

## **Rule 4:105. Motions**

### **4:105-1. General Principles**

After a case has been assigned or designated to the CBLP, the parties shall seek rulings on all motions in the case only from the judge assigned to the case and not from other judges unless otherwise ordered by the court.

**Note:** Adopted July 27, 2018 to be effective September 1, 2018.

### **4:105-2. Motions to be Addressed in the Scheduling Order**

The initial scheduling order and any amendments thereto may include provisions agreed to by the parties with the approval of the court regarding the procedures for the filing of and the disposition of motions. The court may include provisions regarding sanctions for non-compliance with these rules.

**Note:** Adopted July 27, 2018 to be effective September 1, 2018.

### **4:105-3. Extensions of Time for Initial Dispositive Motions**

(a) Absent an order of the court, the hearing date for a dispositive motion may not be adjourned if a trial date has been set.

(b) Subject to paragraph (a), the original motion day of an initial dispositive motion may be adjourned once by a party opposing the motion, without the consent of the moving party, the court, or the clerk.

(c) To obtain the automatic extension, a party first must contact the CBLP judge to obtain a new motion date to be set by the court. Thereafter, the party must file with the clerk, and serve upon all other parties and the court, a letter stating that the originally noticed motion day has not previously been extended or adjourned and invoking the provisions of this rule prior to the date on which opposition papers would otherwise be due under the rules. That letter shall set forth the new motion day, which shall be provided by the CBLP judge.

(d) All parties opposing the motion shall timely file their opposition papers in accordance with the rules prior to the new motion day, and the moving party shall timely file its reply papers in accordance with the rules prior to the new motion day.

(e) No other extension of the time limits shall be permitted without an order of the court, and any application for such an extension shall advise the court whether other parties have or have not consented to such request.

**Note:** Adopted July 27, 2018 to be effective September 1, 2018.

#### **4:105-4. Advance Notice of Discovery Motions**

(a) In order to permit the court the opportunity to resolve discovery issues before motion practice ensues and to control its calendar in the context of the discovery and trial schedule, pre-motion conferences in accordance herewith must be held.

(b) The parties are required to meet and confer (in-person or by phone) before bringing any discovery issue to the attention of the court.

(c) Prior to filing a discovery motion, counsel for the moving party shall advise the court in writing (no more than five pages), on notice to opposing counsel, outlining the issue(s) in dispute and the party's position on each such issue and requesting a telephone conference.

(d) Within three business days of receipt of the letter from counsel for the movant, any party opposing the relief shall submit a letter to the court (no more than five pages), on notice to opposing counsel, outlining the issue(s) in dispute and the party's position on each such issue.

(e) Upon review of the motion notice and response letter(s), the court will schedule a telephone or in-court conference with counsel. At the discretion of the court, the conference may be held on the record. Counsel fully familiar with the matter and with authority to bind their client must be available to participate in the conference. The unavailability of counsel for the scheduled conference, except for good cause shown, may result in granting of the application without opposition and/or the imposition of sanctions.

(f) If the court resolves the matter during the conference, an order consistent with such resolution may be issued or counsel will be directed to forward a letter confirming the resolution to be "so ordered."

(g) If the court does not resolve the matter during the conference, the court shall set a briefing schedule for the motion. Except for good cause shown, the failure to comply with the briefing schedule may result in the submission of the motion unopposed or the dismissal of the motion, as may be appropriate.

(h) Where a motion must be made within a certain time pursuant to the rules or court order, the submission of a motion notice letter, as provided in this rule, within the prescribed time shall be deemed the timely making of the motion. This submission shall not be construed to extend any jurisdictional limitations period.

**Note:** Adopted July 27, 2018 to be effective September 1, 2018.

#### **4:105-5. Process Applicable to Summary Judgment Motions**

This rule applies to any motion brought pursuant to R. 4:46, which shall continue to apply to the extent not inconsistent with this rule.

(a) The parties are to confer and agree on a briefing schedule for dispositive motions, including cross-motions.

(b) The moving party will prepare its notice of motion, brief, affidavits, other supporting documentation and statement of material facts. These papers will be sent to all adversaries and the original filed with the clerk with no motion date designated.

