# 2008 – 2010 Rules Cycle Report

of the

New Jersey Supreme Court
Professional Responsibility Rules Committee

December 16, 2009

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INTRODUCTION

The Professional Responsibility Rules Committee (the "PRRC" or the "Committee") recommends the proposed amendments and new rules contained in this report. Part I contains proposed rule amendments. Part II summarizes proposals considered but not recommended for adoption. The Committee's "non-rule recommendations" are contained in Part III. Part IV summarizes recommendations previously presented to the Court during this 2008-2010 rules cycle, and, as applicable, the actions taken thereon by the Court. Part IV also includes technical changes that the Court made to the Rules of Professional Conduct since the Committee's last cycle report.

In the proposed rule amendments, added text is underlined. Deleted text is [bracketed]. Because existing paragraph designations and captions are indicated by underscoring, proposed new paragraph designations and captions are indicated by double underscoring. No change in the text is indicated by ". . . no change."

## I. PROPOSED RULE AMENDMENTS RECOMMENDED FOR ADOPTION

### A. RPC 5.5 – Multijurisdictional Practice Involving Arbitration, Mediation or Other Alternate Dispute Resolution Program

In its 2006-2008 report, the Committee proposed several amendments to the provisions of RPC 5.5 relating to multijurisdictional (cross-border) practice by attorneys licensed to practice in a jurisdiction other than New Jersey. Those proposals remain pending before the Court. In the meantime, the Committee was asked to consider the implications raised by a cross-border attorney's inquiry about representing an existing New Jersey client who was a party to a dispute that arose in New Jersey, in a New Jersey arbitration, mediation or other alternate or complementary dispute resolution program (collectively, ADR).

Under current RPC 5.5(b)(3)(ii), a cross-border attorney may represent a party to a dispute by participating in ADR when the "representation is on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, and the dispute originates in or is otherwise related to a jurisdiction in which the lawyer is admitted to practice." Thus, the proposed representation by an out-of-state attorney of a New Jersey client in connection with a New Jersey dispute would not be permitted under current RPC 5.5.

In its 2006-2008 report, the Committee proposed a new subparagraph to allow a cross-border attorney to "associate" in a matter with a New Jersey lawyer "who shall be held responsible for the conduct of the out-of-State lawyer in the matter." The proposal does not contain requirements relating to client locale or the place the dispute arose. Thus, if the previously-proposed safe harbor is adopted, a cross-border attorney would be permitted to represent a New Jersey client, who is a party to a dispute that arose in New Jersey, in an ADR process in New Jersey, provided that the cross-border attorney associates with local counsel. In

addition, the attorney must comply with the Rules regarding registration and payment of the attorney assessment, as provided in current RPC 5.5(c)(6) for all forms of cross-border practice.

Another amendment proposed in the 2006-2008 report brings an anomaly to light. To remove obstacles and encourage ADR in New Jersey, the Committee recommended eliminating the registration and assessment requirements for cross-border practice involving ADR under current RPC 5.5(b)(3)(ii). If the Court adopts such an amendment and the previously-proposed safe harbor discussed above, cross-border attorneys may permissibly represent clients in ADR processes in New Jersey without completing a registration statement, paying the assessment, or incurring the expense of associating with local counsel, only if the client is from a jurisdiction in which the attorney in licensed and the dispute originates in or relates to such a jurisdiction – that is, by definition, somewhere other than New Jersey. If, however, the client is from New Jersey or the dispute arose in or relates only to New Jersey, while all other variables remain the same, then the cross-border attorney may engage in the representation only if those additional burdens are satisfied. Stated differently, when a party to a dispute being resolved through a New Jersey ADR process desires representation by a cross-border attorney, the cost of the process will be greater when the client is from New Jersey or the matter concerns a New Jersey dispute.

The Committee recognizes the policy of encouraging ADR, and that imposing additional requirements on cross-border attorneys seeking to engage in ADR processes on behalf of their clients will deter them from selecting New Jersey as their ADR forum. Although the previously proposed new safe harbor would allow cross-border representation in a matter involving a New Jersey client or a dispute that originated in New Jersey, the required prerequisites – association with local counsel, registration, and payment of the annual assessment – may prove to be too cost prohibitive for many clients. In addition, the justification for regulating the practice of law is

more attenuated in the context of ADR than it is in a pure litigation setting. For example, in a private mediation conducted pursuant to a private agreement between private individuals, there is no regulation or oversight by the courts. Even laypersons may assist parties under Section 10 of the Uniform Mediation Act, N.J.S.A. 2A:23C-10.

