

The Metropolitan Corporate Counsel

www.metrocorpcounsel.com

Volume 18, No. 6

© 2010 The Metropolitan Corporate Counsel, Inc.

June 2010

As Local As Local Law Gets: Navigating New Jersey's Unique Legal Landscape

**Fernando M. Pinguelo
and Andrew D. Linden**

**NORRIS McLAUGHLIN & MARCUS,
P.A.**

You arrive at your desk and the day starts like any other – dialing your voice-mail while simultaneously typing an email. But today, you notice that a new file has been added to your mountain of work. “New Jersey?!?” you shout. “We do business in New Jersey?” You collect yourself and acknowledge that yes, of course, your company does business in New Jersey; but it has never been sued there. Thoughts of New Jersey stereotypes run through your mind: runaway jury verdicts, traffic jams, the Sopranos, and *Joisey* accents. You think to yourself, “we’ve got a *Situation*.”

Stereotypes aside, you realize that you’re no longer on your home turf and need to get acquainted quickly with New Jersey’s “local customs” in order to get your arms around this complex matter. Here are ten little-known facts about

Fernando M. Pinguelo, a trial lawyer, Member of Norris McLaughlin & Marcus, and Co-chair of its eDiscovery Group, founded the ABA Journal award-winning eDiscovery blog, *e-Lessons Learned*, where law, technology, and human error collide. **Andrew D. Linden**, an Associate of the firm, practices in its Litigation and Appellate Practice groups. To learn more about New Jersey’s unique legal landscape, email info@NJLocalLaw.com or visit www.NJLocalLaw.com.



**Fernando M.
Pinguelo**



**Andrew D.
Linden**

New Jersey’s state and federal court systems.

A. New Jersey State Courts

New Jersey’s state court system consists of municipal courts, tax courts, the Superior Court (the trial court), the Appellate Division, and the Supreme Court of New Jersey. There is a superior court in each of New Jersey’s twenty-one counties, which are grouped into fifteen vicinages for administrative purposes. There are approximately 360 superior court trial judges, and each year parties file about seven million new cases in New Jersey’s courts.

1. Trial Court Split

The nature of your case and the type of relief sought will determine where your case will be heard. New Jersey is one of only four states to retain a separate chancery court. The vast majority of civil cases are heard in the Superior Court, Law Division. However, actions in which the plaintiff’s primary right or the principal relief sought is equitable in nature (and not monetary) shall be brought in the Chancery Division. Such equitable matters include receivership actions, foreclosures, and the immediate enforcement of restrictive covenants.

Generally, equity actions are not triable by jury. Both the Law and Chancery divisions have the power to afford full legal and equitable relief, but a blatant misfiling of a truly legal issue in the Chancery Division is strongly disfavored.

2. eDiscovery: Make Meet & Confer a Priority

New Jersey became one of the first jurisdictions to adopt eDiscovery court rule amendments that address specifically the proliferation of electronic documents and their impact on lawsuits and the discovery process. In complex cases with e-document-heavy discovery, a mandatory meeting among counsel and technical experts is critical to setting the tone for an orderly and manageable exchange of electronic information. Although modeled after the federal rules, New Jersey’s court rules do not have an equivalent to the federal rules’ mandatory meet and confer rule, which requires all parties to promptly meet and confer regarding discovery needs. New Jersey’s court rules do, however, allow for parties to apply to the court to schedule a case management conference to address eDiscovery and related complexities. Specifically, the rules provide that counsel may ask the court to schedule a conference if it appears that such a conference will assist discovery or otherwise promote the orderly and expeditious progress of the case. In complex cases with e-document-heavy discovery, a meeting among counsel is critical to setting the tone for a manageable exchange of eDiscovery, so make an early application to the court for such a conference.

3. Daubert Standard: Not Quite (Yet)

New Jersey has not codified or

Please email the authors at fmpinguelo@nmmlaw.com or adlinden@nmmlaw.com with questions about this article.

expressly adopted the *Daubert* standard for the admissibility of expert testimony. In New Jersey, parties must satisfy three basic requirements for the admission of expert testimony: the testimony is beyond the ken of the average juror, the field testified to must be at a state of the art such that an expert's testimony could be sufficiently reliable, and the witness has sufficient expertise to offer the intended testimony. In cases involving injuries caused by drugs or toxic substances, however, New Jersey courts have used a *Daubert*-like test, stating that expert testimony is admissible if it is based on sound, adequately founded scientific method involving data and information reasonably relied on by experts in the field. Be certain that your expert's reasoning satisfies the applicable standard in order to avoid wasting money and effort compiling inadmissible evidence.

