OFFICE OF LEGAL AFFAIRS
ARCHDIOCESE OF NEW YORK

James P. McCabe
General Counsel

June 28, 2019

VIA EMAIL (rulecomments@nycourts.gov)

John W. McConnell, Esq.
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Office of Court Administration
25 Beaver Street, 11th Floor
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Re: Comment on Proposed Rules to Facilitate the Prompt Disposition of Matters Revived Under the Child Victims Act of 2019

Dear Mr. McConnell:

I write on behalf of the Roman Catholic Archdiocese of New York in response to the request for public comment issued by the Office of Court Administration ("OCA") on May 10, 2019, with respect to the Proposed Rules to Facilitate the Prompt Disposition of Matters Revived Under the Child Victims Act of 2019 ("Proposed Rules"). As you may be aware, the Archdiocese of New York serves almost three million catholic faithful and a like number of other New Yorkers of all and no faiths in approximately 300 parishes, 200 schools, and hundreds of medical and child-care facilities. Our territory encompasses 10 counties, including Manhattan, Staten Island, and the Bronx in New York City and seven counties in the lower Hudson Valley, spreading across five different judicial districts, and three appellate divisions.

The Archdiocese takes seriously its commitment to provide healing and bring closure to the victim-survivors of child sexual abuse. In 2016 His Eminence Timothy Cardinal Dolan, Archbishop of New York, created an independent compensation fund for victim-survivors, known as the Independent Reconciliation and Compensation Program ("IRCP"), and appointed the pre-eminent attorney Kenneth Feinberg, Esq. to independently administer the IRCP. The IRCP has been financed through loans to the Archdiocese and does not use money donated to our parishes, schools, or charitable organizations. Under Mr. Feinberg's stewardship, the IRCP has investigated hundreds of claims resulting in compensation awards being issued to more than 300 victim-survivors, with other claims still under his review.

Having worked for many years to bring healing and compensation to the victim-survivors in an unprecedented way, the Archdiocese desires an efficient and fair process to resolve claims. We applaud the OCA's intention to create specific "214-g Parts" to oversee the lawsuits that will be filed during the one-year lookback period opening on August 14, 2019. Having Supreme Court Justices and supporting staff specifically trained to handle these sensitive and difficult matters will certainly aid the healing process. We, of course, are committed to fair compensation for meritorious claims, but our review of the Proposed Rules has caused us to propose the following comments and suggestions to improve the process.

I. The Accelerated Litigation Timeline Contemplated by the Proposed Rules Raises Serious and Significant Due Process, Equal Protection, and Substantial Fairness Concerns for Future Defendants which can Easily be Remedied

We have concerns about the Proposed Rules regarding inadequate and insufficient time to properly litigate contested lawsuits. Generally, these concerns relate to due process, equal protection, and substantial fairness. It is anticipated that the one-year lookback window of CPLR § 214-g will result in many claims against many defendants arising from alleged abuse that may have occurred many decades before the advent, let alone the common usage of, electronic file storage. However, the aspirational accelerated discovery schedule proposed by the OCA, suggesting that all discovery be completed within 180 days of the Preliminary Conference, fails to take this simple fact into consideration. Instead, the OCA seeks to impose an infeasible, unrealistic, and potentially prejudicial discovery schedule. The Proposed Rules fail to consider the actual time it will take to search for records or to permit potential defendants an adequate and reasonable time to search through decades of documents sufficient to respond to multiple lawsuits all being litigated simultaneously. A flood tide of decades of previously time-barred claims combined with an unprecedented rush to judgment is a prescription for prejudice to all parties.

There can be no doubt that the burden to produce discovery in lawsuits brought pursuant to CPLR § 214-g is being placed on the defendants, and by including a provision within the Proposed Rules that the parties are to consult before appearing in Court regarding "anticipated requests to obtain records from earlier cases related to the allegations in the revived case" only serves to broaden any already untenable field of discovery, which may even seek to discover matters that are subject to confidentiality, privilege, and releases, which will require court adjudication.

A. A Reasonable and Sensible Discovery Timeline Permitting for the Full and Complete Exchange of Discovery Should be Established to Ensure the Due Process Rights of Defendants to § 214-g Claims

The search of decades-old paper documents and the production time related to reproducing decades worth of paper documents will place an unreasonable strain on the human and financial resources of the Archdiocese, other religious corporations, and other defendants. The Proposed Rules do not take into account the labor-intensive efforts that will be required to conduct discovery in these matters. The Proposed Rules do not take into account the likelihood

of discovery motion practice such as motions to compel and motions for protective orders, the time necessary to procure relevant party records, and the need for independent medical and/or psychiatric examinations.