Commenters previously argued that an attorney's involvement in ADR may not even constitute the "practice of law," such as when they are acting as "neutrals" in a purely private mediation or arbitration. Answering the complicated question of what constitutes the practice of law is beyond the charge of the Committee. It is sufficient to note that the restrictions imposed on cross-border attorneys by RPC 5.5(b) apply, by the terms of the rule, only to the "practice of law in New Jersey." If, as commenters contend, a particular ADR-related activity does not constitute the "practice of law," however that may be defined, then RPC 5.5(b) does not apply to impose any restrictions on that activity.

The Committee proposes a narrow rule expansion to allow a cross-border attorney to provide representation in a New Jersey ADR process without regard to the location of the client or the place the dispute originated, and without requiring the cross-border attorney to register and pay the annual assessment, provided that the attorney: (1) remains subject to the RPCs and the disciplinary authority of the New Jersey Supreme Court, as stated in current RPC 5.5(c)(2); and (2) does not expand the scope of the permitted representation by engaging in conduct for which pro hac vice admission is required. The Committee recommends an amendment to RPC 5.5(b)(3)(ii) that is consistent with ABA Model RPC 5.5(c)(3) (which focuses on the relationship between the representation and the lawyer's practice, not the location of the client or the dispute):

> (ii) the lawyer engages in representation of a party to a dispute by participating in arbitration, mediation or other alternate or complementary dispute resolution program**[**, the representation is on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, and the dispute originates in or is

otherwise related to a jurisdiction in which the lawyer is admitted to practice**] and the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which pro hac vice admission pursuant to R. 1:21-2 is required**;

That proposed amendment, as it would appear with the other provisions of RPC 5.5, follows below. To illustrate this new proposal, together with the RPC 5.5 amendments previously proposed in the 2006-2008 report that the Court has not acted upon, the following formatting is used: Additional text proposed in the prior report is underscored; new text proposed by this report is further indicated in **bold**. Text previously recommended for deletion is [bracketed], while additional text recommended for deletion in this report is further indicated with **[**bold brackets**]**. Current paragraph designations and captions are underscored, and a previously proposed new paragraph identifier is double underscored. This report does not propose any additional new subparagraph identifiers.

PROPOSED AMENDMENTS TO RPC 5.5 (AS RECOMMENDED IN 2006-2008 REPORT AND 2008-2010 REPORT, COLLECTIVELY)

RPC 5.5. Lawyers not admitted to the bar of this state and the lawful practice of law

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

(b) A lawyer not admitted to the Bar of this State who is admitted to practice law before the highest court of any other state, territory of the United States, Puerto Rico, or the District of Columbia (hereinafter a United States jurisdiction) may engage in the lawful practice of law in New Jersey only if:

(1) the lawyer is admitted to practice pro hac vice pursuant to R. 1:21-2 or is preparing for a proceeding in which the lawyer reasonably expects to be so admitted and is associated in that preparation with a lawyer admitted to practice in this jurisdiction; or

(2) the lawyer is an in-house counsel and complies with R. 1:27-2; or

(3) under any of the following circumstances:

(i) the lawyer engages in the negotiation of the terms of a transaction in furtherance of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice and the transaction originates in or is otherwise related to a jurisdiction in which the lawyer is admitted to practice;

(ii) the lawyer engages in representation of a party to a dispute by participating in arbitration, mediation or other alternate or complementary dispute resolution program**[**, the representation is on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, and the dispute originates in or is otherwise related to a jurisdiction in which the lawyer is admitted to practice**] and the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which pro hac vice admission pursuant to R. 1:21-2 is required**;

(iii) the lawyer investigates, engages in discovery, interviews witnesses or deposes witnesses in this jurisdiction for a proceeding pending or anticipated to be instituted in a jurisdiction in which the lawyer is admitted to practice; [or]

(iv) the lawyer associates in a matter with a lawyer admitted to the Bar of this State who shall be held responsible for the conduct of the out-of-State lawyer in the matter; or

(v) [(iv)] the lawyer practices under circumstances other than (i) through [(iii)] (iv) above, with respect to a matter where the practice activity arises directly out of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, provided that such practice in this jurisdiction is occasional and is undertaken only when the lawyer's disengagement would result in substantial inefficiency, impracticality or detriment to the client.

