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April 14, 2016

VIA E-MAIL (Comments.Mailbox@judiciary.state.nj.us) & FIRST CLASS MAIL

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Comments
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08635-0037

Re: Proposed Change to Rule 1:6-5

Dear Judge Grant:

I am a partner with the firm Deutsch Atkins, P.C. in Hackensack, New Jersey, where I practice employment law on behalf of employees. I also serve as the Secretary to the National Employment Lawyers Association, New Jersey affiliate ("NELA-NJ"), and I am an active member of the New Jersey State Bar Association's Labor & Employment Section. I write to you and the Rules Committee to express my objection to the proposed amendment to Rule 1:5-6 which would impose page limits on briefs and, in particular, dispositive motion briefs.

For the sake of brevity, I enclose a copy of April 5, 2016 correspondence NELA-NJ President Claudia A. Reis, Esq., forwarded to Your Honor expressing the reasons for NELA-NJ's opposition to the Rule 1:5-6 amendment. I concur entirely with the position set forth in Ms. Reis' correspondence.

I will also add that most complex employment cases are comprised of multiple claims/legal theories (e.g., discrimination, harassment and retaliation) as well as multiple recovery theories (economic, emotional distress and punitive damages) all of which are often the subject of defendant employers' summary judgment motions. If the amendment is adopted, without excepting dispositive motions, movants will be allowed 55 pages (moving and reply briefs) while the party opposing summary judgment will be limited to a mere 40 pages.

By comparison, Rule 2:6-7, governing the length of appellate briefs, allows 65 pages for appellant's initial brief and 90 pages for respondent's brief. Mounting adequate factual and legal opposition to overcome defendants' multi-faceted summary judgment motions in merely 40 pages – 50 pages less than respondents are permitted on appeal under Rule 2:6-7 -- will systematically disadvantage and severely prejudice employment plaintiffs.

For the foregoing reasons, as well as those set forth in Ms. Reis' April 5, 2016 correspondence on behalf of NELA-NJ, I too strenuously oppose the proposed amendment to Rule 1:6-5. Should you wish to discuss my position further, please do not hesitate to contact me.

Respectfully submitted,

KATHRYN K. McCLURE

KKM\
Enclosure
cc: Claudia A. Reis, Esq. (via electronic mail only w/enclosure)

NELA-NJ

NATIONAL EMPLOYMENT LAWYERS' ASSOCIATION/NEW JERSEY

April 5, 2016

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Trenton, New Jersey 08625-0037

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

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.