In addition, this expedited briefing schedule fails to account for multiple party and non-party depositions, fails to consider the time it will take to secure the fruits of employment, medical and/or tax authorizations, fails to account for whether parties will need to retain expert witnesses, fails to account for certain discovery permissibly occurring after a note of issue is filed, and fails to offer the parties an opportunity to engage in any mediation or settlement conference program dedicated exclusively to these matters.

B. Parties Must be Given the Option to Pursue Court Supervised Alternative Dispute Resolution of § 214-g Claims

The Proposed Rules contemplate dedicated § 214-g Parts in each county to handle the potential avalanche of lawsuits that will be filed during the one-year window, without offering any method for alternative dispute resolution. Not only will this overburden the § 214-g assigned justice and support staff, it also serves to deter § 214-g defendants, who may be served with hundreds of lawsuits, from pursuing settlement or mediation due to the financial burden imposed by engaging private alternative dispute resolution services. The Proposed Rules should provide not only for a reasonable and sensible litigation track for those cases that will be defended, but should also provide for a separate, court-run alternative dispute resolution track in which plaintiffs, defendants and their insurers can participate.

C. Defendants to § 214-g Claims Must be Permitted Time to Resolve Declaratory Judgment Actions on a Coordinated and Concurrent Track with the Related Personal Injury Actions

Concomitant to the foregoing concerns, the Proposed Rules need to take into consideration the concurrent declaratory judgment actions that may be filed by defendants seeking coverage for § 214-g claims. The claims that will be brought in § 214-g Parts are all currently barred by the existing statute of limitations and will not be viable causes of action until August 14, 2019. The Archdiocese, and other similarly situated defendants, and plaintiffs, will face coverage disputes regarding these claims. Defendants to § 214-g lawsuits have a right to seek insurance coverage and to have their insurers defend and indemnify them for these claims, but, based on the Proposed Rules, would be forced to rush through an accelerated discovery and trial process before any decision may be rendered in a concurrent declaratory judgment action as to available insurance coverage. The lack of clarity and/or certainty about coverage will cause substantial harm to both plaintiffs and defendants by depriving them of the opportunity to resolve meritorious actions and of knowing whether potential judgments would be indemnified by insurance coverage. Uncertainty or an open question about the availability of insurance coverage will likely make it difficult to resolve § 214-g matters in a an expeditious way. Therefore, any rules regarding the handling of § 214-g lawsuits should also contain rules establishing a concurrent and parallel litigation track to expedite associated declaratory judgment actions and to allow resolution of meritorious actions.

D. Parties Must be Permitted 120 Days to Prepare and File Dispositive Motions, which Must be Heard and Determined Before a Matter is Set for Trial

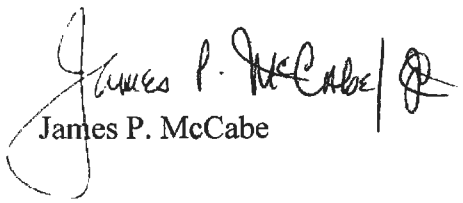
Failing to take into consideration the full scope of discovery that will be required in these matters and the time it will take to complete that discovery, the Proposed Rules require dispositive motions to be "fully submitted within 90 days of note of issue." The Proposed Rules do not provide any deadline for the making of dispositive motions, and only provide that a trial will be scheduled "within 60 days of note of issue" unless a dispositive motion has been filed. Such directive implies that parties will have less than 60 days from the conclusion of discovery and note of issue in which to file a dispositive motion, and opponents less than 30 days to respond to any such motion. This is considerably less time than the Civil Practice Law and Rules permit, and once again fails to take into consideration the full scope of discovery that will be necessary for the parties to obtain and review in order to prepare dispositive motions in these matters. Not only do the Proposed Rules fail to give the parties sufficient time to brief dispositive motions and responses, the Proposed Rules are silent as to any briefing schedule for dispositive motions, and silent as to whether § 214-g Part justices will have discretion over whether dispositive motions will even be permitted in certain instances.

