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Matt Pollack, Esquire, Clerk
Supreme Judicial Court
205 Newbury Street,
Room 139
Portland, Maine
04101-4125

VIA E-MAIL

Re: Proposed Amendments to M.R.Civ.P.

Dear Matt:

I wanted to offer a number of comments relating to the proposed revisions of the M.R.Civ.P. in connection with the Civil Reform project. They are as follows:

1. Proposed Rule 16B(b)(4) exempts from ADR actions where the Plaintiff requests exemption and certifies that the likely recovery of damages will not exceed \$50,000.00. This would typically exempt an action where the Plaintiff is seeking an injunction. I would be surprised to think it was intended to exempt all injunction cases from ADR.
2. Rule 36(a) I think that this acute narrowing of the scope of permissible requested admissions is not salutary. In litigation involving multiple counts and multiple causes of action, obtaining admissions as to facts and as to the application of law to facts can be very helpful, and serving such a request in advance of ADR can sometimes help the neutral get a party to focus upon what is really not going to be a matter in issue.
3. The lack of attention to Rule 80A and real estate disputes in general is, I think a missed opportunity to offer some efficiency to the system. I have

been involved with a great deal of real estate litigation, and it seems to me that it often utilizes too many of the court system's resources.

I suggest at a minimum that in every real estate dispute that is based in whole or in part upon recorded instruments, each party should be required by rule to file copies of the deeds in their chains of title, and that these should be admissible without certification from the Registry both as evidence at trial, in summary judgment proceedings, and in proceedings wherein a party seeks injunctive relief.

While I don't think that real estate disputes require their own special track, quite possibly they could benefit from being included in the Rule 16 definition of Track C cases, if only because Track C cases will have an initial case management conference under Rule 16(b)(2)(B). This would give the court an early opportunity to understand whether the case is one primarily involving construction of recorded instruments (possibly capable of resolution on summary judgment) or whether it is fact intensive (adverse possession or prescriptive easement), and to establish a scheduling order that responds appropriately to the type of dispute.

Thanks.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. Hark', written over the typed name.

Robert S. Hark