

#020

From: Weisslitz, Mike <MWeisslitz@KHOV.COM>
Sent: Thursday, May 24, 2018 2:59 PM
To: Comments Mailbox
Subject: Comments on 4.24.18 Notice to the Bar regarding Proposed Court Rules for the Complex Business Litigation Program

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Attn: Comments on CBLP Rules

Dear Judge Grant:

In accordance with the April 24, 2018 Notice to the Bar regarding Proposed Court Rules for the Complex Business Litigation Program, we respectfully offer the following comments and suggestions.

1. Proposed Rule 4:103-4(a)(3) – In complex construction defect cases, it is often necessary to join several generations of subcontractors. For example, the initial litigants may not be aware of certain contractors until after defendant joins a third party defendant subcontractor, who may then join as a fourth party defendant a sub-subcontractor, and so on. We respectfully suggest that Rule 4:9-1, and the cases decided thereunder, should continue to govern motions for leave to amend.
2. Proposed Rule 4:104-3(a)(1) – It is unclear whether the proposed Rule limits each plaintiff, each defendant, and each third party defendant to 10 depositions, or whether the intent is to limit all plaintiffs, all defendants, and all third party defendants, collectively, to 10 depositions. If the former, we have no comment or suggestion. If the latter, in construction defect cases where there may be upwards of 50 or more defendants and third party defendants, it will be unworkable for 50 or more parties that worked on different aspects of the project to agree upon the 10 witnesses that should be deposed. We suggest the proposed Rule be modified to make clear that each plaintiff, each defendant, and each third party defendant is limited to 10 depositions.
3. Proposed Rule 4:104-3(a)(2) – We have no comment as to the 7 hour limitation as applied to fact witnesses. Many expert witnesses in construction defect litigation, however, offer opinions with regard to dozens of separate and distinct alleged design and construction defects, and those opinions are sometimes grounded in hundreds or thousands of hours of investigations over the course of years and are contained in project files that often contain tens of thousands of pages of technical information. We suggest that the limitation on number of hours for a deposition be limited to fact witnesses.
4. Proposed Rule 4:107-7(b) - If, for some reason, the court does not enter an order setting the date for service of expert reports, we suggest that a deadline of 90 days and 30 days is too close to trial to permit meaningful analysis and, respectfully, any meaningful opportunity to pursue settlement. Most times, the insurance carriers that defend the design professionals and contractors will not participate in meaningful settlement discussions until after expert reports have been served. We suggest that the Rule provide that the Court shall include in its scheduling order under Rule 4:103-4(a) deadlines for submission of affirmative and rebuttal expert reports.
5. Proposed Rule 4:105-3(b) – The rule regarding adjournment of a dispositive motion without the consent of the moving party appears to be inconsistent with Rule 4:105-5(a), which requires the parties to agree on a briefing schedule for summary judgment motions before the motion is even submitted.

6. Proposed Rule 4:105-6 – While we fully appreciate and endorse the goal of brevity, we suggest that a 25-page limit is unreasonable as applied to summary judgment motions. We suggest that the proposed Rule be modified to state that it applies to other than summary judgment motions. As to summary judgment motions, we suggest a page limit of 40/20.

Thank you for your attention to this matter.

Respectfully Submitted,

Michael J. Weisslitz, Esq.
Legal Counsel
K. Hovnanian Companies, L.L.C.
110 Fieldcrest Avenue
Edison, New Jersey 08837
T 732.623.6715 • mweisslitz@khov.com

KHovnanian
Homes

