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NEW JERSEY'S UPCOMING AMENDMENT TO RULE 4:22-1 OF COURT APPLICABLE TO REQUESTS FOR ADMISSION HAS SIGNIFICANT IMPLICATIONS

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A minor, yet significant, change to Rule 4:22-1 of the New Jersey Rules of Court – "Requests for Admissions" could have major implications for litigants in New Jersey state court actions for the foreseeable future. This new Rule change makes having the right and experienced legal counsel on your side handling your litigation matters all the more important.

Requests for Admissions (often referred to as "RFAs") are a discovery tool, not unlike interrogatories or request for production of documents, used by litigants to narrow the issues that are in dispute in an action. The scope of proper RFAs is shaped by Rule 4:10-2 which requires that the subject matter of a request be (1) "relevant to the subject matter involved in the pending action", and (2) "relate[] to the claim or defense of the party seeking discovery or to the claim or defense of any other party." Because RFAs are deemed admitted by the party on whom they were served unless a written answer or objection is served by such party within thirty days of service, RFAs are a particularly powerful instrument in a litigant's pre-trial arsenal.

In New Jersey, RFAs have historically been limited to seeking the admission of facts within a defendant's knowledge or for the authentication of certain documents. An August 5, 2022 Order of the Supreme Court of New Jersey, adopting an amendment to Rule 4:22-1, changes these parameters, effective September 1, 2022.

The current version of the Rule provides, in part:

- A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters of fact within the scope of *R.* 4:10-2 set forth in the request, including the genuineness of any documents described in the request.

Under this version of the Rule, litigants could serve other parties with RFAs requesting that an adversary admit, for example: "[a]dmit that the car you were driving at the time of the accident was red," or "[a]dmit that the document attached hereto as Exhibit "A" to these Requests is a true and accurate copy of the contract."

The 2022 Amendment insert only two words, a total of 9 letters, but it vastly transforms the scope of the Rule:
A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters of fact ***or opinion*** within the scope of *R*. 4:10-2 set forth in the request, including the genuineness of any documents described in the request.

(New text emphasized).

Originally proposed in the 2016-2018 rules cycle that Rule 4:22-1 be amended to mirror Federal Rule of Civil Procedure 36(a), permitting requests for admissions of "fact, the application of law to fact, or opinions about either," the 2022 Amendments have been long in the making.

As part of the Rule amendment process, the Discovery Subcommittee of the Civil Practice Committee prepared a report addressing the proposal and concluded that "[t]there is no logical reason why requests to admit should be limited to purely facts, when there are also issues that could be narrowed

by a request to admit opinions."

Tangibly, the Discovery Subcommittee provided an example of what a request to admit an opinion might look like under the new Rule, suggesting that a party could request an adversary admit that "an employee acted in the scope of his employment." The obvious gray area that remains, however, is the distinction between seeking opinions and conclusions. While the Discovery Subcommittee's Report suggested that as long as "the opinion is something that is not a legal conclusion, then the admission of the opinion is appropriate," the Discovery Subcommittee elected not to craft the amendment of the Rule to draw that distinction and instead left this duty to the courts.

Thus, while the intent of expanding Rule 4:22-1 to include admissions of opinions was to eliminate superfluous issues, unnecessary expense, and expedite trials, the reality is that litigants and courts are likely to be bogged down in discovery disputes and motion practice while the line between opinion and conclusion is drawn by the judiciary.

It is important that you and your business have a skilled and experienced legal team on your side when navigating these and other new Rule changes in the handling of your litigation matters. If you have any questions for the Litigation team at Becker LLC, please feel free to contact Joseph G. Harraka, Jr., Esq. or Erik B. Derr, Esq.

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