4. *Deposition Testimony Will Be Part of the Trial*

The court rules provide that a deposition of a witness may be used by any party for any purpose against any other party who was present at the deposition, if the court finds that the appearance of the witness cannot be obtained for reasons such as death, illness, imprisonment, or the witness is out of state. In some cases it will be necessary to depose a non-party witness who does not reside in New Jersey and will be unavailable for trial. Because that witness's deposition testimony may be admissible at trial, that deposition should not be handled lightly. In one case, the court admitted the telephone deposition of a non-party witness who lived in Hawaii where opposing counsel participated in the deposition and had an opportunity to cross-examine the witness. Thus, be prepared to cross-examine and make proper objections during the deposition of a witness who later may be deemed "unavailable."

5. *"Bending" the Rules*

The often forgotten court rule 1:1-2 lingers and could spell disaster to the unsuspecting lawyer. Rule 1:1-2 provides that the court rules shall be construed to secure a just determination, simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay. Unless otherwise stated, "*any rule may be relaxed or dispensed with by the court*" in which the action is pending if adherence to it would result in an injustice. Although used spar-

ingly, this rule allows judges to dispense with the rules if the circumstances call for it. There are numerous reported decisions where the court invoked the rule. Just when your client thinks it obtained a favorable result, this rule could change the outcome.

B. *United States District Court For The District Of New Jersey*

New Jersey's federal court system is composed of a single judicial district with three divisions located in Newark, Camden, and Trenton. The Clerk of the District Court will consider the defendant's residence, the convenience of the parties, counsel and witnesses, and the origin of the cause of action when allocating cases amongst the court's three divisions. There are twenty-four district court judges and ten magistrate judges. Last year, parties commenced nearly 6,700 actions in the District Court of New Jersey.

1. *Strict Adherence to Proper Form*

The local civil rules provide that the first paragraph of every initial pleading, motion, or other form must recite the address for every party named in the case, and that the first page of each filed paper bear counsel's address. This rule is designed to assist the clerk when determining which division will hear the case. In addition, litigants, as well as attorneys, must advise the court of any change in address within seven days. These requirements may sound rudimentary, but a failure to adhere to these rules may result in sanctions. Case law supports the court's imposition of harsh penalties, including dismissal of a complaint, for violations of the local rules. Do not let a simple technicality end your case before it even starts.

2. *Need a Little More Time?*

Pursuant to the local "breathing room" rule, a party, without notice to an adversary, may obtain an initial fourteen-day extension from the clerk to answer a complaint. If the application is made in writing, prior to the expiration of the time to answer, the clerk will grant the extension. The extra fourteen days can be used to formulate case strategy, prepare preliminary motions, or negotiate an early settlement. Be sure your application for an extension is timely, and use the extra days to your advantage.

3. *Magistrate Judges' Importance*

Magistrate judges play a critical role

in the district. Magistrates are the case management "gatekeepers" responsible for adjudicating case management motions, determining non-dispositive pretrial motions, conducting hearings, making recommendations to the district judge on dispositive motions, and, in some cases, presiding over trials. In the Newark vicinage, magistrates are assigned to particular district court judges. In Trenton and Camden, magistrates assist district court judges on a rotating basis. Due to the court's high volume of complex litigation, the district recently increased its number of magistrates. Knowing the customs and expectations of both district and magistrate judges (most of whom have their own personal practices) will enhance your chances of success during and prior to trial.

4. *eDiscovery Gets Hyper-local*

New Jersey's federal courts have been in the forefront of eDiscovery issues. The local rules provide detailed instructions on how to address eDiscovery. For example, local rule 26.1 imposes an obligation upon counsel prior to the initial conference to thoroughly understand a client's information management system, how information is stored, and how it can be retrieved. These local rules get ever more hyper-local with some judges asking parties to identify IT representatives and produce them for depositions before discovery commences. This local rule and each individual judge's practices should be considered for proper compliance.

5. *Don't Fall for the Calculatedly Evasive Verification*

All too often, parties hedge their responses to interrogatories by submitting a verification that qualifies the responses as being made "upon information and belief." Local rule 33.1 provides that if the person verifying the answers does not have personal knowledge of the information set forth in the answers, the witness must articulate which answers fall into that category and identify persons with personal knowledge from whom the information was obtained. Don't let a deficient verification slide without an objection.

New Jersey's state and federal judiciary is among one of the most respected in the country, and with a strong familiarity of New Jersey's legal terrain you can vastly improve your likelihood of success in litigation.