E. Parties Must be Permitted Recourse to the Appellate Divisions with Established Rules for Expedited Hearings for § 214-g Matters

Additionally, the role of the Appellate Divisions in these matters must be given great consideration. The Proposed Rules fail to take into consideration a party's right to appeal an adverse decision whether that be in a § 214-g lawsuit or in a related declaratory judgment action, and fail to take into account the fact that the Appellate Divisions have not proposed any commensurate rules for the handling or expediting of appeals in § 214-g lawsuits. Defendants in § 214-g lawsuits may be unduly prejudiced by being forced to trial while an appeal of a denial of a dispositive motion is still pending in the Appellate Division, a reversal of which would vitiate the need for a trial. Further, defendants may be forced to produce and engage in costly and voluminous discovery while an appeal of a discovery order is pending in an already overly burdened Appellate Division, once again unduly prejudicing the defendant's due process rights. Thus, the Appellate Divisions should also implement rules establishing a timeline for the hearing of appeals of § 214-g cases to ensure the appellate track is commensurate with the litigation track to avoid undue prejudice and the violation of the due process rights of the parties to these cases.

We look forward to a discussion of these Proposed Rules and would be happy to provide any and all additional information necessary.

Very truly yours,



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July 1, 2019

VIA EMAIL (rulecomments@nycourts.gov)

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New York, New York 10004

Re: Comment on Proposed Rules to Facilitate the Prompt Disposition of Matters Revived Under the Child Victims Act of 2019

Dear Mr. McConnell:

I write on behalf of The Diocese of Rochester in response to the request for public comment issued by the Office of Court Administration ("OCA") on May 10, 2019, with respect to the Proposed Rules to Facilitate the Prompt Disposition of Matters Revived Under the Child Victims Act of 2019 ("Proposed Rules"). I had previously written to the Honorable Justice Marks, Chief Administrative Judge, on March 14, 2019, to express the view on behalf of The Diocese of Rochester that the Proposed Rules should contain an Alternative Dispute Resolution component in light of the success of such voluntary programs in the past. I enclose a copy of that letter so that it may be considered during the comment period.

Respectfully,

Philip G. Spellane

PGS:htc
Enclosure

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March 14, 2019

Hon. Lawrence K. Marks
Chief Administrative Judge
State of New York
25 Beaver Street
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Re: Implementation of the Child Victim's Act

Dear Judge Marks:

My law firm represents The Diocese of Rochester, and I write in connection with the Child Victim's Act ("CVA") passed by the legislature on January 28, 2019, and signed into law by the Governor on February 14, 2019. In particular, the CVA amended the Judiciary Law by adding a new Section 219-d, which provides that the Chief Administrator of the Courts "shall promulgate rules for the timely adjudication of revived actions brought pursuant to section two hundred fourteen-g of the civil practice law and rules." The Diocese of Rochester is, as I am sure many others are, very interested in the establishment of sound procedures for addressing revived claims under the CVA.

Based on its experience, the Diocese believes that there should be an alternative dispute resolution mechanism included as a component of the rules that are to be promulgated under this section of the law. An important benefit the Diocese has observed in its own independent reconciliation process, which has been administered by retired Supreme Court Justice Robert J. Lunn, is protecting claimants' privacy and need for confidentiality in discussing deeply personal matters. I have had a preliminary discussion with the Seventh Judicial District Administrative Judge, the Hon. Craig J. Doran, who suggested that I write to you. I welcome the opportunity to provide input during the rule making process. If your Honor is amenable to some form of public comment on behalf of the Diocese, I would appreciate your guidance as to what form that should take.

I am available at your Honor's convenience should there be any questions.

Respectfully,

Philip G. Spellane

PGS:htc
cc: Hon. Craig J. Doran

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July 1, 2019

BY EMAIL

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Re: Comment on Proposed Rules for Actions Revived Pursuant to CPLR 214-g

Dear Mr. McConnell:

We represent the Roman Catholic Diocese of Rockville Centre and write in response to the request for public comment issued by the Office of Court Administration ("OCA") in connection with proposed rules applicable to actions revived pursuant to CPLR 214-g.

The Diocese of Rockville Centre serves more than 1.4 million Catholics, in 133 parishes throughout Nassau and Suffolk Counties; and it is, by population, the eighth largest diocese in the United States. In October 2017, the Diocese of Rockville Centre established an Independent Reconciliation and Compensation Program ("IRCP") through which to provide compensation to and to reconcile with victims of child sexual abuse, regardless of whether their claims are or were time-barred under New York State law. The preeminent mediator Kenneth R. Feinberg, who has administered several other compensation programs including the September 11 Victim Compensation Fund, is the administrator for the IRCP. Through this program, the Diocese has investigated hundreds of compensation claims resulting in offers of awards to more than 300 individuals, with remaining claims still pending.

