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Sent: Monday, April 02, 2018 11:50 AM
To: Comments Mailbox
Subject: Proposed Rule 4:5B-4

April 2, 2018

Via Email

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Comments
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037
comments.mailbox@njcourts.gov

RE: Proposed Rule 4:5B-4

Dear Mr. Grant,

We are writing to comment on Proposed Rule 4:5B-4.

Proposed Rule 4:5B-4(c) states:

For any defendants joined after the case management conference, the plaintiff must also serve a copy of the affidavit of merit, along with a reasonably current curriculum vitae of the affiant, within thirty (30) days of joinder of the additional defendant. Any objections to the sufficiency of the affidavit of merit must be in writing and served by the added defendant within fifteen (15) days of its receipt. A consent order to that effect shall be submitted by the plaintiff within sixty (60) days of the service of the affidavit and curriculum vitae. *If any dispute concerning the sufficiency of the affidavit is not resolved within sixty (60) days, the added defendant shall promptly file a motion to resolve the issue.*

[Emphasis added.]

From the text of the rule, it is unclear when exactly the defendant is required to file a motion to resolve an issue with the affidavit of merit. Is the rule intended to require the added defendant to file said motion if the dispute regarding the sufficiency of the affidavit is not resolved within 60 days of *service of the objections*? Or is the rule intended to require the added defendant to file said motion if the dispute is not resolved within 60 days of *submission of the plaintiff's consent order*?

If the correct interpretation of Proposed Rule 4:5B-4(c) is the former, we respectfully suggest that the final sentence of the proposed rule be amended to read as follows:

If any dispute concerning the sufficiency of the affidavit is not resolved within sixty (60) days **of service of objections to the affidavit**, the added defendant shall promptly file a motion to resolve the issue.

Alternatively, if the correct interpretation of Proposed Rule 4:5B-4(c) is the latter, we respectfully suggest that the final sentence of the proposed rule be amended to read as follows:

If any dispute concerning the sufficiency of the affidavit is not resolved within sixty (60) days **of submission of plaintiff's consent order**, the added defendant shall promptly file a motion to resolve the issue.

Thank you for your time and consideration.

Sincerely,

Alexis Fung Chen Pen

Rules Attorney

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