(c) A lawyer admitted to practice in another jurisdiction who acts in this jurisdiction pursuant to [sub-]paragraph (b) above shall:

(1) be licensed and in good standing in all jurisdictions of admission and not be the subject of any pending disciplinary proceedings, nor a current or pending license suspension or disbarment;

(2) be subject to the Rules of Professional Conduct and the disciplinary authority of the Supreme Court of this jurisdiction;

(3) consent in writing on a form approved by the Supreme Court to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against the lawyer or the lawyer's firm that may arise out of the lawyer's participation in legal matters in this jurisdiction, except that a lawyer who acts in this jurisdiction pursuant to subparagraph (b)(3)(ii) or (b)(3)(iii) above shall be deemed to have consented to such appointment without completing the form;

(4) not hold himself or herself out as being admitted to practice in this jurisdiction;

(5) maintain a bona fide office in conformance with R. 1:21-1(a), except that, when admitted pro hac vice, the lawyer may maintain the bona fide office within the bona fide law office of the associated New Jersey attorney pursuant to R. 1:21-2(a)(1)(B); and

(6) except for a lawyer who acts in this jurisdiction pursuant to subparagraph (b)(3)(ii) or (b)(3)(iii) above, annually register with the New Jersey Lawyers' Fund for Client Protection and comply [complies] with R. 1:20-1(b) and (c), R. 1:28-2, and R. 1:28B-1(e) during the period of practice.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption amended, former text designated as paragraph (a), and new paragraphs (b) and (c) adopted November 17, 2003 to be effective January 1, 2004; paragraph (c) amended July 28, 2004 to be effective September 1, 2004; subparagraph (b)(3)(iii) amended, former subparagraph (b)(3)(iv) designated as subparagraph (b)(3)(v) and new subparagraph (b)(3)(iv) adopted, and paragraph (c) and subparagraphs (c)(3) and (c)(6) amended to be effective , 2010.

B. Rule 1:20-1, Rule 1:28-2(a), Rule 1:28-3(a), and Rule 1:28B-1(e) – "Rule 1:21-3(c) Attorneys" and Other Non-New Jersey Attorneys

The Court referred to the Committee a question raised by Legal Services of New Jersey: whether an attorney not admitted to the New Jersey bar who is permitted to practice in New Jersey in a limited manner pursuant to Rule 1:21-3(c) (employed or associated with or doing pro bono work for an approved legal services organization) is required to complete New Jersey's annual attorney registration and pay the annual assessment. In response to a simultaneous referral, the Lawyers' Fund for Client Protection (Lawyers' Fund or Fund) submitted a petition for certain amendments to explicitly provide for such registration and payment; to make it clear that claims arising out of the dishonest conduct of Rule 1:21-3(c) attorneys are subject to compensation by the Fund; and to make various housekeeping amendments, discussed below. That petition was also referred to the Committee.

The Committee recommends the Fund's proposed amendments. As the Fund noted, imposing registration and assessment requirements on Rule 1:21-3(c) attorneys is consistent with the current treatment of other non-New Jersey attorneys given limited permission to practice here: those holding limited licenses as in-house counsel pursuant to Rule 1:27-2, those permitted to appear pro hac vice pursuant to Rule 1:21-1, those certified as foreign legal consultants pursuant to Rule 1:21-9, and multi-jurisdictional practitioners under RPC 5.5(b).[1] All such persons are prohibited from holding themselves out as members of the New Jersey bar, yet each must pay the assessment. Also, pro hac vice attorneys, similar to Rule 1:21-3(c) attorneys, must

[1] In its 2006-2008 report, the Committee proposed amendments to RPC 5.5 to eliminate the registration and payment of assessment obligations for two types of multi-jurisdictional attorneys: those engaged in alternative dispute resolution pursuant to RPC 5.5(b)(3)(ii), and those engaged in preparation for non-New Jersey proceedings pursuant to RPC 5.5(b)(3)(iii). Those recommendations remain pending before the Court. In Part I.A., *supra*, the PRRC is recommending additional amendments to RPC 5.5, relating to the permitted scope of practice.

