



ICLG

The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2017

10th Edition

A practical cross-border insight into litigation and dispute resolution work

Published by Global Legal Group, in association with CDR, with contributions from:

ARNECKE SIBETH Rechtsanwälte Steuerberater
Partnerschaftsgesellschaft mbB
Axioma Estudio Legal
Bae, Kim & Lee LLC
Bär & Karrer Ltd.
Blake, Cassels & Graydon LLP
BROSETA
Clayton Utz
Cliffe Dekker Hofmeyr Inc
Covington & Burling LLP
Drinkier Biddle & Reath LLP
Gün + Partners
Gürlich & Co.
Hamdan AlShamsi Lawyers & Legal Consultants
Holland & Knight LLP
Jackson Walker LLP
Kammeradvokaten, Law Firm Poul Schmith
Kentuadei Adefe, Legal Practitioners, Mediators & Arbitrators
Kobre & Kim
Kubas Kos Gałkowski

Lennox Paton
Loyens & Loeff Luxembourg S.à.r.l.
Makarim & Taira S.
McCann FitzGerald
Miller & Chevalier Chartered
Nagashima Ohno & Tsunematsu
Norburg & Scherp Advokatbyrå AB
Oblin Melichar
Polenak Law Firm
Potter Anderson & Corroon LLP
Quevedo & Ponce
Richman Greer, P.A.
Rogério Alves & Associados – Sociedade de Advogados, R.L.
Sam Okudzeto & Associates
Skadden, Arps, Slate, Meagher & Flom LLP
Souto, Correa, Cesa, Lummertz & Amaral Advogados
Sysouev, Bondar, Khrapoutski SBH Law Office
Waselius & Wist
Zamfirescu Racoti & Partners Attorneys at Law



USA – New Jersey

Drinker Biddle & Reath LLP

Andrew B. Joseph



William A. Wright



I. LITIGATION

1 Preliminaries

1.1 What type of legal system has your jurisdiction got? Are there any rules that govern civil procedure in your jurisdiction?

New Jersey is a common law jurisdiction. The Rules Governing the Courts of the State of New Jersey govern practice and procedure. R. 1:1.

1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

The New Jersey court system consists of municipal courts, the Tax Court, the Superior Court, the Appellate Division, and the Supreme Court. The Superior Court is the State's trial court. R. 3:1-1, 4:1, 5:1-1, 6:1. Decisions of the municipal courts may be appealed to the Superior Court. R. 4:74-2. Decisions of the Superior Court, Tax Court, and administrative agencies may be appealed to the Appellate Division. R. 2:2-3. Decisions of the Appellate Division may be appealed to the Supreme Court. R. 2:2-1.

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

Pleadings. A civil action is commenced by filing a complaint. R. 4:2-2. The defendant is then served with a summons and the complaint. R. 4:4. The defendant must serve an answer within 35 days after being served, but a pre-answer motion to dismiss tolls the deadline. R. 4:6-1.

Discovery. Every civil action filed in the Superior Court is assigned to one of four tracks. R. 4:5A. The time for completion of discovery depends on the track assignment and ranges from 150 days in Track I to 450 days in Track IV. R. 4:24-1(a).

Pre-Trial Motions. Generally, motions must be filed/served 16 days before the return date, opposition must be filed/served eight days before the return date, and replies must be filed/served four days before the return date. R. 1:6-3(a). Motions for summary judgment must be filed/served 28 days before the return date, opposition must be filed/served 10 days before the return date, and replies must be filed/served four days before the return date. R. 4:46-1.

Trial. Parties must exchange Pretrial Information Statements seven days before trial, which include lists of witnesses, exhibits, deposition designations, motions *in limine*, and evidentiary issues. R. 4:25-7. Prior to opening statements, the parties must submit to the court copies of any pretrial material that has been exchanged; any objections made thereto; and stipulations reached on contested procedural, evidentiary, and substantive issues. R. 4:25-7. At trial, a party may move for judgment at the close of all the evidence or at the close of the evidence offered by an opponent. R. 4:40-1.

