#016

Donna A. Bahnck
Attorney at Law
7505 Monmouth Avenue
Margate, New Jersey 08402

Licensed in New Jersey
and Pennsylvania

April 8, 2016

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Comments
Hughes Justice Complex, PO 037
Trenton, New Jersey 08625-0037

Dear Judge Grant,

Thank you for the opportunity to comment upon the proposed rule changes.

Proposed Amendment to R.1:9-3 to allow use of service by "ordinary" mail with enforceability only upon receipt of a signed acknowledgment and waiver of service.

While the use of such services such as Federal Express and Certified mail allow either Party and the even the Court to determine when a subpoena has been served, where it was served and who received it, ordinary mail allows the subpoena mills significant room to abuse the process by placing dates on the subpoenas that do not match the dates it was sent, allow them to send to entities and persons who are not authorized to accept service for an entity and it allows games to be played with the calculation of when a Motion to Quash may be filed or the 14 days expires. At least if one gets a certified letter one can check through the US Postal system when it was sent, where it was sent and most importantly who "signed" for the subpoena. Ordinary mail should not be used as it does not allow the Courts or the parties to an impartial method to ensure proper compliance, encourages credibility and does not promote subpoena mills from abusing the process.

More importantly, for out of state subpoenas the latest move by the subpoena mills is for them not to pay the $50 fee but indicate on the top of the subpoena that it is being issued "Subpoena issued per R.4:18-1 and they sign the Clerk's name. There is no indication on the subpoena that they paid the $50 fee or that the Clerk authorized the issuance of the subpoena (often times, there is no active litigation out of state associated with the subpoena and other mistakes). When one calls the Clerk to verify they say they do not stamp or give the subpoena a separate docket number so there is no way for anyone to verify if it is legitimate. One, this is a huge loophole and abuse of process and two, one would think the State would want to ensure that they received their $50. Recommend at least in the rule

requiring a stamped filed copy of the subpoena with some type of tracking number or at least a stamp indicating the fee was paid.

Proposed Amendments to R.4:25-4 Designation of Counsel

Even though the Courts are supposed to follow the older docket rule most Courts are keeping trials scheduled for the same days (so you have to be in multiple jurisdictions all at the same time or risk waiver or contempt of Court), holding counsel at the Courthouses for days on end forcing their clients to settle cases they shouldn't, keeping them away from their offices where they could get work done and abusing this rule by forcing attorneys to choose between malpractice or the best interests of their clients. This proposed rule change just makes a bad situation worse without addressing the abusers. Courts send solos and smaller firms into heart attacks by threatening to waive designations whose only choice is potential malpractice by attempting to prepare and get witnesses, experts ready, etc for multiple trials all at the same time. No one can be expected to prepare two cases at the same time, cause their clients to expend expert costs just because they don't know which one will go or worse make them spend the money when the Court knows they won't have a Judge available, and no one should be forced into trying cases back to back. The time to file a motion to continue the designation can be better spent by both the attorney and the Judiciary getting work done than adding another reason for why work is not getting done. This proposed rule unduly penalizes all clients when the problem with the designated counsel rule being misused can be corrected in other ways.

Proposed Amendment to R:1:7-1 allowing specific dollar amounts to be mentioned just asks for abuse and switches the power to the Plaintiffs who already have the advantage of being able to open to a jury first and close last. It then focuses a jury on the numbers rather than their obligation to follow the law and apply the facts, promotes split the difference results (so there will be less "no cause of actions" for the Defense), the number suggested may have no relationship to how the jurisdiction typically handles the cases but the bell has been rung and promotes nuisance cases by shifting the power to the Plaintiff's attorney who knows that once a jury hears a number the jury result revolves around that number and not actual worth. It is also highly unfair to the Defense that can go no lower than a zero award but the Plaintiffs can go as high as they want. It is also highly prejudicial to Corporate clients and Insurance Companies who already have the stigma that juries assume there infinite money to pay for Plaintiff's case or based upon inequities, the Corporation should pay

Proposed Amendments to R.4:36-3(e) is too severe as many times the action gets adjourned for good reasons such as scheduling, witness availability, funerals and why should the client be penalized just because an attorney was proactive with alerting the Court that an adjournment was needed?

Proposed Amendments to R:4:58 Offer of Judgment. Agree with the recommended changes. Suggest that where there is a statutory defense such as WC bar that the Company be allowed to get defense costs back via issuance of an offer of judgment for zero.

Proposed Amendment to the form on the Arbitration Form:

It is not unusual for both arbitrators to realize that the Plaintiff does not have a realistic chance of being successful but they won't issue a "no cause" because they realize that the case could be settled. So what they do is set the gross award number high enough so that they then can assess liability at 50/50 and get a net number that they think will settle the case. The Parties do not understand when they see the high number so Plaintiff attorneys then must automatically file the de novo to keep their clients happy as the clients think their cases are worth the inflated value. If you want to eliminate the de novos for cases that can settle or should not proceed, the form should include a section allowing the arbitrators to insert a non-binding range of settlement when a "no cause" should be issued but the panel feels compelled to give a 50/50 with a number with no relationship to the full value just to get a workable net number The settlement range would have no binding effect and partues will not have to do anything if they disagree with it. They will still however have to make a decision if they want to de novo the arbitration award within 30 days. This gives the parties and the Court's an additional way to move cases that should not be on the trial list or are good candidates for settlement conferences.

Thank you for your time and consideration. Should you have any questions, I can be reached at 609-822-3135.

Donna Bahnck, Esq. APM