HUDSON COUNTY BAR ASSOCIATION
583 Newark Avenue
Jersey City, New Jersey 07306
(201) 798- 4708

E-mail:staff@hcbalaw.com
Website: www.hcbalaw.com

#004

March 27, 2024

Acting Administrative Director Glenn A. Grant
Administrative Office of the Courts
Attn: Rules Comments
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Dear Judge Grant:

I write on behalf of the Hudson County Bar Association's Civil Practice Committee to voice its opposition to the proposed amendments to Rule 4:22-1, Requests to Admit, set forth in the 2024 Report of the Supreme Court Civil Practice Committee. Requests to admit were originally conceived as a mechanism to reduce litigation costs by limiting the facts that must be proved at trial. Van Langen v. Chadwick, 173 N.J.Super. 517, 522 (Law Div. 1980), but have since grown in popularity as a means of conducting additional discovery after the discovery end date has passed.[1] Since the Rule also provides for an award of fees where the proponent of a Request for Admission later establishes the subject fact at trial, the Rule also lends itself to abuse. See, e.g., Essex Bank v. Capital Resources Corp., 179 N.J. Super. 523, 533-34 (App. Div. 1981) (discussing how a litigant who "carefully set the stage by serving broad requests" could subvert the American Rule).

Despite their utility when properly drafted and limited in volume, The Appellate Division's foresight in Essex Bank is too frequently borne out. Civil practitioners in Hudson County report that it is not uncommon to receive dozens of Requests for Admission, especially as a trial date nears. In one particular instance, a Hudson County attorney reported receiving a list of more than two hundred requests to admit, which required an enormous investment of time that would have been better allocated to more fruitful pretrial preparations. Some members of our county's bar have had success, albeit taking the court's time, simply to obtain orders that extend the relatively short time period in which to respond to these requests. Likewise, they have had to resort to the court to quash requests that flout the limited purpose of Rule 4:22-1 because of the sheer number of requests. Taking that path unnecessarily burdens the moving party and the court.

Even in the Rule's current form, Requests for Admission are too often poorly considered and drafted, thereby compounding the task of crafting good

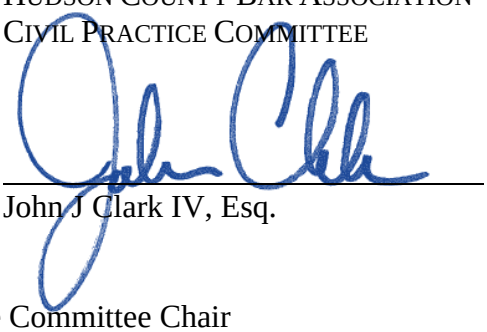
faith responses and objecting where necessary, while running the risk of preclusion of disputed facts and the imposition of attorney fees if the court overrules a good faith objection. The Rule does not provide a clear, cost-effective mechanism to address overbearing requests. Moreover, the outcome of an application to quash or limit unduly burdensome requests or to extend the time to serve a response ultimately varies by the trial court judge to whom the application is presented. As a result, a tool that was conceived as a means to limit the disputed facts, to streamline discovery, focus trials and reduce costs has too often become a tool to consume the court's resources, bludgeon adversaries and drive up litigants' pre-trial expenses.

Expanding the scope of Rule 4:22-1 to include opinions inevitably will compound the shortcomings of the current Rule. Unfortunately, even under the status quo, too many attorneys have difficulty posing a proper request to admit a fact *e.g.*, "admit that defendant was driving the green vehicle at the time of the collision;" and one that improperly asks for as legal conclusion, *e.g.*, "admit that plaintiff was driving the blue vehicle unlawfully at the time of the collision."

Adding requests to admit *opinions* offers no reason to expect improvement in the artfulness of drafting requests for admissions. Evidence Rule 701 also largely circumscribes opinions of the typical lay litigant. Moreover, adding opinions to this mix certainly will not do anything to streamline the process or reduce the parties' costs. Indeed, it is bound to increase the cost of preparing a response—both in terms of an attorney's commitment of time and the fees demanded by expert witnesses, as well as the court's time in resolving disputes. Experts' written opinions are already set forth in reports served pursuant discovery rules, and in our experience, are commonly and more thoroughly addressed in deposition. Only in circumstances where a request concerning an opinion goes to an ultimate fact in issue would an attorney reasonably be expected to properly respond to the request without consulting a retained expert; such a request is already inappropriate under our State and Federal jurisprudence. Essex Bank, 179 N.J. Super. at 533, citing Pickens v. Equitable Life Assur. Society, 413 F.2d 1390 (5 Cir. 1969). Therefore, the only appropriate use of the proposed amendment would be to probe the nuances of an expert opinion while preparing for trial, which invites a tedious consultation with other professionals who are entitled to compensation for their time.

Given the frequency of abuse of Rule 4:22-1 that this county's civil practitioners have observed throughout the State, it is the position of the Hudson County Bar Association that amending the rule to permit requests regarding opinions as well as facts is unnecessary, and undermines the cost-saving intention of the Rule in present form.

HUDSON COUNTY BAR ASSOCIATION
CIVIL PRACTICE COMMITTEE



John J Clark IV, Esq.

cc:
Diane L. Cardoso, Esq., HCBA President
Norbereto A. Garcia, Esq., HCBA Civil Practice Committee Chair

[1] "Requests for admissions are not discovery devices to ascertain relevant facts. They were designed to ascertain an adversary's position with respect to these facts." Van Langen v. Chadwick, 173 N.J. Super. 517, 522 (Law. Div. 1980).