

#028

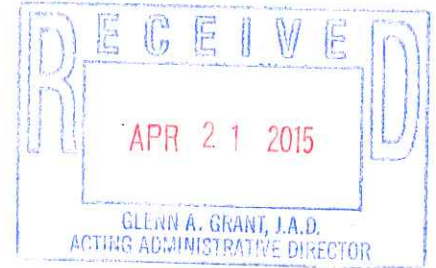
SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

JACK M. SABATINO
JUDGE



RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 977
TRENTON, NEW JERSEY 08625-0977
(609) 777-0200

April 21, 2015



Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director
Administrative Office of the Courts
Superior Court of New Jersey
P.O. Box 037
Trenton, New Jersey 08625

Re: 2013-15 Family Practice
Committee Report Proposal
to Amend R. 1:21-1(a)(1)

Dear Director Grant:

I write as Chair of the Civil Practice Committee ("CPC") to express concerns among CPC members about the proposed revisions to Rule 1:21-1(a)(1) recommended in the 2013-15 Report of the Family Practice Committee. The CPC discussed the proposed rule changes at our most recent meeting on April 14.

As drafted, the proposed changes to the Rule would disallow a lawyer who is licensed in New Jersey from practicing in our State unless he or she designates "one or more physical locations in this State" where, among other things, "depositions and meetings shall be scheduled . . . [.]" (Emphasis added).

Although CPC members appreciate why these requirements might be appropriate for matrimonial and other family litigation — typically involving adverse spouses or co-parents and rarely other parties — our consensus is that they would be unduly restrictive if applied in the context of other kinds of civil litigation.

For example, it is commonplace in civil actions for one or more defendants to be headquartered or principally located out of state. Sometimes a plaintiff may be from out of state, such as in business litigation brought here by a foreign plaintiff against a New Jersey defendant. At times, such out-of-state civil litigants may wish to be represented by a New Jersey-licensed attorney who works in a law firm (or who is in-house counsel) with offices outside this State. Under the proposed rule, he or she could not do so without designating a New Jersey physical office location.

It strikes us as an undue burden to require such civil counsel to maintain a physical office within New Jersey in order to appear in the case. Indeed, the in-state office requirement appears to run counter to the modern trend to allow, with certain conditions, a "virtual office" from any location, so long as the needs of the clients, adversaries, and the courts are being met.

In addition, it seems to us that it is far more common for witnesses in commercial and other types of civil suits to reside or be located out of state than they are in family litigation. Consequently, the CPC is concerned that the proposed "shall" language within Rule 1:21-1(a)(1), which seems to mandate that "depositions and meetings" take place at a New Jersey physical office, will impose a costly and inefficient burden on civil parties and witnesses.

As they relate to "meetings," the proposed requirements may unduly constrain the scheduling of in-person settlement negotiations, mediations, other ADR events, physical inspections of machines or objects, site visits, and the like. Sometimes such meetings are feasibly (or most conveniently) scheduled only when located outside of this state.

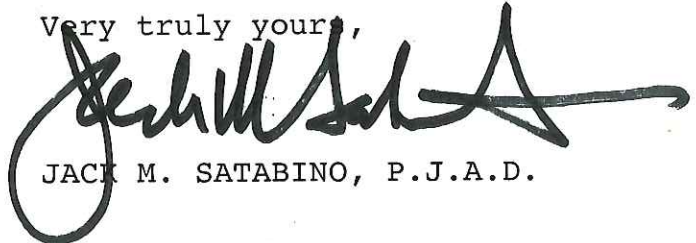
The requirements proposed by the Family Practice Committee as they relate to depositions also appear inconsistent with the recent amendments of the civil rules, made effective in September 2014, to ease the taking of depositions outside of New Jersey, under a modified version of the Uniform Interstate and International Procedures Act ("UIDDA"). See R. 4:11-5.

The CPC has similar concerns about the statement in the Family Practice Committee's Report that it intends to consider in the next rules cycle "whether to recommend a cross-reference in the Part IV rules relating to depositions, which would complement this rule recommendation." The Part IV rules are the staple of civil lawyers and civil judges and are the primary concern of the CPC. Given my committee's most recent discussion, it is unlikely that CPC members will favor a future amendment to the deposition procedures in the Part IV rules, especially if they impose grater logistical restrictions either by design or unintended effect.

In sum, the CPC appreciates that Family Part cases might require special rules. That said, we respectfully suggest that the proposed changes to Rule 1:21-1(a)(1), if adopted by the Court, be limited to family matters, and that they expressly exclude other forms of civil litigation.

We thank you and the Court for considering the collective views of the CPC. I would be happy to confer further with my counterpart Judge Lihotz, who is the Chair of the Family Practice Committee, in an effort to harmonize the views of our two committees.

Very truly yours,



JACK M. SATABINO, P.J.A.D.

cc: Hon. Peter G. Verniero (ret.), Vice-Chair
Hon. Marie E. Lihotz, P.J.A.D. (Family Practice Chair)
Joanna Dietrich, Esq., Assistant Director,
Family Division
Kevin M. Wolfe, Esq., Assistant Director, Trial Court
Services, Civil Practice
Taironda E. Phoenix, Esq., AOC Civil Practice Division