New Jersey's Complementary Dispute Resolution Program includes an Expedited Jury Trial, in which parties may participate by consent order. Generally, all materials are admitted into evidence during a N.J.R.E. 104 pretrial conference, in which the parties resolve evidentiary issues. The parties utilise written reports and deposition testimony presented by counsel in lieu of live testimony. The consent order limits the number of jurors, length of opening and closing statements, and available objections. Hon. Stuart Rabner, J. & Glenn A. Grant, J.A.D., Expedited Jury Trials, CIVIL CDR PROGRAM RESOURCE BOOK 7-1 (2015), available at http://www.judiciary.state.nj.us/civil/expedited_jury_trials.pdf.

Appeal. Appeals to the Appellate Division from final judgments and orders must be made within 45 days from entry. R. 2:4-1. Petitions for Certification to the Supreme Court must be filed within 20 days from entry of the judgment. R. 2:12-3.

1.4 What is your jurisdiction's local judiciary's approach to exclusive jurisdiction clauses?

Forum selection clauses "are *prima facie* valid and enforceable". Courts will decline to enforce a clause only if: "(1) the clause is a result of fraud or 'overweening' bargaining power; (2) enforcement would violate the strong public policy of New Jersey; or (3) enforcement would seriously inconvenience trial". Paradise Enters., Ltd. v. Sapir, 356 N.J. Super. 96, 103 (App. Div. 2002).

1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

The filing fees and costs differ among the divisions. The fee for filing a complaint is \$250 in the Civil and General Equity Parts. See R. 1:43 (table of various court fees and costs).

Unless otherwise provided by statute or court rules, each party is responsible for his or her own attorney's fees and costs. See, e.g., R. 4:42-9.

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible?

Contingency fee arrangements are permissible, subject to certain limitations. N.J. Rules of Prof'l Conduct 1.5; R. 1:21-7. The propriety of the fee is evaluated based on factors including the time and labour involved, the complexity of the work, and the fee that is customarily charged.

A lawyer is generally not permitted to provide financial assistance to a client in connection with pending or contemplated litigation, accept compensation for representation from a third party, or acquire a proprietary interest in the litigation or subject matter of litigation except to acquire a lien to secure the lawyer's fee or in a contingency fee arrangement. N.J. Rules of Prof'l Conduct 1.8 (e)-(f), (i).

1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

A party is generally permitted to assign claims for money damages (except personal injury tort claims prior to such claims being reduced to judgment). Kimball Int'l, Inc. v. Northfield Metal Prods., 334 N.J. Super. 596, 612 (App. Div. 2000); see also N.J.S.A. 2A:25-1 (providing "all choses in action arising on contract shall be assignable").

A lawyer is generally not permitted to accept compensation for representing a client from a third party, unless the client gives informed consent, there is no interference with the lawyer's independence of professional judgment or the lawyer-client relationship, and the information relating to representation remains confidential. N.J. Rules of Prof'l Conduct 1.8(f).

1.8 Can a party obtain security for/a guarantee over its legal costs?

Each party is responsible for its own attorney's fees and costs, unless otherwise provided by statute, court rule, or agreement of the parties. See, e.g., R. 4:42-9. Generally, to stay the execution of a monetary judgment or judgment of rights/liabilities to property entered by the trial court pending appeal, an appellant must provide a guarantee to the appellee for the full judgment, interest, and trial costs in the form of a supersedeas bond, cash deposit, or other security, unless the court orders otherwise on good cause shown. R. 2:9-5(a); 2:9-6(a)-(b); and 1:13-3(c).

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

A civil suit begins by the filing of a complaint and a Civil Case Information Statement, accompanied by the appropriate filing fee. Within 10 days of the filing, the plaintiff will receive a Track Assignment Notice. The plaintiff must serve these documents with a summons upon all parties. The plaintiff may issue the summons and sign it in the name of the Clerk of the Superior Court. See R. 4:2, 4:4, 4:5, 4:5A, and 4:5B.

The New Jersey Tort Claims Act ("TCA"), N.J.S.A. § 59:1-1 *et seq.* applies to tort actions against public entities or their employees.

