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There is a recommendation in the 2020 report of the Supreme Court's Civil Practice Committee, pp. 16-20, dealing with a proposed amendment to Rule 4:22-1, Requests for Admission, to permit a party to demand that a party admit or deny the truth of an opinion.

I believe such an amendment would prove to be quite unwise and unfair. As a practitioner, mostly defending medical malpractice cases, I can safely say the vast majority of tried cases result in defense verdicts.

If a defendant is permitted to request that a plaintiff admit that the opinion of the defense expert that there was no deviation from the standard of care is true, and the plaintiff denies it, in perhaps 90% of all tried cases the plaintiff will owe the defendant the costs and attorneys fees of proving that there was no deviation. See, Rule 4:23-3(c). In many cases, this would place a burden of tens of thousands of dollars upon the losing plaintiff. In many instances, the plaintiff would not be able to pay, but there would be a judgment against them if perfected by the defendant.

Conversely, a plaintiff who wins their case would almost always be paid costs and attorneys fees through the defendant's insurance company.

The proposed rule would have an extremely uneven application, it would do great damage to many individual plaintiffs, and it would have an unforeseen effect in the calculations a plaintiff makes in determining whether to settle – or even continue litigation. Certainly, it would further destabilize an already unstable situation.

Very truly yours,



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Staff share/IRuprecht/comment on rule change(2)