As you know, the Child Victims Act ("CVA") provides for a one-year period commencing on August 14, 2019 during which formerly time-barred claims for sexual abuse are deemed revived. Decades worth of formerly time-barred claims against public and private institutions will likely flood into the State's court system as of the opening of this one-year window period. While the Diocese of Rockville Centre commends the provision in the OCA's Proposed Rules that would establish a dedicated Part in each Judicial District for the assignment of actions revived pursuant to CPLR 214-g, the Proposed Rules provide an unrealistic, aspirational timeline for the completion of discovery that, if followed, will deprive many defendants of fair treatment and due process. The Proposed Rules provide that judges and other court personnel shall aspire to have discovery completed within 6 months of a Preliminary Conference. However, many of the lawsuits that will be revived pursuant to the CVA will be

predicated on incidents that occurred decades ago. The Proposed Rules do not account for the time it will take to search for records relating to these allegations—many of which will not be preserved in electronic form for the defendants in these cases. Nor do the aspirational timelines in the Proposed Rules properly account for the need for, and the time that it will take to conduct, both party and non-party discovery of, for example, decades-old employment and medical information, the need for independent medical examinations in many actions, and the disclosure of expert testimony, in addition to the taking of party and non-party depositions.

A 6-month period to conduct discovery of what is likely to be a flood into the State's court system of decades-old claims, where often the alleged abusers and other critical witnesses are deceased or their location is not currently known, is a framework for not only overwhelming the court system but running roughshod over the parties' due process rights, especially as to certain defendants who may be facing scores if not hundreds of individual actions. The Legislature in enacting the CVA provided for the issuance of rules to allow for the "timely adjudication" of revived actions. But the Legislature did not prescribe the sort of rush to judgment and the wholly unfair and prejudicial treatment of claims and defenses that would likely result from adherence to the constrained timelines set forth in the Proposed Rules.

The Diocese of Rockville Centre's experience with the IRCP also shows that alternative dispute resolution procedures can be an effective way to achieve fair, efficient, and timely resolution of many of these sensitive claims. The Diocese respectfully submits that the Proposed Rules should provide for the use of court-supervised alternative dispute resolution at the outset of actions—in parallel with briefing motions pursuant to CPLR 3211 and before formal discovery begins—to get in one forum plaintiffs, defendants, and their insurers so that they may work in a focused way toward resolutions of these cases that can ease the strain off the State's court system while preserving victims' confidentiality and conserving the resources of the parties and the implicated insurers. Indeed, providing for alternative dispute resolution at the commencement of actions that are revived pursuant to the CVA will, respectfully, be a far more efficient and fair manner of achieving a potential timely resolution of the hundreds of lawsuits that are likely to commence as of August 14 and will, even if not successful in certain cases, serve to hone and define the issues for later discovery and trial of any actions that cannot be resolved.

We thank you for consideration of these comments and welcome any further discussion.

Respectfully submitted,

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June 24, 2019

John W. McConnell, Esq.,
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RE: Child Victims Act of 2019

Dear Mr. McConnell:

Thank your May 10, 2019 memorandum invitation for comments regarding proposed rules to facilitate the prompt disposition of claims revived under the Child Victims Act (L. 2019, c. 11).

It is respectfully submitted that including an ADR component would have a salutary effect in advancing timely and reasonable administration and disposition of claims. Specifically, the presumptive mediation initiative announced by Chief Judge Janet DiFiore should be considered and incorporated in the proposed rules.

Thank you for your attention to this matter.

Very truly yours,

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July 1, 2019

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Re: Public Comment on Proposed Rules to Facilitate the Prompt Disposition of Matters Revived Under the Child Victims Act of 2019

Dear Mr. McConnell:

On behalf of Cuti Hecker Wang LLP, I submit this letter in response to the Memorandum, dated May 10, 2019, requesting public comment on the proposed rules to facilitate the prompt disposition of matters revived under the Child Victims Act ("CVA"). This firm has represented hundreds of individuals who were subjected to childhood sexual abuse at hospitals, in their homes, at schools, in houses of worship, and at doctors' offices, among other places.