Under the TCA, a claimant must first present his or her claims against the State or local public entity with either the Attorney General or the department/agency/local entity involved in the alleged wrongful act or omission within 90 days of accrual of the cause of action. N.J.S.A. § 59:8-7 & -8. The claimant may file suit in an appropriate court of law after the expiration of six months from the date the notice of claim was received. *Id.* at § 59:8-8. Similarly, under the New Jersey Contractual Liability Act, N.J.S.A. § 59:13-1 *et seq.*, a claimant must present his or her claim against the State with the contracting State agency within 90 days of accrual of the claim. The claimant may file suit in an appropriate court within 90 days from the date the notice of claim is received. N.J.S.A. § 59:13-5.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

Limitations periods are two years for tort claims alleging personal injury, six years for tort claims alleging injury to property, six years for breach of contract governed by the common law, and four years for breach of contract governed by the Uniform Commercial Code. N.J.S.A. 2A:14-1, -2; N.J.S.A. 12A:2-725.

Limitations periods begin to run when the cause of action accrues. In some circumstances, the limitations period is tolled by the discovery rule, which delays accrual until such time as the plaintiff knows, or reasonably should have known, of the harm. NCP Litig. Tr. v. KPMG, 399 N.J. Super. 606, 627 (Law Div. 2007).

Limitations periods are substantive when they occur in legislation that creates the cause of action; they are procedural when they place a time limit on common law causes of action. Gaskill v. Citi Mortg., Inc., 428 N.J. Super. 234, 244 (App. Div. 2012).

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

A civil action is commenced by filing a complaint. R. 4:2-2. A summons and complaint must then be served on the defendant. R. 4:4-3. The primary method of service is personal service. R. 4:4-4. If personal service cannot be made despite diligent effort, service can be made by mail. R. 4:4-4(b). Service is considered complete upon mailing. R. 1:5-4. New Jersey allows out-of-state defendants to be served in the same manner as service made within the state. R. 4:4-4(b).

3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

The plaintiff is permitted to seek injunctive relief pending disposition of the action by applying to the court for an order requiring the defendant to show cause why the injunction should not be granted. R. 4:52-1(a). The plaintiff must show: (1) the injunction is necessary to prevent irreparable harm; (2) the application is premised upon settled law; (3) there is a reasonable probability of success on the merits; and (4) a balancing of the hardships suggests that the relief should be afforded. Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982).

3.3 What are the main elements of the claimant's pleadings?

A pleading that sets forth a claim for relief must contain a statement of the facts on which the claim is based, showing the pleader is entitled to relief, and demand for judgment for the relief sought. R. 4:5-2.

3.4 Can the pleadings be amended? If so, are there any restrictions?

Generally, a party may amend any pleading as a matter of course at any time before a responsive pleading is served. Thereafter, a party may amend a pleading only by written consent of the adverse party or by leave of court, which shall be freely given in the interest of justice. R. 4:9-1.

3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

Generally, a complaint, counterclaim, cross-claim, or third-party claim may be dismissed by the pleader unilaterally and without prejudice by: (1) filing a notice of dismissal before a responding party files an answer, motion for summary judgment, or responsive pleading (or if there is no response, before the introduction of evidence); or (2) by filing a stipulation of dismissal signed by all parties who have appeared in the action. R. 4:37-1(a) and 4:37-3. Otherwise, a pleader may only dismiss such pleadings by leave of court. R. 4:37-1(b). A claimant may be liable for the responding party's costs in the previous action if it commences a new action based upon the same claims. R. 4:37-4.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

An answer should state in short and plain terms the defendant's defence to each claim asserted in the complaint by admitting or denying the allegation, or by stating that he or she does not have enough information to know whether the statement is true. R. 4:5-3. If an allegation is partially true, the defendant must specify the part admitted and the part denied. Id. Failure to deny an allegation deems that allegation admitted. R. 4:5-5. An answer must also include affirmative defences. R. 4:5-4.

A defendant's answer may contain counterclaims or cross-claims against the opposing party whether or not it arises out of the same transaction or occurrence that is the subject matter of the opposing party's claim. Under the "entire controversy doctrine", any related claim against the parties to the action must be asserted in the same litigation; failure to do so will preclude the party from subsequently bringing an action upon that claim. R. 4:7-1; R. 4:30A.

4.2 What is the time limit within which the statement of defence has to be served?

A defendant must file and serve a responsive pleading within 35 days of service of the complaint. R. 4:6-1(a)-(b). The time for service of a responsive pleading may be extended for a period not exceeding 60 days by the written consent of the parties; any further extension requires a court order upon a showing of good cause. R. 4:6-1(c).

