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Directive # 08-12
[Supersedes Directive # 07-09]

To: **Assignment Judges**
Civil Presiding Judges

From: **Glenn A. Grant, J.A.D.**

Subj: **Multicounty Litigation Guidelines (Formerly "Mass Tort Guidelines")**

Date: **August 7, 2012**

The Supreme Court as part of its July 19, 2012 Omnibus Rule Amendment Order adopted revisions to Rule 4:38A, to be effective September 4, 2012. Accordingly, as of that date, Rule 4:38A will be captioned "Centralized Management of Multicounty Litigation"; prior thereto the rule was captioned "Centralized Management of Mass Torts".

Rule 4:38A provides that the Court shall adopt procedures for the centralized management of cases covered by the rule, with those procedures to be promulgated by the Administrative Director. This directive promulgates the attached "Multicounty Litigation Guidelines and Criteria for Designation" ("Multicounty Litigation Guidelines"), effective September 4, 2012. Directive #07-09, which promulgated the Revised Mass Tort Guidelines, is therefore superseded as of that same September 4, 2012 date.

The revisions to the court rule and to the guidelines were solely to replace the superseded "Mass Tort" terminology with new "Multicounty Litigation" terminology.

Questions regarding Multicounty Litigation Guidelines promulgated by this directive may be directed to Leslie A. Santora, Esq., Chief, Civil Court Programs, Civil Practice Division, AOC, by phone at 609-292-8471 or by LotusNotes email.

G.A.G.

Attachment (Multicounty Litigation Guidelines)
cc: Chief Justice Stuart Rabner
Hon. Carol E. Higbee
Hon. Brian R. Martinotti
Hon. Jessica R. Mayer
Hon. Vincent LeBlon
Hon. Ann G. McCormick
Mark Neary, Supreme Court Clerk
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Trial Court Administrators
Gurpreet M. Singh, Special Assistant
Civil Division Managers
Leslie A. Santora, Chief

MULTICOUNTY LITIGATION GUIDELINES AND CRITERIA FOR DESIGNATION

[As Promulgated by Directive # 08-12 Pursuant to Rule 4:38A]

Procedure for Requesting Designation of a Case as Multicounty Litigation for Centralized Management

The Assignment Judge of any vicinage or an attorney involved in a case or cases that may constitute multicounty litigation may apply to the Supreme Court, through the Administrative Director of the Courts, to have the case(s) classified as multicounty litigation, and assigned to a designated judge for centralized management. The Assignment Judge or attorney making such an application must give notice to all parties then involved in the case(s), advising that the application has been made and that a Notice to the Bar will appear in the legal newspapers and in the Multicounty Litigation Information Center on the Judiciary's Internet website providing information on where and within what time period comments on and objections to the application may be made.

Such Notice advising of the application and requesting comments or objections will be sent by the Administrative Director to all Assignment Judges and Civil Presiding Judges, will be published by the Administrative Director in the legal newspapers, and will be posted on the Judiciary's Internet website both in the Notices section and in the Multicounty Litigation Information Center. Once the comment period has closed, the Administrative Director of the Courts will present the application, along with a compilation of any comments and objections received, to the Supreme Court for its review and determination.

If the Supreme Court determines that the case(s) should be classified as multicounty litigation and assigned to a designated judge for centralized management and, in that judge's discretion, trial, an appropriate Order will be entered. The Order will be sent to all Assignment Judges and Civil Presiding Judges, will be published in the legal newspapers, and will be posted in the Multicounty Litigation Information Center on the Judiciary's Internet website.

Criteria to be Applied in Determining Whether Designation as Multicounty Litigation is Warranted

In determining whether designation as multicounty litigation is warranted, the following factors, among others, will be considered:

- whether the case(s) possess(es) the following characteristics:
    - it involves large numbers of parties;

- it involves many claims with common, recurrent issues of law and fact that are associated with a single product, mass disaster, or complex environmental or toxic tort;

- there is geographical dispersement of parties;

- there is a high degree of commonality of injury or damages among plaintiffs;

- there is a value interdependence between different claims, that is, the perceived strength or weakness of the causation and liability aspects of the case(s) are often dependent upon the success or failure of similar lawsuits in other jurisdictions; and

- there is a degree of remoteness between the court and actual decision-makers in the litigation, that is, even the simplest of decisions may be required to pass through layers of local, regional, national, general and house counsel.

- whether there is a risk that centralization may unreasonably delay the progress, increase the expense, or complicate the processing of any action, or otherwise prejudice a party;

- whether centralized management is fair and convenient to the parties, witnesses and counsel;

- whether there is a risk of duplicative and inconsistent rulings, orders or judgments if the cases are not managed in a coordinated fashion;

- whether coordinated discovery would be advantageous;

- whether the cases require specialized expertise and case processing as provided by the dedicated multicounty litigation judge and staff;

- whether centralization would result in the efficient utilization of judicial resources and the facilities and personnel of the court;

- whether issues of insurance, limits on assets and potential bankruptcy can be best addressed in coordinated proceedings; and

- whether there are related matters pending in Federal court or in other state courts that require coordination with a single New Jersey judge.

Choice of Site for Centralized Management

Issues of fairness, geographical location of parties and attorneys, and the existing civil and multicounty litigation caseload in the vicinage will be considered in determining to which vicinage a particular multicounty litigation will be assigned for centralized management. This decision will be made by the Supreme Court.

Subsequent Related Actions

The initial order of the Supreme Court denominating a particular category of cases as multicounty litigation and referring those cases to a particular county for centralized management may specify that subsequent related actions are to be transferred from the counties in which they are filed to the designated multicounty litigation county and judge without further application to the Supreme Court.

Severance

The multicounty litigation judge may thereafter review the cases designated as a multicounty litigation and assigned for centralized management, and may sever and return to the original county(ies) of venue any that no longer warrant centralization.

Termination of Centralized Management

When the multicounty litigation judge determines that centralized management is no longer necessary or appropriate under the circumstances, he or she will send a written report to the Administrative Director, with copies to the Assignment Judge, Civil Presiding Judge, Trial Court Administrator, Civil Division Manager of his or her vicinage and all counsel of record in any pending cases. The report shall provide details of matters resolved as well as the particulars concerning any unresolved matters including whether the latter will be returned to their original county(ies) of venue or will continue to be handled until resolution by the multicounty litigation judge. This report will be presented to the Supreme Court for review. Thereafter, a Notice to the Bar advising of the request and requesting comments or objections will be sent to all Assignment Judges and Civil Presiding Judges, will be published by the Administrative Director in the legal newspapers and will be posted on the Judiciary's Internet website both in the Notices section and in the Multicounty Litigation Information Center.

Once the comment period has closed, the Administrative Director of the Courts will present the termination request, along with a compilation of any comments and objections received, to the Supreme Court for its review and determination.

If the Supreme Court determines that the multicounty litigation designation should be terminated, it may terminate the centralized management or determine that continuing the centralized management of any pending and future such cases by the designated multicounty litigation judge is warranted. Following the Supreme Court's determination, an appropriate order will be entered. The order will be sent to all Assignment Judges and Civil Presiding Judges, will be published in the legal newspapers and will be posted on the Judiciary's Internet website both in the Notices section and in the Multicounty Litigation Information Center.