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August 7, 2025

Via eCourts Supreme

Heather Joy Baker, Clerk
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 970
Trenton, New Jersey 08625

Re: Henry Okiogah v. New Jersey Transit, New Jersey Department of
Transportation, State of New Jersey, New Jersey Turnpike Authority,
Hudson County, and Jersey City
Supreme Court Docket No.: 090856
Appellate Division Docket No.: A-2363-23

On Petition for Certification to the Supreme Court from the
Final Judgment of the Superior Court, Appellate Division

Sat Below: Hon. Joseph L. Marczyk, J.A.D.
Hon. James R. Paganelli, J.A.D.

Dear Ms. Baker,

Please accept this letter brief on behalf of Plaintiff-Appellant, Henry Okiogah
("Petitioner") in reply to the opposition of Defendants New Jersey Transit, New
Jersey Department of Transportation, State of New Jersey, New Jersey Turnpike

Authority, Hudson County, and Jersey City (“Respondents”) and in further support of Appellant’s petition for certification. Appellant incorporates herein the merits of his Appellate submissions and those submitted in support of his petition for certification.

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PRELIMINARY STATEMENT

Petitioner, unlike Respondents, has procedurally complied with all requirements for a petition for certification. Respondents two, and only two, legal arguments made in opposition to Petitioner’s application is that of alleged procedural deficiencies: (1) that Petitioner has not put forth a valid reason for the petition to be granted and (2) that Petitioner has not complied with the form mandates. As seen below, both assertions are incorrect.

Moreover, Respondents' own opposition is procedurally defective as it was filed out of time.

Thus, for the below reasons, the reasons set forth in Petitioner's brief in support of this application, and the reasons stated in the submissions and oral arguments below, it is respectfully submitted Petitioner's petition for certification should properly be granted.

POINT I

RESPONDENTS' SUBMISSION WAS FILED LATE AND THEREFORE SHOULD NOT BE CONSIDERED

As noted in this Court's August 5, 2025 deficiency notice, Respondents' letter brief was received over 15 days after the filing of the petition for certification. As a result, it is procedurally improper and it is respectfully submitted it should be ignored by this Court.

Rule 2:12-8 informs the proper schedule to be followed when a petition for certification is filed. Specifically, R. 2:12-8 states "[t]he respondent shall, within 15 days of the service of the petition, serve two copies of the brief in opposition to certification and file four copies thereof together with four copies of respondent's Appellate Division brief and appendix with the Clerk of the Supreme Court."

Here, a simple review of the electronic docket shows Petitioner filed his petition for certification on July 2, 2025 (Transaction ID E1056913-07022025). Fifteen days from that date was July 17, 2025. However, Respondents did not file

their opposition until July 31, 2025 (acknowledging they attempted to on July 30, 2025 but could not for logistical reasons). (Transaction ID E1057490-07312025). Further, no motion for leave to file as within time has been filed to Plaintiff's knowledge.

Therefore, as Respondents' briefing is woefully tardy, it is respectfully submitted the arguments made therein should properly be barred from this Court's consideration.

POINT II

THE PETITION FOR CERTIFICATION DOES MEET THE CRITERIA OF RULE 2:12-4

Respondents claim the petition for certification is defective for two reasons, both procedural: failure to meet the requirements of Rule 2:12-4 and Rule 2:12-7(a). It is abundantly clear the mandates of both of these Rules have been met.

Rule 2:12-4 regards the grounds for certification. It states, in whole:

Certification will be granted only if the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any other decision of the same or a higher court or calls for an exercise of the Supreme Court's supervision and in other matters if the interest of justice requires. Certification will not be allowed on final judgments of the Appellate Division except for special reasons.

Here, it is respectfully submitted the issues which give rise to this petition meet all of these factors. Foremost, as set forth in detail in the Appellate Division and in the petition for certification, the Trial Court and Appellate Division both ignored the reality that their decisions conflict directly with other decisions rendered by the Appellate Division. (Pb1-18). Specifically, the decisions of the Trial Court and Appellate Division conflict with the holdings of this Court and prior Appellate Opinions including D.D. v. UMDNJ, 213 N.J. 130 (2013), Maier v. Cnt’y of Mercer, 384 N.J.Super. 182, (App.Div. 2006), R.L. v. State-Operated Sch. Dist., 387 N.J.Super. 3331 (App.Div. 2006), Mendez v. South Jersey Transp. Auth., 416 N.J.Super. 525 (App.Div. 2010), and Jeffrey v. State, 468 N.J.Super. 52 (App.Div. 2021).

Further, the competing results between this matter and the cases cited both above and in Respondents’ briefing make clear that a question of general public importance which has not been decided by this Court exists. In the interest of Petitioner and future like-situated individuals, it is in the interest of justice that incongruent and ad hoc decisions like those made by the Trial Court and Appellate Division here do not preclude those who exhibit exceptional circumstances from having their cases heard on the merits due to severe and debilitating injuries they sustained at the hands of public entities and their employees.

It is therefore respectfully submitted the above reasons amount to the exact “special reasons” which this Court should find sufficient to permit certification.

Turning to Rule 2:12-7(a), Petitioner’s application absolutely identifies the “question presented, the errors complained of, the reasons why certification should be allowed, and comments with respect to the Appellate Division opinion.” The question presented is set forth on pages 2 and 3 of the petition for certification: whether the Trial Court and Appellate Division erred in finding the Petitioner failed to exhibit extraordinary circumstances under prevailing law to permit a late tort claim notice to be filed or deemed timely filed. (Pb. 2-3). The errors complained of permeate the petition and Appellate Division submissions throughout. (Pb. At 1-18, Pa129-174). Similarly, the comments with respect the Appellate Division opinion can be found in the Preliminary Statement and Point I of Petitioner’s Legal Argument. (Pb.1-3; 11-18). Finally, the reasons why certification should be allowed are found in the Legal Standard and supplemented above. (Pb. 9-10)

It should be noted these two procedural issues are the entirety of Respondents’ legal argument as to why the petition for certification should be denied.

CONCLUSION

Therefore, based on the foregoing and the submissions heretofore in the Trial Court, Appellate Division, and to this Court, it is respectfully submitted Petitioner’s petition for certification is properly before this Court and should properly be granted.

Respectfully Submitted,

s/Robert J. Banas

Robert J. Banas, Esq.

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Attorneys for Plaintiff, Henry Okiogah

Dated: August 7, 2025