In order to facilitate the just and efficient adjudication of matters revived under the CVA, we have the following comments:

1. With respect to the schedule set forth in paragraph 3 of the proposed rules, we believe that shorter timelines should be adopted, as follows:

   Preliminary conference (PC): within 30 days of filing the RJI

   Status conferences (SC): every 45 days after the PC or prior SC

These timelines are slightly shorter than those in the proposed rules. The shorter timeframes would permit individuals seeking remedies for childhood sexual abuse to proceed with their claims more promptly, but would still provide sufficient time for the litigation of the case, both on the part of the parties and the courts.

2. We respectfully suggest that the following provision should be added:

   "The Office of Court Administration shall adopt a Model Confidentiality Order for matters revived under the CVA. Such order shall take into account the sensitivity of the names, medical histories, and personal identifying details of

> individuals who were subjected to childhood sexual abuse. Prior to the preliminary conference, all parties shall confer regarding a proposed confidentiality order, and are encouraged to use the Model Confidentiality Order as a template. Prior to the preliminary conference, the parties shall submit a proposed confidentiality order, or notify the court of any disputes that need to be resolved with respect to a confidentiality order."

We believe that the adoption of a Model Confidentiality Order, and a procedure for prompt entry of a confidentiality order at the time of the preliminary conference, would help to streamline the administration of CVA cases. This would permit discovery to proceed without any delay due to concerns regarding whether sensitive personal information will be adequately protected. Should the Office of Court Administration decide to accept this suggestion, we would welcome the opportunity to comment on the proposed order as a model is being developed.

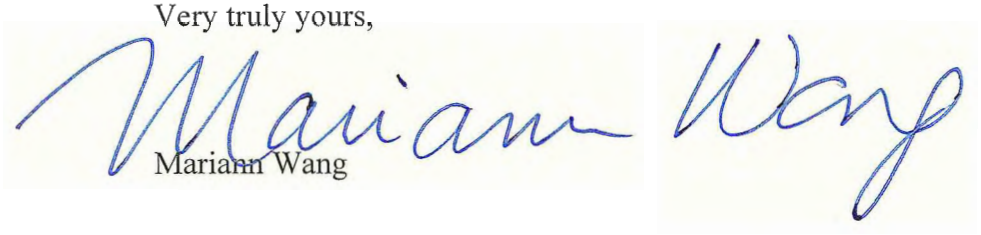
3. We respectfully suggest that the following provision should be added:

> "As soon as practicable after an RJI is filed, the Office of Court Administration shall assign a mediator. All such mediators shall be attorneys who have trained in subjects related to sexual assault and the sexual abuse of minors pursuant to paragraph 2 of the proposed rules. The mediator shall promptly confer with counsel for all parties to schedule a mediation session to occur no later than 60 days after the filing of the RJI. Mediation shall not be required if any party declines to participate. If the parties agree to participate, each party must attend the mediation, or be represented by counsel with full authority to settle the case. The pendency of a mediation shall not stay discovery or otherwise alter the deadlines in a given case."

We believe that giving the parties the opportunity to mediate promptly after the RJI is filed would substantially improve the efficiency of resolving CVA cases. Settlement of some cases at an early stage would of course reduce the burden on courts. Even where cases do not settle at that stage, we believe that mediation would be beneficial to all involved, as it would begin a dialogue and explore the parties' positions with respect to an ultimate resolution. Particularly in the highly emotional context of childhood sexual abuse allegations, we believe that it would be greatly beneficial for the courts to facilitate a process to ensure that such communications take place at an early stage in each case.

We appreciate your consideration of these comments.

Very truly yours,



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July 1, 2019

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Re: Request for Public Comment on Proposed Rules to Facilitate the Prompt Disposition of Matters Revived Under the Child Victims Act of 2019

Dear Mr. McConnell:

As you know, on May 10, 2019, New York's Office of Court Administration ("OCA") issued a memorandum seeking public comment on proposed rules to facilitate the disposition of matters revived under New York's Child Victims Act ("CVA"). This letter is my comment on OCA's proposed rules.

I am a New York City based litigator that routinely handles cases against institutional defendants arising from child sexual abuse. As such, I expect to be filing CVA cases during the civil window opening in August against several defendants, including multiple of New York's Catholic dioceses. In preparing this letter, I consulted with several colleagues with expertise in child sexual abuse litigation, including:

- Marci Hamilton, Esq., a law professor at the University of Pennsylvania, founder and CEO of CHILD USA, a nonprofit academic think tank dedicated to prevention of child abuse and neglect, and an expert on child sex abuse statutes of limitations; and,

- Nathaniel Foote, Esq. and Benjamin D. Andreozzi, Esq., two Pennsylvania based litigators who handle almost exclusively child sexual abuse civil cases. For example, Ben and Nate handled more than a dozen of the Jerry Sandusky victims' cases against Penn State, and are currently litigating cases against several of Pennsylvania's Catholic dioceses.

