

LITIGATION

CHANCERY DIVISION JURISDICTION AND CASE MANAGEMENT PROCEDURES

BY: [Brian J. Molloy](#)

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When to file a complaint in the Chancery rather than the Law Division, and what to expect once the case is filed, are important considerations for any practitioner. This article will generally discuss Chancery Division jurisdiction, as well as prevalent case management procedures in the Chancery Division vicinages in this state.¹

WHEN TO FILE IN THE CHANCERY DIVISION

R. 4:3-1(a)(1) instructs that actions in which the plaintiff's "primary right or the principal relief sought is equitable in nature" shall be brought in the Chancery Division, General Equity, even though legal relief is also sought. Only those cases where the *principal* relief sought is equitable in nature belong in the Chancery Division. All other civil cases not specifically assigned to the Probate or Family parts are to be filed in the Law Division, where appropriate injunctive relief can be granted as that division of the court also exercises equitable powers.

Traditional Chancery Division proceedings include specific performance actions, mortgage foreclosures, partition and quiet title actions, shareholder and related corporate proceedings and labor strike injunctions. Although jury trials are theoretically available in the Chancery Division, as a practical matter, jury trials are extremely rare.²

Cases frequently misfiled in the Chancery Division include actions for declaratory judgment, which almost always belong in the Law Division. The nature of the legal issue in the declaratory judgment action determines whether it belongs in the Law or Chancery Division.³

As noted above, the mere fact that some injunctive relief is sought does not automatically bring the case before the chancery court. Moreover, there are some actions that *must* be filed in the Law Division even though the *only* relief sought is equitable in nature. Thus, actions in lieu of prerogative writ seeking only injunctive relief (*i.e.*, enjoining the execution and performance of a contract awarded by a municipal body), must be filed in the Law Division.⁴

CASE MANAGEMENT PROCEDURES

One of the unique features of the Chancery Division is that a case ordinarily will be individually managed by the same judge from commencement of the action through trial. This individualized case management greatly reduces discovery motions, promotes settlement, and assures the litigants of a better-informed court in the event of trial.

The general practice in the Chancery Division is for the court to conduct a case management conference, usually around 8:45 a.m., before the start of the trial day, as soon as the answer(s) is (are) filed. Counsel usually are required to appear in chambers for this conference, although some courts now permit the initial conference to be conducted on the telephone. Invariably, the court at the case management conference will endeavor to identify the legal issues and sort out those issues that are appropriate for prompt disposition. Summary judgment motions and, where appropriate, summary hearings pursuant to R. 4:67-5, will be discussed at the initial conference in an effort to rationally and expeditiously manage the case.

Furthermore, anticipated discovery and evidentiary problems are explored along with a schedule for a resolution of these issues. The goal in each vicinage is to have discovery completed within 150 days of the conference.⁵

Usually, chancery judges are accessible for telephone conferences during the gestation of the case to resolve discovery

and other issues promptly, often times avoiding the cost and delay associated with traditional motion practice.

All contested actions in the Chancery Division are subject to a pretrial conference.⁶ A firm trial date usually will be set at the pretrial conference, along with a schedule for the submission of trial briefs, normally a week or so before the trial date.

Additionally, several vicinages now use early settlement programs specifically designed for chancery cases. Where these programs are available, the court will ask a panel of experienced chancery practitioners to conference a case with the litigants and their counsel. The panelists will express their views as to the strengths and weaknesses of the positions asserted in an effort to facilitate a settlement. Chancery lawyers participate in these programs on a *pro bono* basis, and most judges report success with these programs.

SCHEDULING EMERGENT RELIEF APPLICATIONS

Where there is an application for emergent relief seeking a temporary restraining order, plaintiff's counsel should call the judge's clerk as soon as the supporting papers are completed to advise of the nature of the application and to schedule an appointment to present the application. Generally, plaintiff's counsel will be required to both notify and serve opposing counsel with the moving papers sufficiently in advance of the hearing (*i.e.*, before arriving at the courthouse) to permit the preparation of any opposition papers.⁷ An application for a temporary restraining order must include supporting affidavits, a brief and a proposed form of order. Where emergent relief is sought at the commencement of the actions, the verified complaint (and/or complaint accompanied by affidavit or certification), case information statement, and filing fee must be filed.

ENDNOTES

1. A useful resource for any Chancery Division practitioner is Hon. William Dreier and Paul A. Rowe, Guidebook to Chancery Practice in New Jersey (3d Ed. 1991).
2. *O'Neill v. Vreeland*, 6 N.J. 158, 167-68 (1951); *Boardwalk Properties v. BPHC*, 253 N.J. Super. 515 (App. Div. 1991).
3. *Chiaccio v. Chiaccio*, 198 N.J. Super. 1, 5 (App. Div. 1984); *Government Employees Ins. Co. v. Butler*, 128 N.J. Super. 492, 495 (Ch. Div. 1974).
4. *R. 4:69-1*; *Theodore v. Dover Bd. of Ed.*, 183 N.J. Super. 407, 412-13 (App. Div. 1982).
5. *R. 4:24-1*.
6. *R. 4:25-1*.
7. Where it is shown from "specific facts by affidavit or verified complaint that immediate and irreparable damage will probably result to the plaintiff before notice can be served or informally given..." the court can enter an *ex parte* temporary restraining order. *R. 4:52-1(a)*.

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