practice under a sponsoring New Jersey attorney, yet they too must pay. The Fund observed that the practice of law in New Jersey is a privilege, and that one of the broad purposes of the annual assessment is to protect law clients. Seen from that perspective, the payment of the annual assessment, regardless of the limited nature of one's practice, is minimally burdensome. With respect to Fund coverage, and the registration and payment of the assessment by Rule 1:21-3(c) attorneys, the proposed amendments affect Rule 1:20-1(b) and (c), Rule 1:28-2(a), Rule 1:28-3(a), and Rule 1:28B-1(e).

The recommended amendments to Rule 1:28-3(a) and Rule 1:28B-1(e) include "housekeeping" aspects. The first would make clear that the Fund has the authority to pay claims arising from the dishonest conduct of all attorneys permitted to practice here – not merely New Jersey attorneys and attorneys appearing pro hac vice, as the current rule provides. That is consistent with the requirement that all of them are required to pay the annual assessment. Similarly, the amendment to Rule 1:28B-1(e) would provide that all attorneys permitted to practice here – not merely admitted attorneys and those appearing pro hac vice – must pay the component of the annual assessment that represents the fee to the Lawyers' Assistance Program. That is consistent with the obligations imposed on such attorneys to pay the other two components of the annual assessment. *See* Rule 1:20-1 (annual fee to Disciplinary Oversight Committee); Rule 1:28-2(a) (annual fee to Lawyers' Fund).

The proposed amendments follow.

1:20-1. Disciplinary Jurisdiction; Annual Fee and Registration

(a) Generally. . . . no change.

(b) Annual Fee. Every attorney admitted to practice law in the State of New Jersey, including all persons holding a plenary license, those admitted pro hac vice in accordance with Rule 1:21-2, those holding a limited license as in-house counsel under Rule 1:27-2, those registered as multijurisdictional practitioners under RPC 5.5(b), [and] those certified as Foreign Legal Consultants under Rule 1:21-9, and those permitted to practice under Rule 1:21-3(c) shall pay annually to the Oversight Committee a sum that shall be determined each year by the Supreme Court. The names of all persons failing to comply with the provisions of this Rule shall be reported to the Supreme Court for inclusion on its Ineligible to Practice Law List.

(c) Annual Registration Statement. To facilitate the collection of the annual fee provided for in paragraph (b), every attorney admitted to practice law in this state, including all persons holding a plenary license, those admitted pro hac vice, those holding a limited license as in-house counsel, those registered as multijurisdictional practitioners, [and] those certified as Foreign Legal Consultants, and those permitted to practice under Rule 1:21-3(c) shall, on or before February 1 of every year, or such other date as the Court may determine, pay the annual fee and file a registration statement with the New Jersey Lawyers' Fund for Client Protection (hereinafter referred to as the Fund). The registration statement shall be in a form prescribed by the Administrative Director of the Courts with the approval of the Supreme Court. As part of the annual registration process, each attorney shall certify compliance with Rule 1:28A. All registration statements shall be filed by the Fund with the Office of Attorney Ethics, which may destroy the registration statements after one year. Each lawyer shall file with the Fund a supplemental statement of any change in the attorney's billing address and shall file with the Office of Attorney Ethics a supplemental statement of any change in the home and primary bona fide law office addresses, as well as the main law office telephone number previously submitted and the financial institution or the account numbers for the primary trust and business accounts, either prior to such change or within thirty days thereafter. All persons first becoming subject to this rule shall file the statement required by this rule prior to or within thirty days of the date of admission.

The information provided on the registration statement shall be confidential except as otherwise directed by the Supreme Court.

(d) Remedies for Failure to Pay or File. . . . no change.