First, regarding the proposed training "in subjects related to sexual assault and sexual abuse of minors." I believe such training is a noble goal. However, I encourage OCA to ensure this training addresses the impacts of trauma on our clients. The trauma from child sex abuse impacts every

area of our clients' functioning. It is important that our courts understand just how devastating the impact of abuse is on victims in deciding these cases. We further request that the OCA is transparent about what type of training the assigned judges receive by making that information publicly available.

Second, regarding the deadlines outlined in the proposed rules. I and my colleagues believe 180 days for conclusion of discovery and note of issue from the filing of the RJI is extremely aspirational. In Diocese litigation, for example, there are often discovery disputes regarding priest-penitent privilege, discovery of priests' psychiatric records, and litany of other hotly contested issues that require a court's intervention. Also, in most child sex abuse litigation there are multiple experts on both liability and damages. Given these realities, it is highly unlikely that a case will be ready for trial in only 6 months. Most child sexual abuse civil cases last 2 - 3 years. As such, I believe that 365 days from the filing of the RJI for completion of discovery and note of issue is more appropriate.

Thank you for the opportunity to comment on the OCA's proposed rules. Please contact me with any questions.

Sincerely,

Kat Thomas, Esq.

cc: Marci Hamilton, Esq.
Nathaniel Foote, Esq.

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July 1, 2019

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Re: **Comments on Proposed Rules to Facilitate the Prompt Disposition of Matters Revived Under the Child Victims Act of 2019**

Dear Mr. McConnell:

The Marsh Law Firm PLLC, along with the law firm of Pfau Cochran Vertetis Amala PLLC, together represent hundreds of clients throughout New York state in actions revived pursuant to CPLR 214-g.

We hereby submit the following comments and suggestions on the Administrative Board of the Courts' Proposed Rules to Facilitate the Timely Adjudication of Actions Revived under the Child Victims Act (L. 2019, c. 11), published on May 10, 2019.

The Proposed Rules were developed to supplement and support the Child Victims Act's ("CVA") one-year one-time window, passed to allow victims and survivors of historic childhood sexual abuse to pursue their claims regardless of the age of the victim or survivor.

Since many of the complainants in Revived Actions under the CVA are rapidly advancing in age and declining in health, the Proposed Rules should seek to expedite as practicable and in keeping with the strictures of the CPLR, such Revived Actions in the interest of justice and fairness to all parties.

We support the Proposed Rules and suggest the following additional rules to Section 202 which will promote the New York legislature's clear mandate that Revived Actions be timely adjudicated. Districts are encouraged to promulgate standing orders to require: (i) early disclosures and (ii) alternative dispute resolution process, as follows.

Early Disclosures

A. Parties shall, without awaiting a discovery request, disclose to the opposing party or parties before the initial preliminary conference the following:
   (1) Party's statement in accordance with CPLR 3101(e)
   (2) Contents of insurance agreement in accordance with CPLR 3101(f)
   (3) Accident reports in accordance with CPLR 3101(g)
   (4) Films, photographs, video tapes or audio tapes, including transcripts or memoranda thereof in accordance with CPLR 3101(i)
   (5) The names of all witnesses known by each party including witnesses who were participants in the event, any eyewitness to it, witnesses with knowledge of any of the facts connected with it, and witnesses who can say whether the defendant had "notice" of a condition that caused the plaintiff to be harmed in an action revived pursuant to CPLR 214-g

Alternative Dispute Resolution

A. Each Judicial District shall establish or utilize an already established Alternative Dispute Resolution process to facilitate the early resolution of Revived Actions, such as the ADR Program for the Commercial Division in New York County and the Non-Division Pilot Project.
B. Neutrals, like judicial and related personnel, shall receive training in subjects related to sexual assault and the sexual abuse of minors pursuant to a curriculum and format approved by the Office of Court Administration.

Respectfully Submitted,

Marsh Law Firm PLLC
James R. Marsh
Jennifer Freeman
Robert Y. Lewis

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Michael T. Pfau
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