

251 Legal Briefing

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Goals

- Overview of Court System
- Overview of possible areas of District involvement in litigation
- Discovery process
- Testimony
 - Rules of evidence
- Record keeping

Courts in NJ

Federal Courts

- District Courts in Newark and Camden
- Appeals go to 3rd Circuit Court of Appeals- Philadelphia
- Specialty Courts- Bankruptcy

Federal Courts are Courts of limited jurisdiction

- Federal laws and statutes
- Diversity

NEW JERSEY STATE COURTS

- All operate under authority of NJ Supreme Court
 - Municipal Court- trend toward regional
 - Superior Courts- each county

Law Division

Criminal

Civil

Special Civil Part- LT/Small Claims

Family Part

Chancery Division

- Superior Court- Appellate Division
- New Jersey Supreme Court
- Specialty Court- OAL, Workers Comp, etc.

New Jersey Court Rules

- All actions in Court are governed by NJ Court Rules
- Adopted by NJ Supreme Court
- Also known as Rules of Civil Procedure
- The Bible of Court Procedure
- If not in accordance with Rules- your action can be tossed out

Areas of possible District involvement in litigation

Always ask- Where am I and what am I doing here?

- Plaintiff-
 - Chapter 251- NJSA 4:24-53
 - Other action
- Defendant
 - Action in lieu of prerogative writ **NJR** 4:69
 - Other action
- Witness in an action between other parties

District as the Plaintiff/Enforcer

Jurisdictional Language of 251

Section 15 of Chapter 151 (PL 1975, c 251 or NJSA 4:24-53) provides:

“Violations, injunction; penalty; enforcement. If any person violation any of the provisions of this act, or fails to comply with the provisions of a certified plan, the...district may institute a civil action in the Superior Court for injunctive relief to prohibit and prevent such violation or violations and said court may proceed in a summary manner. Any person who violates any of the provisions of this act, any standard promulgated pursuant to this act or fails to comply with the provisions of a certified plan shall be liable to a penalty of not less than \$25 nor more than \$3,000 to be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.). The Superior Court, County Court, county district court and municipal court shall have jurisdiction to enforce said Penalty Enforcement Law. If the violation is of a continuing nature, each day during which it continues shall constitute an additional separate and distinct offense. “

PENALTY ENFORCEMENT LAW

- Updated in 1999- P.L. 1999, c 274.
- Now codified at NJSA 2A:58-11.
- Parallel Court Rule **NJR 4:70**.
- Summary rather than plenary proceeding
- Questions:
 - Did they violate
 - If so, what is the penalty
- Can be joined with an action for injunction.

The District as the Defendant

- Action in Lieu of Prerogative Writ- **NJR 4:69**
 - To force public entity to do something.
 - Must be initiated within 45 days of action
 - Requirement for exhaustion of remedies
 - Usually heard by Chief Judge or Assignment Judge
 - Expedited procedure
 - Conference required within 30 days of filing
- Other
 - Wide range- typically a contract, possibly personal injury.

The District as a Witness

- Typical examples:
 - Cases between property owners relative to damages.

Discovery

- Discovery is considered Pre-trial procedure
- Controlled by Court Rules
- Minimal Judicial involvement
- Sanctions for failure to participate in discovery
- Much loser standards
- Fishing expeditions allowed- loose definition of relevancy
- Hearsay allowed
- Usually is not admitted into evidence unless used for impeachment or where witness is unavailable.

Discovery to parties

- Interrogatories- NJR 4:17- Written questions
- Depositions- NJR 4:14- “Practice” testimony
- Production of documents- NJR 4:18
- Mandatory Identification of witnesses
- Mandatory identification of expert witnesses.
- Expert reports MUST be provided.

Discovery to non-parties

- Must be initiated by Subpoena NJR 1:9 et seq.
- Can be combined for “appearance and testimony” (NJR 1:9-1), for “production of documents and electronically stored information” (NJR 1:9-2) or for both.
- Deposition upon written questions- (Interrogatories for non-parties) NJR 4:15.
- Failure to appear or to provide is “contempt.”
- Can apply to judge to “quash” subpoenas.
- Unclear relationship between “discovery” and OPRA.
- Informal procedures possible- file review

Subpoenas

- Governed by NJR 1:9
 - Must state name of Court and Title of action
 - Court may “quash or modify on motion if compliance would be unreasonable or oppressive.”
 - Must be at least 5 days before trial
 - Must be served together with a fee.

HINT: LAWYERS CAN BE SLOPPY- MAKE THEM COMPLY WITH RULE.
Lawyers often assume cases will be carried or adjourned.

Helpful hints for all testimony

- **NOTHING IS MORE IMPORTANT THAN ADEQUATE PREPARATION.** Force your attorney to prepare you. Don't withhold information from your attorney.
- Have a complete knowledge of the file
- Dress and answer professionally
- **THINK** before you answer.
- Answer only one question at a time. Answer only the question that was asked
- If in doubt ask them to restate
- Provide short answers only.
- Do not offer information
- Let your attorney lead. If your attorney objects STOP.
- A good attorney will never ask a question to which he does not know the answer

Trial testimony

- Based upon NJ Rules of Evidence (Based on national model)
 - Relevancy (Rule 401)
 - Personal knowledge (Rule 602)
 - Can use file to “refresh your recollection” (Rule 612)
 - Privileges
 - Right against self incrimination (Rule 502)
 - Lawyer client privilege (Rule 504)
 - Identify of informer (Rule 516)
- Compare Witness to Expert Witness (Rules 700)
Bring your documentation and resume with you

Trial Testimony (continued)

- General Prohibition on “Hearsay” (Rule 802)
- Hearsay is a statement (oral, written or non-verbal), other than one made by a declarant while testifying at a trial or hearing, offered in evidence to prove the truth of the matter stated.”
- Myriad of exceptions:
 - Public records
 - Absence of entry in public records

Files/Record Keeping

- Anything in the “official’ file is part of the “public” record. It is discoverable, including handwritten notes etc. Watch what you put in it. No notes, funny comments, derogatory comments, etc.
- Document everything to best extent possible.
- Watch out for inconsistencies between inspectors.
- Watch out of incorrect dates, weather, conditions etc. Can be used to prove inaccuracy of records.
- Follow the Chain of custody
 - Do not allow unrestricted access to files.
 - You must stay with persons reviewing files.
- Watch your e-mails

Final thoughts

- Relationship with District's attorney
 - Be prepared
 - Tell the truth.
 - Be professional
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- **GOOD LUCK!**