RULE 4:25. Pretrial Conferences

4:25-1. Pretrial Conferences

(a) Actions to Be Pretried. Pretrial conferences in contested actions may be held in the discretion of the court either on its own motion or upon a party's written request. The request of a party for a pretrial conference shall include a statement of the facts and reasons supporting the request. The pretrial conference shall be recorded verbatim.

(b) Pretrial Order. Immediately upon the conclusion of the conference, the court shall enter a pretrial order to be signed forthwith by the attorneys, which shall recite specifically:

(1) A concise descriptive statement of the nature of the action.

(2) The admissions or stipulations of the parties with respect to the cause of action pleaded by plaintiff or defendant-counterclaimant.

(3) The factual and legal contentions of the plaintiff as to the liability of the defendant.

(4) The factual and legal contentions of the defendant as to non-liability and affirmative defenses.

(5) All claims as to damages and the extent of injury, and admissions or stipulations with respect thereto, and this shall limit the claims thereto at the trial. Where such claims have been disclosed in answers to interrogatories they may be incorporated by reference.

(6) Any amendments to the pleadings made at the conference and, where necessary, the time fixed within which such amended pleadings shall be filed. Except when ordered on the court's own motion, no amendments of pleadings shall be granted at the conference which would justify an adverse party in demanding additional time for investigation and further discovery, and result in delay of the trial.

(7) A specification of the issues to be determined at the trial including all special evidence problems to be determined at trial and issues, not raised by the pleadings, which occur to the trial judge, with an appropriate notation if the attorney concerned does not wish to advance such issues.

(8) A specification of the legal issues raised by the pleadings which are abandoned or otherwise disposed of. No legal issue shall be ruled upon at the pretrial conference as to which there is any doubt or reasonably arguable question. If a ruling is sought on any such legal issue, the matter should be set forth with directions that formal motion be made thereon at a later time and before the pretrial judge if possible.

(9) A list of the exhibits marked in evidence by consent.

(10) Any limitation on the number of expert witnesses.

(11) Any direction with respect to the filing of briefs. A request by the court for briefs should be included where the resolution of any general legal problem is not clear, or where special problems of evidence exist, as noted by the attorneys or on inquiry by the pretrial judge.

(12) In special circumstances the order of opening and closing to the jury at the trial.

(13) Any other matters which have been agreed upon in order to expedite the disposition of the case.

(14) In the event that a particular member or associate of a firm is to try a case, or if outside trial counsel is to try the case, the name must be specifically set forth. No change in such designated trial counsel shall be made without leave of court if such change will interfere with the trial schedule. If the name of trial counsel is not specifically set forth, the court and opposing counsel shall have the right to expect any partner or associate to proceed with the trial of the case, when reached on the calendar.

(15) The estimated length of the trial.

(16) When the case shall be placed on the weekly call. When entered, the pretrial order becomes part of the record, supersedes the pleadings where inconsistent therewith, and controls the subsequent course of action unless modified at or before the trial or pursuant to R. 4:9-2 to prevent manifest injustice. The matter of settlement may be discussed at the sidebar, but it shall not be mentioned in the order.

(c) Trial Briefs. If trial briefs are ordered at a pretrial conference the pretrial order shall specify to which judge or other court official they shall be submitted and within what time. Where it appears that the trial will be presided over by a judge other than the pretrial judge, the pretrial judge shall file a copy of the pretrial order with the Assignment Judge or the Assignment Judge's designee, who shall make appropriate arrangements so that it may be determined after the briefs are received whether the action is one which requires study in advance by the trial judge. If so, a day certain shall be fixed and the action assigned to a particular trial judge for disposition at least 2 days in advance of the date so fixed.

(d) Disposition by Pretrial Judge. Notwithstanding the provisions of (c) hereof, and even though a continuance is ordered during the conference because of inadequate preparation by the parties of any matter, in the absence of some unusual circumstance the pretrial judge shall retain the case until the completion of the conference. The Assignment Judge shall, whenever possible, assign the case for trial and all preliminary motions to the pretrial judge.

Note: Source – R.R. 4:29-1(a)(b)(d)(e), 4:29-6. Paragraph (a) amended July 7, 1971 to be effective September 13, 1971; paragraph (a) amended July 14, 1972 to be effective September 5, 1972; paragraph (a), and paragraph (b)(7) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended July 24, 1978 to be effective September 11, 1978; paragraph (a) amended December 20, 1983 to be effective December 31, 1983; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraphs (c) and (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended July 28, 2004 to be effective September 1, 2004.