Note: Adopted February 23, 1978, to be effective April 1, 1978. Any matter pending unheard before a County Ethics Committee as of April 1, 1978 shall be transferred, as appropriate, to the District Ethics Committee or the District Fee Arbitration Committee having jurisdiction. Any matter heard or partially heard by a County Ethics Committee by April 1, 1978 shall be concluded by such Ethics Committee and shall be reported on in accordance with these rules; amended July 16, 1981 to be effective September 14, 1981. Caption amended and first two paragraphs amended and redesignated as paragraph (a); new paragraphs (b), (c) and (d) adopted

January 31, 1984 to be effective February 15, 1984; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; paragraph (d) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended September 15, 1992, to be effective January 1, 1993; caption added to all paragraphs and paragraphs (a), (b), (c), and (d) amended February 8, 1993 to be effective immediately; paragraphs (a), (b) and (c) amended January 31, 1995, to be effective March 1, 1995; paragraph (a) amended July 10, 1998, to be effective September 1, 1998; paragraph (b) amended July 12, 2002 to be effective September 3, 2002; paragraphs (a), (b), (c) and (d) amended July 28, 2004 to be effective September 1, 2004; paragraph (c) amended July 9, 2008 to be effective September 1, 2008; paragraphs (b) and (c) amended to be effective , 2010.

* * * * *

1:28-2. Payment to the Fund; Enforcement

(a) Generally. . . . no change to first paragraph.

All persons admitted pro hac vice in accordance with Rule 1:21-2, those holding limited licenses as in-house counsel under R. 1:27-2, those registered as multijurisdictional practitioners under RPC 5.5(b), [and] those certified as Foreign Legal Consultants under R. 1:21-9, and those permitted to practice under R. 1:21-3(c) shall also make the same annual payment described above subject to the same late fees and reinstatement from ineligible list fees. However, such persons shall not be entitled to the exemptions provided hereinafter.

For the purpose of annual assessment all members of the Bar, including those admitted pro hac vice, those holding limited licenses as in-house counsel, those registered as multijurisdictional practitioners, [and] those certified as Foreign Legal Consultants, and those permitted to practice under R. 1:21-3(c) shall report changes of address as they occur and thus keep their billing address current with the Fund at all times.

Any member of the Bar who receives a billing notice addressed to another member of the Bar shall either forward the notice to the intended recipient or return it to the Fund.

(b) . . . no change.

(c) . . . no change.

Note: Source-R.R. 1:22A-2; amended July 17, 1975 to be effective September 8, 1975; amended January 31, 1984 to be effective February 15, 1984; amended June 29, 1990 to be effective September 4, 1990; redesignated paragraph (a) amended and paragraph (b) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (b) amended February 8, 1993, to be

effective immediately; paragraph (a) amended and new paragraph (c) added July 28, 2004 to be effective September 1, 2004; paragraph (a) amended to be effective , 2010.

* * * * *

1:28-3. Payment of Claims

(a) Eligible Claims. The Trustees may consider for payment all claims resulting from the dishonest conduct of a member of the bar of this state or an attorney (1) admitted pro hac vice, (2) holding limited license as in-house counsel, (3) registered as multijurisdictional practitioner, (4) certified as a foreign legal consultant or (5) permitted to practice under Rule 1:21-3(c), if the attorney was acting either as an attorney or fiduciary, provided that:

(1) to (5) . . . no change.

(b) to (f) . . . no change.

Note: Source-R.R. 1:22A-3(a) (b) (c) (d) (e) (f). Paragraph (a)(2) amended June 24, 1974 to be effective immediately; paragraph (a) amended and paragraph (a)(5) adopted January 31, 1984 to be effective February 15, 1984; paragraph (a)(1), (2), and (5) amended, former paragraph (a)(4) deleted, paragraph (a)(3) redesignated as paragraph (a)(4), new paragraph (a)(3) adopted; paragraph (b) amended and paragraph (b)(5) adopted June 29, 1990 to be effective September 4, 1990; paragraphs (a) and (a)(1) amended July 14, 1992 to be effective September 1, 1992; introductory paragraph and paragraphs (a)(4) and (f) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended to be effective , 2010.

* * * * *

1:28B-1. Board of Trustees; Purpose; Administration; Annual Assessment

(a) . . . no change.

(b) . . . no change.

(c) . . . no change.

(d) . . . no change.

