MIDDLESEX COUNTY BAR • ASSOCIATION
1914 – Celebrating 100 Years – 2014

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June 17, 2014

Hon. Faustino J. Fernandez-Vina
Supreme Court of New Jersey
25 West Market Street
PO Box 970
Trenton, NJ 08625-0970

Thomas R. Curtin, Esq.
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Dear Associate Justice Fernandez-Vina & Mr. Curtain:

I am writing to you on behalf of the Middlesex County Bar Association ("MCBA") with the MCBA's comments on the Report of the Supreme Court Advisory Committee on Expedited Civil Actions. The MCBA elicited input from its Civil Practice Committee and its Board of Trustees. Our Board, with one abstention, voted to provide you with these comments opposing the implementation of the proposed program. The overwhelming concern was compromising our State's citizens' access to justice.

While the MCBA is sensitive to current shortage of judges and the Judiciary's need to move civil cases expeditiously, it is our position that the proposal will overly compromise litigants' due process rights to a full and fair adjudication of their dispute. There were many concerns raised over the impact that the program will have on both the litigants and counsel. We have selected the most commonly raised concerns for your review.

Many members felt that the "opt out" provision was not fair since it requires all parties to consent. The provision could allow one party to force a case to stay in the expedited track when there is a disagreement amongst counsel over the proper track for the matter. We think that the program should be "opt-in," but at a minimum we urge the Court to permit "opt out" by any party without consent.

The limitations on written discovery, such as number of interrogatories, will not promote speedier trials through streamlined discovery, it will force counsel to use motion practice and more expensive means of discovery to obtain information. Interrogatories are perhaps the most cost-effective and simplest method of investigation. Restricting the number of depositions will also require additional motion practice. While not every case will require this type of Court intervention, many will as the litigation of the standard Track II case has become more involved and contentious in recent years.

While the discovery restrictions in the proposed program cause concern, the limitations at trial are even more worrisome. Restricting the number of peremptory challenges and time for opening and closing statements will have a minimal impact on shortening the length of a trial, but will, potentially, cause hardship on the parties and counsel in having the opportunity to tell their side of the story to a fair and impartial

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jury when the parties ultimately receive their day in Court. The goal of a trial is obtaining a just result, not to see how quickly we can get through the process. In Track I and Track II cases, generally, the longest part of jury selection is getting the first 8 jurors in the jury box, not the peremptory challenge portion. Once counsel are exercising their challenges, that portion of the selection process tends to move relatively quickly. These challenges serve an important purpose: namely, giving counsel the opportunity to remove biased jurors. Without the small number of challenges that parties already hold to aid in the selection of a fair and impartial jury, a jury trial will simply come down to the luck of the draw. As to the limitations on opening and closings, counsel should be permitted to try the case as necessary and pled their client's case. It is their day in court, and presumably their one chance to have their dispute heard. Openings and closings in these cases are rarely a reason for a lengthy trial. There were far more objections to the limitations on closings than there were on openings, especially by those that generally have the burden of proof.

The issue of trial management was raised as well. If there are an insufficient number of judges to try pending cases that come up in the natural course at this time, how are cases with a "preference" date from this program going to get tried? Lawyers are stretched between counties with conflicting trial dates as things stand now, how will we deal with a trial date in one county on an "expedited track case" and an older case, in a normal track, in a different county?

The general feeling was that the appointment of more judges will address the concerns of counsel and the public in speeding up the resolution of cases. In Middlesex County, our presiding civil judge, the Hon. Jamie Happas, case manages all civil cases and this has improved greatly trial-readiness and provided the opportunity for each case to have its individual needs addressed. Attorneys that handle complex civil litigation are also concerned that their cases would be moved to the back of the line so that the expedited cases could be tried first.

We thank the Court for entertaining our comments and ask that it revisit the proposal to address the concerns raised above.

Sincerely,

Craig M. Aronow

CRAIG M. ARONOW
President-Elect
Chair, Civil Trial Practice Committee

Cc: All Members of the Supreme Court Advisory Committee on Expedited Trials √
Paris Eliades, Esq., President, New Jersey State Bar Association
All New Jersey County Bar Associations
New Jersey Law Journal

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