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

The Court Rules provide mechanisms to join parties needed for just adjudication and any nonparty who may be liable to a party to the litigation. R. 4:28-1. A party may file a motion to dismiss a claim for failure to join a party without whom the action cannot proceed. R. 4:6-2.

4.4 What happens if the defendant does not defend the claim?

If the defendant fails to respond to the summons and complaint, the plaintiff may file a request to enter default, supported by an attorney's affidavit. R. 4:43-1. These documents must be filed within six months of the actual default.

4.5 Can the defendant dispute the court's jurisdiction?

A defendant can challenge a court's subject matter jurisdiction or personal jurisdiction by asserting the defences in its answer or by way of motion. R. 4:6-2(a)-(b). Failure to raise the issue of personal jurisdiction within a party's first responsive pleading waives the issue. If a party asserts a claim for lack of personal jurisdiction in its answer, it has 90 days to raise the issue by motion unless a previous motion covered by R. 4:6-6 has already been made, in which case the issue is waived. R. 4:6-3. A party may challenge the court's subject matter jurisdiction at any time.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

Mandatory joinder: Applicable if (1) the third party's absence prevents complete relief being accorded to those which are already parties, or (2) if the third party claims an interest in the subject of the action and disposition in the third party's absence impedes its ability to protect that interest or leaves an existing party subject to "substantial risk of incurring double, multiple, or other inconsistent obligations". R. 4:28-1(a).

Permissive joinder: A party may join an action as a plaintiff or be joined as defendants if such claims by or against the third party "arise[] out of or in respect of the same transaction, occurrence, or series of transactions or occurrences and involves any question of law or fact common to all of them". R. 4:29-1(a).

New Jersey's entire controversy doctrine requires that any counterclaims or cross-claims for indemnity or contribution against other parties to the action be asserted in the original proceeding, or be precluded from assertion in a later proceeding. R. 4:30A.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

The court may order actions consolidated when they involve a common question of law or fact arising out of the same transaction or series of transactions. R. 4:38-1(a).

5.3 Do you have split trials/bifurcation of proceedings?

For either the convenience of the parties or to avoid prejudice, a court may order a separate trial of any claims or issues. R. 4:38-2(a). The issues of liability and damages may also be separately tried. R. 4:38-2(b).

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

The Superior Court has two divisions, the Chancery Division and the Law Division, composed of various subdivisions. For example, the Chancery Division encompasses General Equity, Probate Part, and Family Part. The Law Division encompasses the Civil Part, the Special Civil Part, and non-civil actions (e.g., Criminal Part). See, e.g., R. 4:3-1.

New Jersey also has centralised courts that adjudicate special types of cases, including multicounty litigation, mass tort cases, and complex commercial cases (New Jersey Complex Business Litigation Program). Some matters must be adjudicated in a different court (e.g., a municipal court or tax court).

6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Actions in the civil part are assigned to one of four case management tracks. R. 4:5A-1. The complexity of the case generally dictates the track; the tracks vary in terms of the length of discovery. See question 1.3 above.

The action is assigned a pretrial judge, who generally presides over all pretrial motions and management conferences until discovery ends. Generally, Track IV and general equity cases are presided over by the same judge for pretrial and at trial. R. 4:5B-1.

Case management conferences “assist discovery, narrow or define the issues to be tried, address issues relating to discovery of electronically stored information, or otherwise promote the orderly and expeditious progress of a case”. R. 4:5B-2.

6.3 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court’s orders or directions?

Generally, judges hold an inherent discretionary power to impose sanctions. See, e.g., Calabrese v. Trenton State Coll., 162 N.J. Super. 145, 151-52 (App. Div. 1978), aff’d, 82 N.J. 321 (1980). For example, a court may dismiss an action with or without prejudice for failing to provide discovery (R. 4:23-5(a)) or comply with a discovery order (R. 4:23-2).