(e) Annual Assessment. Every attorney admitted to practice law in the State of New Jersey, including those holding a plenary license, [and] those admitted pro hac vice in accordance with Rule 1:21-2, those holding a limited license as in-house counsel under Rule 1:27-2, those registered as multijurisdictional practitioners under RPC 5.5(b), those certified as Foreign Legal Consultants under Rule 1:21-9, and those permitted to practice under Rule 1:21-3(c), shall be assessed and shall pay annually to the Lawyers Assistance Program a fee in a sum that shall be determined each year by the Supreme Court. All fees so paid shall be used for the administration of the Lawyers Assistance Program. This assessment shall be collected administratively in the same manner as and subject to the same exemptions as provided under Rule 1:28-2, except that no such fee shall be assessed to attorneys during the first calendar year of their admission. The fee shall be assessed to all attorneys in their second through forty-ninth calendar year of admission. The names of any and all attorneys failing to comply with the provisions of this rule shall be reported to the Supreme Court for inclusion on its Ineligible to Practice Law List. Any attorney who fails to pay the annual assessment for seven consecutive years shall be subject to the license revocation procedures contained in Rule 1:28-2(c).

Note: Adopted July 15, 1999, to be effective September 1, 1999; caption amended and new paragraph (e) added July 12, 2002 to be effective September 3, 2002; paragraph (b) amended February 4, 2003 to be effective immediately; paragraph (e) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended December 5, 2006 to be effective immediately; paragraph (e) amended November 27, 2007 to be effective immediately; paragraph (e) amended _____to be effective _____, 2010.

## II. PROPOSED RULE AMENDMENTS CONSIDERED BUT NOT RECOMMENDED

### A. Request for Technical Amendments to Rules 1:20-1(b) & (c) and 1:28-2(a) Regarding Collection and Due Date for Payment of Annual Attorney Assessment

The Civil Practice Committee referred to the PRRC a letter from an attorney requesting amendments to certain rules relating to the method of collection of the discipline part of the annual attorney assessment, and to the deadline for payment for the annual assessment. The PRRC asked the Lawyers' Fund for Client Protection for its recommendations on the issues. The Fund's position, explained below, is that the requested rule changes are unnecessary because existing rules adequately address the concerns raised by the requestor. The PRRC agrees.

First, the attorney noted that lawyers do not receive a separate bill for the disciplinary oversight portion of the annual assessment. Instead, that charge is included in the total annual assessment collected by the Lawyers' Fund. The requesting attorney asked that this procedure be reflected in Rule 1:20-1(b) by adding the following after the first sentence of the rule: "This assessment shall be collected in the same bill rendered by the Client Security Fund, subject to the same exceptions in Rule 1:28-2." As the Lawyers' Fund correctly observed, that point is already covered in the third sentence of Rule 1:20-1(b), which states: "This assessment shall be collected administratively in the same manner as and subject to the same exemptions provided under Rule 1:28-2, except that plenary-licensed attorneys who are in their second calendar year of admission shall pay a partial fee, as determined by the Supreme Court."

The attorney's second concerns relates to the Fund's historical practice of mailing annual billing notices in late March, which set a payment deadline of April 30. Because Rule 1:20-1(c) and Rule 1:28-2 refer to a February 1 deadline, the attorney expressed concern that lawyers who pay by the April 30 deadline stated in the billing notice "are in technical violation of those rules." The Fund found that the stated concern is misplaced. After mentioning February 1, each of the

cited rules goes on to state "or such other date as the Court may determine," which the Fund view as the operative language. As the Fund explained, each year the Court delegates the setting of the deadline to the Fund, and the Fund chooses a deadline to provide lawyers with four to six weeks to respond to the billing notice. The Committee agrees with the Fund's conclusion that, in the absence of a clear advantage in a proposed change, a rule should not be amended. If it is determined that an amendment is desirable, then the specific February 1 reference should be deleted (rather than replaced with May 1, as suggested) to preserve flexibility in the event of unanticipated circumstances.

## III. NON-RULE RECOMMENDATIONS

### A. Guidelines for Media Coverage of District Ethics Committee Hearings

In its 2006-2008 report, the Committee recommended that the Court's *Guidelines for Still and Television Camera and Audio Coverage of Proceedings in the Courts of New Jersey* apply to media requests to cover District Ethics Committee (DEC) hearings, with variations that take into account unique features of the disciplinary system. Following its review of the 2006-2008 report and public comments, the Court asked the Committee for further consideration of certain issues. This report contains the Committee's revised recommendations.

