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New Jersey Law Journal

November 8, 2004

HEADLINE: Proposed Amendments to the Local Civil Rules;
United States District Court, New Jersey;
Local Civil Rules 7.1 and 78.1

BODY:

U.S. District Court, District of New Jersey

Notice is hereby given to the Bar and all interested parties that the United States District Court for the District of New Jersey proposes to make the following amendments to Local Civil Rule 7.1 and Local Civil Rule 78.1

The current Local Civil Rule 7.1 has been revoked in its entirety and replaced with the following proposed rule.

Civ. RULE 7.1 APPLICATION AND MOTION PRACTICE**[a] No Pre filing Applications**

No applications will be entertained by a Judge or Magistrate Judge in any action until the action has been filed, allocated and assigned.

[b] All Motions

[1] Unless a Judge or Magistrate Judge advises the attorneys otherwise, all motions, regardless of their complexity and the relief sought, shall be presented and defended in the manner set forth in L. Civ. R. 7.1.

[2] The Notice of Motion and all papers in support of or in opposition to the motion, including briefs, must be filed with the Clerk.

[3] Motions filed electronically by ECF Registered Users shall also comply with the Policies and Procedures that govern Electronic Case Filing for the District of New Jersey.

[4] Pursuant to Rule 78 of the Federal Rules of Civil Procedure, a motion will be decided on the papers submitted unless a party requests oral argument and the request is granted by the Judge or Magistrate Judge. Any request for oral argument shall be clearly marked on the front page of the Notice of Motion and Brief. In the absence of a request for oral argument, the Court, sua sponte, may direct that oral argument be held.

[c] Motion Dates

[1] All applications, other than applications under L.Civ.R. 65.1, by notice of motion or otherwise, shall be made returnable before the Judge or Magistrate Judge to whom the case has been assigned on the first motion day which is at least 24 days after the date of filing.

[2] If a motion is noticed for any day other than a regular motion day, unless such day has been fixed by the Court, the Clerk shall list the disposition of the motion for the next regular motion day and notify all counsel of the change in date. The regular motion days for the three vicinages are set forth in L.Civ.R. 78.1.

[d] Filing Motion Papers

[1] No application will be heard unless the moving papers and a brief, prepared in accordance with L.Civ.R. 7.2, and proof or acknowledgment of service on opposing counsel, are filed with the Clerk at least 24 days prior to the noticed motion date. The brief shall be a separate document for submission to the Court, and shall note the motion date on the cover page.

[2] The brief and papers in opposition to a motion, specifying the motion date on the cover page, with proof or acknowledgment of service thereof on opposing counsel, must be filed with the Clerk at least 14 days prior to the original

motion date, unless the Court otherwise orders, or an automatic extension is obtained pursuant to L.Civ.R. 7.1[d][5].

[3] If the moving party chooses to file a reply brief, the brief specifying the motion date on the cover page, with proof of acknowledgment of service thereof on opposing counsel, must be filed with the Clerk within seven days after service of the opposition papers.

[4] In lieu of filing any brief pursuant to L.Civ.R. 7.1[d][1], [2] or [3], a party may file a statement that no brief is necessary and the reasons therefor.

[5] The time within which to file papers, including the brief, in opposition to a dispositive motion may be extended once by the party opposing the motion for a period not to exceed 14 days. Such extension does not require the consent of the adversary, the Court, or the Clerk. To obtain the automatic extension a party must file with the Clerk and serve upon all other parties, a letter invoking the provisions of this rule before the date on which opposition papers would otherwise be due under L. Civ. R. 7.1[d][2]. If an automatic extension is obtained, the new motion date shall be the next available motion date following the originally noticed date. No other extension of the time limits provided in L.Civ.R. 7.1[d][2] and [3] shall be permitted without an Order of the Court. Any application for such an extension shall advise the Court whether the applicant's adversary has consented to such request.

[6] No sur-replies are permitted without permission of the Judge or Magistrate Judge to whom the case is assigned.

[7] The Court may reject any brief not filed within the time specified.

[e] Preparation of Order

All filed motions shall have annexed thereto a proposed order. If the proposed order does not adequately reflect the Court's ruling, the prevailing party, if directed by the Court, shall submit an order within five days of the ruling on the motion on notice to his or her adversary. Unless the Court otherwise directs, if no specific objection to that order with reasons therefor is received within seven days of its receipt by the Court, the order may be signed. If such an objection is made, the matter may be listed for hearing at the discretion of the Court.

[f] Motions Regarding Additional Pleadings

Upon filing of a motion for leave to file an amended complaint or answer, a complaint in intervention, or other pleading requiring leave of Court, the movant shall attach to the motion a copy of the proposed pleading or amendments and retain the original until the Court has ruled. If leave to file is granted, the movant shall file the original forthwith.

[g] Courtesy Copies

In addition to the filing of all papers, including briefs, in support of or in opposition to a motion, the filer must submit forthwith to the Judge's or Magistrate Judge's chambers one courtesy copy of a filed paper or brief in paper form, unless otherwise directed by the judicial officer. These documents shall be clearly marked as courtesy copies.

[h] Cross Motion

A cross-motion related to the subject matter of the original motion may be filed by the responding party together with that party's opposition and may be noticed for disposition on the same date as the original motion, as long as the responding papers are timely filed. Upon the request of the original moving party, the Court may enlarge the time for filing a reply or a response to the subsequent motion and adjourn the original motion date.

[i] Motions for Reconsideration

A motion for reconsideration shall be served and filed within 10 days after the entry of the order or judgment on the original motion by the Judge or Magistrate Judge. A brief setting forth concisely the matter or controlling decisions which counsel believes the Judge or Magistrate Judge has overlooked shall be filed with the Notice of Motion. Unless the Court directs otherwise, any party opposing a motion for reconsideration shall file and serve a brief in opposition within seven days after service of the movant's Notice of Motion and Brief. No oral argument shall be heard unless the Judge or Magistrate Judge grants the motion and specifically directs that the matter shall be argued orally.

Local Civil Rule 78.1 has been amended as follows [new text underlined]:

Civ. RULE 78.1 MOTION DAYS

Except during vacation periods of the Court, the regular argument motion days are: Camden, the first and third Friday

of each month; Newark, the second and fourth Monday of each month; Trenton, the first and third Monday of each month. Unless the Court directs otherwise, it will convene at 10:00 a.m. on argument days. If oral argument is to be heard, the Court will designate the time. Whenever a regular argument motion day falls on a holiday, the argument will be heard on the following non-holiday except in Camden where it will be heard on the preceding non-holiday.

Comments regarding this proposal are to be submitted within 30 days of publication to:

William T. Walsh, Clerk

United States District Court

Martin Luther King, Jr. Federal Building and Courthouse

P.O. Box 419

Newark, NJ 07101

FOR THE COURT

John W. Bissell

Chief Judge