

PREPARATION OF PENDENTE LITE APPLICATIONS - Part Five

by Curtis J. Romanowski, Esq.

PENDENTE LITE COUNSEL FEE AWARDS

1. Understand the statutes, court rules and case law authorizing a *pendente lite* award of counsel fees.
2. Provide adequate financial information and argument so that the Court can conclude that an award of *pendente lite* counsel fees is reasonable and just.
3. N.J.S.A. 2A:34 23:
The court may order one party to pay a retainer on behalf of the other for expert and legal services when the respective financial circumstances of the parties make the award reasonable and just. In considering an application, the court shall review the financial capacity of each party to conduct the litigation and the criteria for award of counsel fees that are then pertinent as set forth by court rule [R.5:3 5(c)]. Whenever any other application is made to a court which includes an application for *pendente lite* or final award of counsel fees, the court shall determine the appropriate award for counsel fees, if any, at the same time that a decision is rendered on the other issue then before the court and shall consider the factors set forth in the court rule on counsel fees, the financial circumstances of the parties, and the good or bad faith of either party.
4. Provide a properly drafted affidavit of services along with *your pendente lite* application.
5. Be reasonable in your billing practices
6. Challenge *pendente lite* counsel fee requests by the opposing party where the requirements for making such an application have not been met.
7. Challenge the amount of the opposing party's request, if unreasonable.
8. Let your CIS create a clear picture of the relative financial circumstances of the parties.
9. Consider requesting the sale or encumbrance of marital assets *pendente lite*, in order to fund the litigation when no other sources are readily available.
10. Raise the relative "reasonableness and good faith of the positions advanced by the parties" argument [R. 5:3 5] when the bad position or behaviors of the other party calls for it.

- CJR

Curtis J. Romanowski, Esq. is a sole practitioner concentrating in Divorce, Family & Collaborative Law in Metuchen, New Jersey. He is President of the Collaborative Family Institute, LLC, Edison, New Jersey.

New Jersey Divorce Lawyer
Romanowski Law Offices
475 Main Street - 2nd Floor
Metuchen, NJ 08840

Phone: (732) 603-8585
(732) 603-0999

Fax: (732) 603-8580

info@divorcenewjersey.com

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