- Summary of Recommendations in 2006-2008 Report

In its 2006-2008 report, the Committee recommended the following overlay on the *Guidelines* in the context of DEC hearings. The first two are central to the issues addressed here:

(1) Media members planning to attend DEC hearings should provide reasonable advance notice (ten business days' was suggested) so that ethics authorities can find alternative accommodations if needed. The concerns were that most hearings are held in volunteers' offices and few DECs have ready access to courtrooms for hearings.

(2) Audio recordings, but not still photography or video recordings, should be allowed. Cameras may distract or intimidate in the typically small hearing rooms, and the host lawyer has a legitimate interest in protecting confidential information in the office from visual recording.

(3) No coverage should be permitted of proceedings deemed non-public under R. 1:20-9(c) (proceedings subject to protective order or alleging disability).

(4) Initial decisions on media coverage should be made by the DEC Chair, with a right to appeal to the DRB Chair. Further review may be sought pursuant to R. 1:20-16(f).

(5) A press kit should explain the disciplinary process and volunteer system, as well as any notice requirements and restrictions on coverage.

- Summary of Public Comments to 2006-2008 Report.

Following publication of the 2006-2008 report, comments were received from one individual and one press group. Both commenters objected specifically to the recommendations summarized in (1) and (2) above. With respect to the recommended ten business days' advance notice, the commenters noted that the *Guidelines* allow the general public to attend proceedings without notice. They argued that members of the press (with or without small audio recording devices) should likewise be permitted to attend without providing any advance notice. The press group commented that if the Court were to require advance notice, the group would support the *Guidelines*' undefined concept of "reasonable advance notice" because the media may not learn of a hearing until a few days beforehand. The individual commenter stated that a ten-day notice of attendance requirement would be acceptable if the Court also requires that the ethics system provide meaningful advance notice of hearing dates to the public, such as by posting notice of scheduled hearing dates on the Judiciary's website at least fifteen to twenty days in advance.

The commenters also objected to a ban on visual recording equipment. They suggested that concerns about confidentiality can be addressed by moving the hearing out of private law offices and by removing confidential material from the hearing room. They also noted that the *Guidelines* minimize concerns about intrusiveness by limiting the number of camera operators, disallowing sound and light distractions, and requiring certain positioning of equipment.

- The Committee's Further Review.

Following publication of the 2006-2008 report and receipt of public comments, the Court referred the matter back to the Committee, asking it to consider: (1) the issue of providing adequate advance public notice of DEC hearing dates; and (2) whether video and photographic coverage should be permitted, consistent with the *Guidelines*, if DEC hearings were conducted in more public venues, such as a courtroom. As the backdrop to consideration of those issues, the

Committee considered the current administrative procedures for posting information about pending ethics matters (detailed below), the volunteer nature of the ethics system, the rarity of press coverage and public attendance at hearings, the difficulties involved in rescheduling ethics hearings, and the fact that not all DECs have ready access to courtrooms.

*1. Summary of New Recommendations by Committee*

Ultimately, the Committee has determined to make the following recommendations, with the goal being to reasonably accommodate those interested in attending and covering hearings:

- The ethics system should be encouraged to plan in advance for anticipated outside interest in hearings, to consider the importance of public notice and the current posting procedures when scheduling hearings, and to make reasonably frequent updates to the posted notice of hearing dates on the Judiciary's website. Strict requirements are not recommended due to staffing considerations and the volunteer nature of the ethics system.

- At the same time, members of the public and the press should be encouraged, but not required (other than as may be provided in the existing *Guidelines*), to provide advance notice of their attendance or, with respect to the media, of their use of visual recording equipment. By encouraging reasonable advance notice of attendance or press coverage, the ethics system will have an opportunity to take reasonable steps to address possible accommodations issues.