(c) An original of all opposition papers are then to be filed with the clerk in accordance with the agreed-upon schedule of the parties. All opposition papers are to be served on the movant and all other parties.

(d) An original of all reply papers are then to be filed with the clerk in accordance with the agreed-upon schedule of the parties. All reply papers are to be served on all other parties.

(e) After the motion has been fully briefed, the movant shall file a letter with the clerk, and serve a copy on the CBLP judge and all other parties, certifying that the matter is fully briefed and asking the clerk to place the motion on the court's motion calendar for a motion date within 30 days of the submission date. The motion return date may be changed by the court, and if the court changes the motion date, it shall notify the parties. The clerk shall forward all original filed motion papers to the court. The movant shall provide one full set of all motion papers as a courtesy copy to the court, listing in the cover letter all papers submitted.

(f) If any party receiving a motion for summary judgment seeks to file a crossmotion for summary judgment, the cross-movant shall confer with the movant to agree on a revised briefing schedule, as appropriate. The cross-movant thereafter shall file and serve a single brief consisting of its opposition to the original motion and its moving brief on the cross-motion. The original moving party shall then file and serve a single brief consisting of its reply on the original motion and its opposition to the cross-motion. The cross-movant shall then file and serve a reply brief limited to the issues on the cross-motion. After both the motion and cross-motion have been fully briefed, the original moving party shall file a letter with the clerk, and serve a copy on the CBLP judge and all other parties, certifying that the matters are fully briefed and asking the clerk to place the motions on the court's motion calendar for a motion date within 30 days of the submission date. The motion return date may be changed by the court, and if the court changes the motion date, it shall notify the parties. The clerk shall forward all original filed motion and cross-motion papers to the court. The original moving party shall collect all papers submitted in support of and in opposition to both the original motion and the cross-motion, and shall provide one full set of all motion papers as a courtesy copy to the court, listing in the cover letter all papers submitted.

**Note:** Adopted July 27, 2018 to be effective September 1, 2018; paragraphs (c) and (d) amended July 31, 2020 to be effective September 1, 2020.

#### **4:105-6. Length of Papers**

Unless otherwise permitted by the court: (i) the page limitations for briefs or memoranda of law set forth in R. 1:6-5 shall apply; and (ii) affidavits/certifications, exclusive of exhibits, shall be limited to 25 pages.

**Note:** Adopted July 27, 2018 to be effective September 1, 2018.

#### **4:105-7. Sur-Reply and Post-Submission Papers**

Absent express permission in advance, sur-reply papers, including correspondence, addressing the merits of a motion are not permitted, except that counsel may inform the court by letter of the citation of any post-submission court decision that is relevant to the pending issues, but there shall be no additional argument. Materials submitted in violation hereof will not be read or considered. Opposing counsel who receives a copy of materials submitted in violation of this rule shall not respond in kind unless instructed by the court.

**Note:** Adopted July 27, 2018 to be effective September 1, 2018.

#### **4:105-8. Joint Motion Submissions**

A party who elects to join in any pending motion or opposition shall do so by timely submitting a letter stating that the party is joining in the relief sought and relying upon the papers submitted by the movant or opponent of the motion.

**Note:** Adopted July 27, 2018 to be effective September 1, 2018.

#### **4:105-9. Motions Not Requiring Briefs**

(a) No brief is required by either movant or respondent, unless otherwise directed by the court, with respect to the following motions: for extension of time for the performance of an act required or allowed to be done, provided request therefor is made before the expiration of the period originally prescribed or extended by previous orders; to continue a pretrial conference, hearing, or the trial of an action; to add parties; to amend the pleadings; to file supplemental pleadings; for substitution of parties; or for pro hac vice admission of counsel who are not members of the New Jersey State Bar.

(b) The above motions, which are not required to be accompanied by a brief, shall state good cause therefor and cite any applicable rule, statute, or other authority justifying the relief sought. These motions shall be accompanied by a proposed order.

**Note:** Adopted July 27, 2018 to be effective September 1, 2018.