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June 1, 2018

By Email and Regular Mail

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

Re: Proposed Rule 2:11-1(b)(3)

Dear Judge Grant:

I write in my individual capacity to comment on the proposed change to Rule 2:11-1(b)(3) to limit the number of persons who may present argument on behalf of a party from two to one, unless the Court otherwise orders. While I do not know what motivates the change, I believe the change may be misguided.

In the usual case, the best practice will be to have a single lawyer argue all issues for a party. But, in my experience, I can think of situations where it may be appropriate to have two attorneys present argument on different issues, provided the Court is advised at the argument of each attorney's role and the time is appropriately divided. In certain complex cases, it is common to assign discrete roles to particular attorneys, and those attorneys may be best able to present appropriate argument. One example is when expert testimony and issues are assigned to one lead counsel, and another handles the merits issues, and the appeal involves issues in both areas. Another involves situations where another firm may be assigned to issues involving a non-party for conflict purposes, and it would be inappropriate for the lead attorney to address issues involving that third party. I can think of two recent cases in which two different counsel presented argument for a given party without any apparent detriment to the process.

Another circumstance in which two attorneys may choose to divide argument is one in which the argument presents an opportunity for a less senior attorney to present part of the

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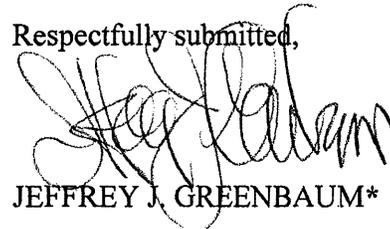
argument. The opportunities for less experienced attorneys to obtain on-your-feet experience have greatly declined as the number of cases going to trial has diminished, and, at least in federal court, opportunities for oral argument on motions are extremely rare. This rule change seems to further close the door on such opportunities.

I understand that the proposed rule does provide an opportunity for the Court to otherwise direct. But, such relief would require a formal motion, which certainly would discourage argument splitting and make it hard to justify providing opportunities for junior lawyers. Formal motions add burden and expense, which certainly would be hard to justify to clients, particularly if the goal is to foster junior attorney experience. The elimination of another opportunity to help in the development of younger lawyers should be a reason alone to reject this proposed change.

Obviously, if more than one attorney presents argument, the role of each should be clearly designated, and no duplication should be permitted. Time should be clearly divided so that the presentation by two attorneys should not be permitted to extend the time for argument.

Therefore, I would respectfully request that the Court consider eliminating this proposed change.

Respectfully submitted,



JEFFREY J. GREENBAUM*

JJG:fy

* This letter is submitted expressing my individual views and do not necessarily represent the views of my firm or of others in my firm.