6.4 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

Courts may strike pleadings or dismiss a case during the pendency of an action under various circumstances, such as when pleadings are

“scandalous, impertinent” or “abusive to the court or another person” (R. 4:6-4); parts of a pleading are “immaterial or redundant” (*id.*); a “defense [is] insufficient in law” (R. 4:6-5); a party fails to make discovery or comply with a discovery order (R. 4:23-2 and 4:23-5); the court lacks subject matter jurisdiction (R. 4:6-7); or a party fails to comply with the Court Rules or an order of the court (R. 4:37-2(a)).

6.5 Can the civil courts in your jurisdiction enter summary judgment?

Summary judgment may be granted: (1) where there is no genuine issue of any material fact as to a necessary element of the cause of action or defence; and (2) if, after the completion of discovery relevant to the motion an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defence that would require the issues to be submitted to a jury. R. 4:46.

6.6 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The Superior Court may stay execution on a judgment or stay proceedings. For example, the Superior Court may stay proceedings pending an outcome in another venue or action (e.g., bankruptcy court or arbitration) or pending appeal. R. 2:9 and 4:62-6.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

A party may obtain discovery regarding any unprivileged matter relevant to the subject matter of the action. R. 4:10-2(a). A party cannot object to discovery of information because it is inadmissible at trial, and the information that is sought must only “appear[] reasonably calculated to lead to the discovery of admissible evidence”. *Id.*

A party is not required to disclose privileged information or things. See R. 4:10-2(e); see also question 7.2 below. A party may obtain discovery of documents prepared in anticipation of litigation or for trial by showing that it has “substantial need of the materials” and is unable to obtain the substantial equivalent without undue hardship. R. 4:10-2(c). If the court permits disclosure, it should bar disclosure of the “mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation”. *Id.*

If a party retains an expert in anticipation of litigation or preparation for trial, but that expert is not expected to be called as a witness, “facts known or opinions held by” that expert are only discoverable upon “a showing of exceptional circumstances”, namely that it is impractical “to obtain facts or opinions on the same subjects by other means”. R. 4:10-2(d).

A party need not provide electronically stored information (ESI) from sources the party identifies as not reasonably accessible because of undue burden or cost. R. 4:10-2(f)(2). A party may request the production of metadata in electronic documents, but the

parties should confer as to the scope of the request, the format of production, and whether unrequested metadata may be reviewed. R. 4:10-2(f)(1); R. 4:18-1 official comments. Absent agreement by the parties or court order, ESI should be produced in its ordinary or reasonably usable form. R. 4:18-1(b)(2)(B).

A party may also seek a protective order to protect a person from “annoyance, embarrassment, oppression, or undue burden or expense”. R. 4:10-3.

7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

A party may not obtain discovery regarding matters that are privileged, such as communications subject to the attorney–client privilege and attorney work product doctrine. R. 4:10-2(c).

New Jersey recognises other privileges, such as trade secret; marital; patient–physician; newsperson’s, cleric–penitent; and various psychologist, counsellor, mediator, and social worker–related privileges. See N.J.R.E. 500-534.

7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

A subpoena requires a third party to attend and testify at a deposition, and may also require the person to produce documents. R. 4:14-7. If evidence is produced by a subpoenaed witness who does not attend the deposition, the recipient of the evidence must provide “notice to all other parties of the receipt thereof and of its specific nature and contents, and shall make it available to all other parties”. R. 4:14-7(c).

7.4 What is the court’s role in disclosure in civil proceedings in your jurisdiction?

A party can seek a motion for an order compelling discovery and the court may, among other things, issue sanctions or strike pleadings for failure to comply with the order or to produce discovery. R. 4:23. A court may issue a protective order to assist and/or limit discovery, and use case management conferences to assist with discovery issues.

7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

If information is produced in discovery that is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information. After being notified, a party must promptly return, sequester, or destroy the specified information and may not use or disclose the information until the claim is resolved. A recipient may promptly present the information to the court under seal for a determination of the claim. If the recipient disclosed the information before being notified, it must take reasonable efforts to retrieve it. The producing party must preserve the information until the claim is resolved. R. 4:10-2(e)(2).

8 Evidence

8.1 What are the basic rules of evidence in your jurisdiction?

The New Jersey Rules of Evidence govern the admissibility of evidence.

