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March 26, 2024

Hon. Glenn A. Grant, J.A.D.

Acting Director

Administrative Office of the Courts

Attn: Rules Comments

Hughes Justice Complex - P.O. Box 037

Trenton, New Jersey 08625-0037

Dear Judge Grant:

On behalf of the 2,700 members of the New Jersey Association for Justice (NJAJ), thank you for the opportunity to comment on the Supreme Court Rules Committee Report.

NJAJ does not support the changes to R. 4:19-1 limiting a defense medical exam (“DME”) to a matter “in the Law Division, Civil Part.” Rule 6:4-3(c) states that the Rule applies to Special Civil Part with modification. Rule 5:1-1 along with the procedure in R. 5:3-3. Therefore, the Rule Change would mean that the Rule no longer permits DMEs in Special Civil Part or *Tevis* claims in the Family Part as well as any other proceeding where Part 4 Rules apply.

NJAJ does not support the changes to R. 4:19-2. NJAJ believes the language used in the proposed Rule is confusing as it states that the party serving the notice is the party that should apply for the protective order. The Supreme Court’s holding in DiFiore v. Pezic, 254 N.J. 212 (2023) placed the burden on the party objecting to the presence of a third-party. Adding the clause to the last sentence “of the exam,” would eliminate this contradiction with DiFiore. NJAJ also has concerns with the short time frame of fourteen days’ notice of the party seeking to utilize a third-party observer because the amount of information required is substantial, and it would be difficult to comply in just fourteen days. That would give a party seeking to hire a nurse or other expert, would have to coordinate with the expert and obtain the CV to be served in just 14 days. In addition, the Rule and the DiFiore decision contemplate a third-party observer may be either an expert or a fact witness. But the Rule asks for a business address when a fact witness may not have a business address. The Rule also asks for a CV when a person like a neighbor, who was one of the third-party observers in DiFiore should not have to provide a CV to be a fact witness. The Rule should be clarified as follows: *Once a notice for exam has been issued pursuant to Rule 4:19-1, the receiving party must, within thirty (30) days, inform the party serving notice of any intent to utilize a third-party observer or to record the examination, set forth the identity and business address of the third-party observer, if an expert, provide the third party observer’s curriculum vitae, and advise if the third-party observer will serve as an expert or fact witness and, if any recording will be taken, state the method of recording.*



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*If the party serving notice of the exam objects, the parties shall confer orally and if they cannot come to an agreement, the party serving notice may move for a protective order under Rule 4:10-3.*

NJAJ recommends supporting the proposed expansion of Rule 4:22-1 that would bring the Rule in line with the federal request for admission rule. Members of NJAJ who support the change think the expansion would assist in cases involving experts, and being able to have parties admit opinions.

NJAJ does not support the removal of this paragraph R. 4:58-4 because the paragraph makes clear that it applies in cases where there is no joint and several liability, such as successive tortfeasor cases. Without this part of the Rule, given it had existed, it would be used by successive tortfeasors and other parties in cases where there is no joint and several liability, to which the Rule does not apply under the doctrine of *expressio unius est exclusio alterius*.

Respectfully,

Patricia M. Giordano, Esq.  
President

cc: Cornelius J. Larkin, CAE, CMP, CEM, CMM, DES