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March 16, 2016

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments: Final Offer Arbitration Pilot Proposal
Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625-0037

Dear Judge Grant:

The New Jersey Association for Justice has reviewed the report of the Supreme Court Arbitration Advisory Committee with respect to a proposal for a "Final Offer Arbitration Pilot Program." NJAJ is a statewide organization of over 2,600 members in private practice, public service, paralegals and law students. One of our goals is to uphold the adversary system and trial by jury.

At the outset, NJAJ disagrees with two basic assertions which form the foundation of the Committee's report. First, the Committee states that mandatory non-binding arbitration "has generally been successful throughout the state in resolving cases and saving litigant, counsel and court resources in the process." The Committee has not produced any data to support this conclusion. Nor is such a conclusion supported by the Annual Report of the Supreme Court Committee on Mandatory Arbitration.

In fact, most civil litigators would agree that the mandatory non-binding arbitration program has not been generally successful and has not saved litigant, counsel or court resources. In fact, the most effective resource in resolving civil claims is the traditional reliance on trial by jury.

Second, the Committee states that the proposal represents "a minor variation" in the mandatory arbitration process and "has the potential to promote settlements before the arbitration hearing and to foster greater litigant satisfaction with the arbitration process." In reality, the proposal represents a major variation in the current system because it promotes an entirely new method for the presentation of demands, offers and awards.

In addition, the Committee has produced no evidence that the proposal will "incentivize" the parties to make reasonable offers and demands, will "foster" settlements and will result in greater litigant "satisfaction." In fact, most civil litigators will agree that final offer arbitration will have no effect on the submission of offers and demands, whether the offer or demand has more or less chance of being selected by the arbitrator, simply because the award is not binding on the parties.

Protecting People's Rights.

The Honorable Glenn A. Grant, J.A.D.
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The "social science" literature submitted by the Committee does not validate the proposal with "experimental evidence." The two articles of Jeff Monhait and Benjamin Tulis on "Baseball Arbitration" are inapposite because baseball arbitration is binding while Rule 4:21A arbitration is non-binding. Thus, there is no special "incentive" under the New Jersey rule for either party to submit a lower demand or a higher offer.

NJAJ has read the eloquent letter submitted by the Trial Attorneys of New Jersey. We recognize TANJ as an important organization of both plaintiff and defense attorneys who have a long history of fighting to preserve "the right to trial by jury, a fundamental and inviolate right that is integral to the proper functioning of our judicial system."

We agree with their comments that Final Offer Arbitration:

1. Gives a capricious quality to the decision-making process and lacks the solemnity appropriate to deciding litigation matters;
2. Diminishes the credibility of the courts, erodes the judicial system and undermines the public's confidence in the resolution of civil matters;
3. Conveys the impression to personal injury litigants that the judicial system is relying upon an arbitrary procedure;
4. Undermines the confidence of civil litigants in their attorneys, the courts and the judicial system; and
5. Will have a negative impact on the public's perception of the civil justice system.

Accordingly, NJAJ agrees with TANJ that the proposal for Final Offer Arbitration should be rejected.

Very truly yours,



Daniel E. Rosner, Esq.
President