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

Evidence is admissible if it is competent and relevant. “Relevant evidence” means evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action. N.J.R.E. 401. Evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or is cumulative. N.J.R.E. 403. Hearsay is inadmissible unless it is permitted by an exception. N.J.R.E. 802.

The standard for qualification of an expert is liberal: “If scientific, technical, or other specialised knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise”. N.J.R.E. 702.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

A fact witness can only testify to matters as to which he or she has personal knowledge. N.J.R.E. 602. Deposition testimony may be used at trial for many purposes, including impeachment, to preserve a witness’s testimony, or in the event of a witness’s inability to attend or testify. R. 4:16.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Does the expert owe his/her duties to the client or to the court?

A party may propound interrogatories, asking the other party to identify any expert witness and the subject matter on which the expert is expected to testify. R. 4:10-2(d). The interrogatories can also demand production of the expert’s report. Id. The purpose of expert testimony is to assist the trier of fact in deciding complex factual issues. See N.J.R.E. 702. An expert is permitted to give an opinion that relates to an ultimate issue to be decided by the trier of fact, N.J.R.E. 704, but may not testify on questions of law.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

The Court is empowered to issue final judgments at the resolution of litigation and through default judgments (R. 4:43), summary judgments (R. 4:46), and declaratory judgments (R. 4:42-3). The Court may also issue temporary restraints and interlocutory injunctions (R. 4:52-1 and 4:52-2).

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Courts may award prejudgment interest, but such awards may be limited in certain circumstances. See, e.g., R. 4:42-11(b) (tort actions). Judgments, awards, and orders for the payment of money; taxed costs; and attorney’s fees are generally subject to post-judgment interest. R. 4:42-11.

Each party is responsible for his or her own attorney’s fees and costs, unless otherwise provided by statute, court rule, or by agreement of the parties. R. 4:42-9.

9.3 How can a domestic/foreign judgment be recognised and enforced?

Courts recognise and enforce final judgments, decrees, or orders from other states under the Uniform Enforcement of Foreign Judgments Act (N.J.S.A. 2A:49A-25) and the Full Faith and Credit Clause of the United States Constitution. Foreign country money judgments are enforceable under the Uniform Foreign Country Money Judgments Recognition Act. N.J.S.A. 2A:49A-11.

9.4 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

Appellate Division: A litigant may appeal “as of right” final judgments of the Superior Court. If an order is not appealable as of right, a litigant may file a motion for leave to appeal. The Appellate Division may grant leave for appeal from an interlocutory order. See R. 2:2-3 and 2:2-4.

Supreme Court: A litigant may appeal as of right final judgments of the Appellate Division and also by certification. R. 2:2-1. The Supreme Court may grant leave from interlocutory orders. See R. 2:2-1 and 2:2-2.

10 Settlement

10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

The public policy of New Jersey favours settlement of litigation. Smith v. Fireworks by Girone, Inc., 380 N.J. Super. 273, 291 (App. Div. 2005), cert. denied, 186 N.J. 243 (2006). A court may conduct a settlement conference or schedule “any other settlement event in any civil action”. R. 4:5B-3.

II. ALTERNATIVE DISPUTE RESOLUTION

1 General

1.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

Parties commonly use mediation and arbitration to resolve litigation in New Jersey. New Jersey has a comprehensive “Complementary Dispute Resolution Program”. See R. 1:40.

Some actions require mandatory arbitration, such as automobile negligence actions and personal injury actions (except professional malpractice and products liability cases). R. 4:21A-1. The court can refer any civil case to mediation at no charge for two hours.

1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

R. 4:21A provides rules governing arbitration.

R. 1:40 governs the mediation programme for Civil (R. 1:40-4), Family (R. 1:40-5), and General Equity and Probate cases (R. 1:40-6).

1.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

New Jersey public policy favours settlement of litigation, thus most matters can be resolved through alternative dispute resolution. See, e.g., Smith v. Fireworks by Girone, Inc., 380 N.J. Super. 273, 291 (App. Div. 2005), cert. denied, 186 N.J. 243 (2006). Even an agreement to arbitrate a child custody dispute is permissible, but may not be enforced when it is not in the best interests of the child. Johnson v. Johnson, 204 N.J. 529, 547 (2010).