4:25-2. Notices; Filing of Pretrial Memorandum

(a) Notice of Pretrial Conference. Thirty days' notice of the pretrial conference shall be provided to all parties or their attorneys. The notice shall not be given earlier than 150 days after service of the original complaint on the defendant, except that the court may direct earlier notice either on its own motion or for good cause on the application of a party, with or without consent of the adverse party.

(b) Filing and Service of Memorandum. The parties shall submit to the court and serve on all other parties a pretrial memorandum, as prescribed by R. 4:25-3, at least three days prior to the pretrial conference date specified in the notice of pretrial conference.

Note: Source – R.R. 4:29-2(a) (b). Caption and paragraph (a) amended, paragraphs (b) and (c) adopted July 7, 1971 to be effective September 13, 1971; paragraphs (a) and (c) amended and paragraph (b) deleted July 14, 1972 to be effective September 5, 1972; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; caption and paragraphs (a) and (b) amended July 28, 2004 to be effective September 1, 2004.

4:25-3. Form of Pretrial Memoranda

Pretrial memoranda shall include the 16 items enumerated in R. 4:25-1(b), set forth in the same sequence and with corresponding numbers, and the following additional items, numbered as indicated:

(17) The date the attorneys for the parties conferred and matters then agreed upon;

(18) A certification that all pretrial discovery has been completed or, in lieu thereof, a statement as to those matters of discovery remaining to be completed;

(19) A statement as to which parties, if any, have not been served and which parties, if any, have defaulted.

Note: Source – R.R. 4:29-3(a)(b)(c)(d)(e). Caption amended, paragraph (b) adopted, and former paragraphs (b), (c) and (d) deleted July 7, 1971 to be effective September 13, 1971; paragraph (b) amended July 14, 1972 to be effective September 5, 1972; caption amended, paragraph (a) deleted and caption of paragraph (b) deleted July 13, 1994 to be effective September 1, 1994.

4:25-4. Designation of Trial Counsel

Counsel shall, either in the first pleading or in a writing filed no later than ten days after the expiration of the discovery period, notify the court that designated counsel is to try the case, and set forth the name specifically. If there has been no such notification to the court, the right to designate trial counsel shall be deemed waived. No change in such designated counsel shall be made without leave of court if such change will interfere with the trial schedule. In Track I or II tort cases pending for more than two years, and in Track III or IV tort cases, other than medical malpractice cases, pending for more than three years, the court, on such notice to the parties as it deems adequate in the circumstances, may disregard the designation if the unavailability of designated counsel will delay trial. If the name of trial counsel is not specifically set forth, the court and opposing counsel shall have the right to expect any partner or associate to proceed with the trial of the case, when reached on the calendar. Designations of trial counsel shall presumptively expire in all Track III medical malpractice cases pending for more than three years.

Note: Source – R.R. 4:29-3A(a); amended July 13, 1994 to be effective September 1, 1994; amended July 10, 1998 to be effective September 1, 1998; caption and text amended July 5, 2000 to be effective September 5, 2000; amended July 12, 2002 to be effective September 3, 2002; amended July 9, 2008 to be effective September 1, 2008; amended July 22, 2014 to be effective January 1, 2015.

4:25-5. Scheduling of Pretrial Conferences

In cases to be pretried, the court shall schedule pretrial conferences at such times as may be necessary to maintain a full trial calendar. Not more than two actions shall be noticed for pretrial conferences within the same hour before the same judge. The court shall notice all cases of the same attorney or firm before the same judge and consecutively.

Note: Source – R.R. 4:29-4(a) (b) (c); amended June 28, 1996 to be effective September 1, 1996; amended July 5, 2000 to be effective September 5, 2000; amended July 28, 2004 to be effective September 1, 2004.

4:25-6. Pretrial Conference After Grant of New Trial

If a new trial is directed by either the trial court or the appellate court, a pretrial conference shall be scheduled if the action was originally pretried and in such other actions as the court directs.

Note: Source – R.R. 4:29-7.

4:25-7. Attorney Conferences

(a) Prior to Pretrial. In cases that are to be pretried, the attorneys shall confer before the date assigned for the pretrial conference in order to reach agreement on as many matters as possible.

