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NELA-NJ

NATIONAL EMPLOYMENT LAWYERS' ASSOCIATION/NEW JERSEY

April 5, 2016

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APR 11 2016
GLENN A. GRANT, J.A.D.
ACTING ADMINISTRATIVE DIRECTOR

Re: NELA-NJ Corrected Comments to Proposed Change to Rule 1:6-5

Dear Judge Grant,

I write to you and the Rules Committee in my capacity as President of and on behalf of The National Employment Lawyers Association – New Jersey ("NELA-NJ"). For the reasons set forth below, NELA-NJ, which is comprised of plaintiffs' employment attorneys, opposes the proposed amendment to Rule 1:6-5 particularly with regard to the imposition of page limits on summary judgment briefs.

Employment cases are inherently difficult to prove as they seldom involve smoking gun evidence and, instead, require aggrieved employees to establish the existence of unlawful intent through circumstantial evidence. Zive v. Stanley Roberts, Inc., 182 N.J. 436, 446 (2005)(internal citations and quotations omitted). To that end, employment plaintiffs, when opposing summary judgment, must go through the time and page-consuming process of not only setting forth the facts in the most favorable light but of also weaving together a series of otherwise seemingly unrelated facts with sufficiency to demonstrate the existence of discrimination, harassment, or retaliation. That is no small task particularly given that employment plaintiffs are also often required to undergo the painstaking task of discrediting defendants' proffered reasons for the employment actions at issue. With regard to that burden, to survive motions for summary judgment, plaintiffs must also demonstrate "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions" in employers' proffered explanations so as to raise a genuine issue of fact as to the underlying motivation for those actions. Fuentes v. Perskie, 32 F. 3d 759, 764 (3d Cir. 1994); Romano v. Brown & Williamson Tobacco Corp., 284 N.J. Super. 543, 550-51 (App. Div. 1995). Doing so within page limitations of forty (40) pages will prove

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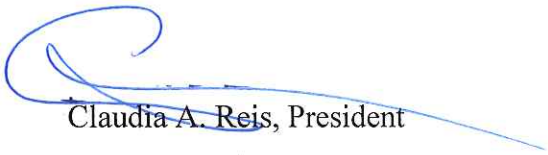
impossible in most complex employment cases, which tend to be fact-specific, highly contentious, hotly disputed, and discovery-intensive.

Further, granting defendants fifty-five (55) pages[1] to set forth their gloss on plaintiffs' facts so as to attempt to support a grant of summary judgment while limiting plaintiffs, who bear the burden of proof on all issues, to forty (40) pages will unduly prejudice aggrieved employees and undermine the important public policy of this State to rid workplaces of employment decisions rooted in unlawful discriminatory, harassing, and retaliatory animus.

For the foregoing reasons, the attorneys of NELA-NJ strenuously oppose the proposed modification to Rule 1:6-5. Should you require further information or assistance, please do not hesitate to contact me via telephone at (973) 845-9922 or e-mail at creis@newjerseyemploymentattorneys.com.

Respectfully submitted,
On Behalf of NELA-NJ



Claudia A. Reis, President

cc: NELA-NJ Membership

[1] Pursuant to the proposed amendment, the page limits for initial briefs would be 40 pages but defendants would get a second bite at the apple by being permitted the opportunity to submit a reply brief of at least 15 pages.