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

Where an arbitration clause governs, a party may file a motion to compel arbitration. Courts address disputes over the scope of the arbitration clause unless the parties have agreed to arbitrate such disputes. A court may stay litigation pending arbitration. Before an arbitrator is appointed, authorised, and able to act, the court, in such summary action upon application of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding. N.J.S.A. 2A:23B-8(a).

1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

Appellate review of final arbitration orders resulting from contractual agreements to arbitrate between parties is generally subject to the Federal Arbitration Act and narrowly limited only to circumstances of fraud, corruption or similar wrongdoing by the arbitrator, or manifest disregard. See, e.g., Tretina Printing, Inc. v. Fitzpatrick & Assoc., Inc., 135 N.J. 349 (1994).

Arbitration awards stemming from mandatory arbitrations required by R. 4:21A-1 (such as in automobile negligence and personal injury actions) are not subject to appeal; however, a party can seek a trial *de novo* through a notice of rejection of the award. R. 4:21A-6; see question 1.1 above.

2 Alternative Dispute Resolution Institutions

2.1 What are the major alternative dispute resolution institutions in your jurisdiction?

New Jersey has a Complementary Dispute Resolution Program conducted under judicial supervision in accordance with the Court Rules. R. 1:40.



Andrew B. Joseph
 Drinker Biddle & Reath LLP
 600 Campus Dr.
 Florham Park
 N.J. 07932-1047
 USA
 Tel: +1 973 549 7264
 Email: andrew.joseph@dbr.com
 URL: www.drinkerbiddle.com

Andrew B. Joseph is an experienced litigator who has tried multiple cases to verdict. He focuses on complex business disputes, consumer class action litigation, securities litigation and the defence of white collar criminal investigations and prosecutions. Andrew is the partner in charge of Drinker Biddle’s Florham Park office and one of the managing partners of the firm.

Andrew has been engaged as lead trial counsel for clients in a variety of business disputes throughout the country. Among other things, he has defended corporations and executives in federal, state, arbitral and regulatory claims involving franchise disputes, unfair competition, breach of contract, tortious interference, fraud, bad faith, professional malpractice, trademark infringement, business divorce, commercial real estate and leasing disputes, non-compete covenants, RICO laws and Qui Tam statutes. Andrew also counsels his clients on strategic issues and initiatives to minimise litigation risk. Andrew’s clients include leading wireless carriers, pharmaceutical companies, business consulting firms, retailers and financial institutions.



William A. Wright
 Drinker Biddle & Reath LLP
 600 Campus Dr.
 Florham Park
 N.J. 07932-1047
 USA
 Tel: +1 973 549 7073
 Email: william.wright@dbr.com
 URL: www.drinkerbiddle.com

William A. Wright is a senior attorney with Drinker Biddle and assists clients with complex business disputes, consumer class actions, and emerging e-discovery and data management issues.

Bill’s litigation experience includes a broad range of representative matters, including consumer class actions, complex contract disputes, products liability and wrongful death defence. He defends large institutional clients in complex commercial litigation and routinely manages subject matter experts and consultants. Bill has appeared in numerous state and federal courts and before private arbitration panels.

Bill is a member of the firm’s cross-discipline Data Management and Discovery team and has significant experience counselling clients on cutting edge e-discovery issues. He routinely advises clients on appropriate litigation holds and document collection and retention policies. Bill has also managed numerous large scale electronic document reviews in connection with multimillion-dollar litigation and serves as a client liaison with technical experts regarding the appropriate format and scope of electronic productions.

Drinker Biddle

Drinker Biddle is a national, full-service law firm providing litigation, regulatory and business solutions to public and private corporations, multinational Fortune 100 companies and start-ups. Building on a rich 167-year history, our more than 600 lawyers across 11 offices – including in Pennsylvania, New Jersey, New York and Illinois – uphold our firm’s reputation for outstanding legal results and bring a sophisticated, forward-thinking approach to every client engagement.

Drinker Biddle’s litigators successfully try cases to verdict, efficiently manage class action and multidistrict litigation, and win major victories through creative dispositive motions, well-crafted trial strategies, and focused and effective appeals. Whether it is a “bet-the-company” case, a complex financial dispute, or a more routine business conflict, our experienced litigators stand ready to serve the interests of our clients.