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JUSTICE MARIE L. GARIBALDI
AMERICAN INN OF COURT FOR ALTERNATIVE DISPUTE RESOLUTION
STATE OF NEW JERSEY

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30 Montgomery Street
Suite 990
Jersey City, New Jersey 07302
201-333-0400 Fax 201-333-1110
rem@mwhlawfirm.com

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May 23, 2018

Via Email and Regular Mail

Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Attn: Comments on CBLP Rules
Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625-0037

Re: Comments on Proposed CBLP Rules of Court
Justice Marie L. Garibaldi ADR Inn of Court Submission

Dear Judge Grant:

The Justice Marie L. Garibaldi American Inn of Court for ADR (“Inn”) respectfully submits this letter in response to the New Jersey Supreme Court’s invitation to submit comments on the proposed CBLP Rules of Court. We respectfully submit that the Program would benefit substantially from inclusion of a provision incorporating presumptive mediation of complex business disputes.

As Your Honor and the Committee know, the New Jersey Court system has been a national leader in adopting and utilizing mediation. Justice Garibaldi was an early and persuasive proponent of incorporating mediation into our judicial framework. Mediation continues to be a method for resolving cases that is less costly and adversarial, more efficient and

reliable, and better designed to provide the parties with self-determination, as opposed to third party-imposed results. This is especially so since the dismissal and settlement rate of Superior Court civil matters is about 98.8% in New Jersey. A mediated resolution is preferable to either a trial of uncertain outcome or costly litigation until “courthouse steps” settlement. Effective mediation also has been an invaluable tool for the Court in reducing the docket and improving attorney and party satisfaction with the judicial system.

But, uniquely, commercial disputes seem to have fallen outside of the mediation program. In fact, commercial and business disputes are perhaps best suited for mediation. While employment and family matters most often are charged with personal and emotional components that sometimes misguide a party’s self-determination, commercial disputes most frequently are driven at their core by business needs and financial analyses. In our roles as attorneys, many Inn members choose to voluntarily mediate their commercial cases, which otherwise would go to non-binding arbitration much later in the process, at much greater cost to the parties.

Many other forums have adopted mediation in their commercial and business dispute programs. They include, by limited but significant example, the Commercial Division of Supreme Court of New York (<https://www.nycourts.gov/courts/comdiv/ny/PDFs/ADR-rules.pdf>), the Judicial Branch of California (which actually posted two intensive studies of several hundred pages, reporting the multiple benefits of civil case mediation (<http://www.courts.ca.gov/programs-adr.htm>), and the American Arbitration Association, in its “Commercial Arbitration and Mediation Procedures,” at (<https://www.adr.org/sites/default/files/Commercial%20Rules.pdf>, pp. 39-44). Of course, there are many more examples throughout the United States and beyond (See, e.g., https://e-justice.europa.eu/content_eu_overview_on_mediation-63-en.do).

Clearly, the Committee on CBLP Rules has given the program a lot of thought and has developed a set of rules designed to manage and resolve complex business disputes. Inclusion of a Mediation provision can only help to further that goal. Complex and novel cases, with an amount in controversy of at least \$200,000 dollars, would benefit from mediation, where a mediator’s commitment to learning each case and the parties’ desire to curb costs and engage in self-determination favor alternative resolution. See proposed Rule 4:102-2. Moreover, the use of scheduling conferences and orders will enable the assigned judge to manage the timing of mediation. See proposed Rule 4:103-4. The CBLP is an ideal program to embrace the benefits of mediation.

Therefore, the Justice Marie L. Garibaldi American Inn of Court for ADR recommends that the Committee include Mediation as a provision of the proposed CBLP Rules of Court. We are available for further comment, at the Committee’s request.

Respectfully submitted,

The Justice Marie L. Garibaldi American Inn of Court

/s/ Nicholas Stevens

Nicholas Stevens, President

Sheryl Mintz Goski, Vice President

Theodore K. Cheng, Treasurer

Robert E. Margulies, Executive Director