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New Jersey Defense Association

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Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Comments
Hughes Justice Complex
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Trenton, New Jersey 08625-0037
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RE: Rule 4:22-1 (Requests for Admission) proposed amendment

Dear Mr. Grant:

On behalf of the New Jersey Defense Association ("NJDA"), we have reviewed the proposed changes in the 2020 Report of the Supreme Court Civil Practice Committee. While we appreciate the hard work of the Committee and Discovery Subcommittee, we disagree with the proposed amendment to Rule 4:22-1 (Requests for Admission) for the reasons set forth herein.

The Subcommittee proposed "that the term 'or opinion' be added to the existing Rule rather than trying to narrow the Rule further with limiting language." R. 4:22-1 has not changed for the past forty years, as Judge Miller's oft-cited decision in Van Langen v. Chadwick, 173 N.J. Super. 517, 522, 414 A.2d 618 (Law Div. 1980) continuously reinforced the longstanding decision in New Jersey state jurisprudence that request for admissions are not intended to elicit opinion responses. Moreover, while the amendment request was suggested as a means to "mirror" F.R.C.P. 36(a), the current proposed amendment goes much further, perhaps eventually resulting in unintended consequences.

The amended R. 4:22-1 would provide, in relevant part, "A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters of fact or opinion within the scope of R. 4:10-2 set forth in the request, including the genuineness of any documents described in the request." Contrary to the Subcommittee's recommendation, the proposed broad amendment does not mirror the federal rule. F.R.C.P. 36(a) is more limited, stating:

> (1) Scope. A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:
> (A) facts, the application of law to fact, or opinions about either; and
> (B) the genuineness of any described documents.

While the proposed amendment opens the door to any opinion, lay or expert, about any topic whatsoever without limitation, the federal rule limits opinions to either facts or the application of law to fact. The proposed amendment lends itself to abuse by practitioners of request for admissions seeking any type of lay or expert opinion. While it is appreciated that "case law provides a mechanism for separating proper requests to admit in matters of opinion from improper requests to admit matters for ultimate resolution by a trier of fact," as a practical matter, this will result in unnecessary, and more costly, litigation. The lack of a significant amount of published federal case law addressing more limited in scope opinion requests for admission does not mean that significant problems will not arise resulting from the proposed broader amendment.

Another potential consequence and possible abuse resulting from this broad amendment is the motivating factor of the fee shifting provisions of R. 4:23-3, wherein a party may seek to have opinions admitted as an alternative to, or, in addition to, filing an offer of judgment. This motivating factor will inevitably lead to unnecessary motion practice and expense and the creation of superfluous issues on the path to the Committee's goal of the "admission of *appropriate* opinions."

For these reasons, the NJDA disagrees with the recommended change to R. 4:22-1. Thank you for your time and consideration.

Respectfully,

Michael A. Malia
President of the New Jersey Defense Association

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