(b) Exchange of Information. Except as otherwise provided by paragraph (d) of this rule, in cases that have not been pretried, attorneys shall confer and, seven days prior to the initial trial date, exchange the pretrial information as prescribed by Appendix XXIII to these rules. At trial and prior to opening statements, the parties shall submit to the court the following in writing: (1) copies of any Pretrial Information Exchange materials that have been exchanged pursuant to this rule, and any objections made thereto; and (2) stipulations reached on contested procedural, evidentiary, and substantive issues. In addition, in jury trials, the parties shall also exchange and submit (1) any proposed voir dire questions, (2) a list of proposed jury instructions pursuant to R. 1:8-7, with specific reference either to the Model Civil Jury Charges, if applicable, or to applicable legal authority, and (3) a proposed jury verdict form that includes all possible verdicts the jury may return. Failure to exchange and submit all the information required by this rule may result in sanctions as determined by the trial judge.

(c) Continuing Obligation. Attorneys shall have the continuing obligation to report to the court any stipulations reached during the course of the trial.

(d) Waiver of Exchange. The parties may, in writing, waive the requirement of the exchange of information as set forth in paragraph (b) of this rule, but such waiver shall not affect the obligation to provide that information to the court at the commencement of trial.

Note: Source of paragraph (a) – R. 4:25-3(a). New rule adopted July 13, 1994 to be effective September 1, 1994; caption amended, paragraph (b) amended, and new paragraph (c) adopted July 5, 2000 to be effective September 5, 2000; paragraph (b) amended and new paragraph (d) added July 12, 2002 to be effective September 3, 2002.

4:25-8. Motions in Limine

(a) Definition; Procedures; Timeframes.

(1) Definition. In general terms and subject to particular circumstances of a given claim or defense, a motion in limine is defined as an application returnable at trial for a ruling regarding the conduct of the trial, including admissibility of evidence, which motion, if granted, would not have a dispositive impact on a litigant's case. A dispositive motion falling outside the purview of this rule would include, but not be limited to, an application to bar an expert's testimony in a matter in which such testimony is required as a matter of law to sustain a party's burden of proof. A motion in limine shall be part of the pretrial exchange under R. 4:25-7(b). As a result, the filing of such motions shall not trigger any filing fee.

(2) Motion Deadlines. Unless otherwise ordered or permitted by the court, the parties shall submit, serve and respond to all motions in limine for which pretrial rulings are sought pursuant to the timeframes found under R. 4:25-7(b) and paragraph 4 of Appendix XXIII ("Pretrial Information Exchange"). Such motions shall be attached as exhibits to the pretrial exchange.

(3) Briefs. To the extent practicable, each motion in limine shall embrace one issue. The respective briefs of the movant and respondent shall comply with the line and type-point requirements of R. 1:6-5, except that the page limitation shall be five pages, exclusive of any tables of contents or authorities. No reply briefs by movant shall be permitted unless requested by the court. If more than one motion is submitted, the collective page limit for all motions by a single party shall not exceed 50 pages, exclusive of any tables of contents or authorities. A party may apply to the court to submit an over-length brief or seek relief from the collective page limit in the same manner described under R. 1:6-5.

(4) Rulings. The court shall rule on all motions submitted under this rule in a timely manner based on the issue raised in the particular motion. In the event the motion is not decided before opening statements, the court shall direct the litigants on whether or to what extent they may refer to the disputed evidence or other issue raised in the motion in the opening statements or otherwise, until such time as the motion is decided.

(b) Non-compliance. Motions not submitted in accordance with paragraph (a)(2) need not be decided pursuant to paragraph (a)(4), unless good cause is shown for the non-compliance, with an opportunity for any party opposing the late submission to be heard. Good cause may include but not be limited to the circumstance under which a party receives information as part of the pretrial exchange and such information forms a good faith basis regarding the admissibility of evidence.

(c) Preservation of rights. The failure to submit a motion in limine under this rule shall not preclude a party from seeking to admit evidence, or objecting to the admission of evidence, during trial.

(d) Preservation of rulings. A trial court's ruling on a motion in limine shall not preclude the court from reconsidering or modifying that ruling, sua sponte or at the request of a party, based on later developments at trial.

Note: New Rule 4:25-8 adopted July 31, 2020 to be effective September 1, 2020.