. Regardless of the vicinage in which one is practicing, however, the District Judges require a very comprehensive form of final pretrial order. While the specifics may vary from judge to judge, some general requirements include: specifying all deposition

read-in testimony, by page and line, setting forth objections and counter-designations to such read-in testimony; listing all trial exhibits and objections thereto; and having to meet with adverse counsel prior to the trial to agree upon proposed jury charges, where applicable. The Court may also require counsel to submit a statement of stipulated facts, a statement of contested facts, and list all contemplated in limine motions. While it is obvious that preparing a final pretrial order is time-consuming, a well-prepared practitioner will be aware of the form of final pretrial order that a particular judge requires, will prepare and organize the case accordingly, and will begin preparing the final pretrial order well in advance of the due date. Counsel that is unaware of this aspect of New Jersey federal court practice may find him or herself in quite an uncomfortable position at the end of the case.

Undoubtedly, New Jersey practice has a number of nuances of which counsel from outside the State should be cognizant and/or have competent local counsel. Otherwise, litigating a case in New Jersey can become burdensome and needlessly frustrating.



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