*2. Background on Current Procedures for Posting Statewide Public Hearing List*

As the Committee understands the process, an updated *Statewide Public Hearing List* (List) is posted on the Judiciary's website every month.[2] The List describes pending public

[2] To access the List from the Judiciary's website, go to www.njcourtsonline.com. In the left-side frame, under the heading "Attorney and Judicial Regulations," click the link Office of Attorney Ethics. At the third bullet point on the OAE page, click Public Charges. Then, in the

charges (matters in which formal ethics complaints were filed) and includes hearing dates. Compilation of the List begins with the DECs, which gather information from their respective hearing panels and special masters on the status of matters pending in their districts. Each DEC, usually through the Vice Chair, compiles that data and provides a status report to the Office of Attorney Ethics, generally by the 25th of each month. The OAE compiles the data received from the districts (there are nineteen in all, including the sub-districts and the OAE) and generates the List, generally by the 1st of the following month. The OAE then sends the List to the Administrative Office of the Courts. The AOC, in turn, posts the List on the Judiciary's website, generally within three of four days of receipt. Thus, under current procedures, an updated Statewide Public Hearing List is posted once monthly, usually by the 4th or 5th of each month, and it includes data about hearings that the DECs provided near the 25th of the previous month.

In many instances, hearings are planned far in advance and, under the current compilation and posting procedures, those hearing dates are contained in a posted List well in advance. Sometimes, however, hearings are scheduled with the minimum required notice to the parties. *See* R. 1:20-6(c)(2)(A) (requiring that notice of hearing be served on presenter, respondent, and counsel at least 25 days before hearing). That may occur when the matter is getting close to "goal," and the DEC is striving to keep it moving through the process. *See* R. 1:20-8(b) (encouraging disciplinary system to meet 6-month time goal between due date of answer and completion of formal hearings and filing of report with OAE). In some such instances, a hearing date may be imminent or may have passed by the time that information about that date makes its way from the hearing panel and, ultimately, onto a posted List. That may occur, for example, when on the first of the month, the parties schedule a hearing to occur at the end of that month.

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first section entitled "Generally," go to the third paragraph, and find this sentence: "To see charges for the latest month, CLICK HERE."

Other reasons may cause the posted Statewide Public Hearing List to be incomplete or somewhat stale, including: limited manpower and busy schedules of the volunteer panels and special masters, who may be unable to transmit complete hearing information to their District Vice Chair in time for the Vice Chair to provide a complete current report to the OAE; a Vice Chair's report may reach the OAE after the new List is generated; or due to unanticipated OAE or AOC staffing issues, the List may be posted on the Judiciary's website later than usual.

*3. Two Possible Approaches to Ensuring Minimum Advance Public Notice*

The Committee considered the possibility of requiring certain protocols for scheduling hearings and for processing and posting the List to ensure that every hearing date is publicly posted on the Internet in advance. For example, by keeping in mind the length of time it takes the system to compile data and update the List, panels and special masters could be required to schedule hearings in a manner that ensures the hearing dates are on a published List at least a specified number of days in advance.

Alternatively, additional administrative duties could be imposed on the DEC volunteers and on the OAE and AOC staff responsible for processing the data and posting the List. For example, hearing panels and special masters could be required to continually inform their Vice Chairs as hearing dates are added or changed during the month, particularly when inclusion of the dates on the next List will not provide at least a certain amount (e.g., 20 days) of advance public notice. The Vice Chairs could be required to provide frequent interim reports to the OAE; the OAE could be required to continually revise the List or generate supplemental updates to provide to the AOC; and the AOC, in turn, could be required to post the updated information on the Judiciary's website as soon as it arrives from the OAE.

One consequence of the first approach, requiring that hearings always be scheduled in a manner that ensures advance inclusion on a List, is extending the overall length of time to complete disciplinary proceedings. That could push some matters beyond their goal dates and, although less likely, could cause the loss of witness and volunteer hearing panel members, the latter of which may have terms that expire during the pendency of the proceedings. Both approaches would put additional strain on the 500-plus volunteer ethics system. Training on new scheduling and reporting requirements would be necessary. Moreover, the second approach, mandating continuous rolling updates to the List, would impose additional duties on OAE and AOC staff.

In light of the volunteer nature of the ethics system and Judiciary staffing concerns, the Committee does not recommend strict rules for scheduling or posting hearing dates. Rather, the system should be encouraged to make reasonable efforts to ensure reasonable advance public notice. Both when scheduling hearings and when compiling and reporting data for inclusion on the List, volunteers and staff should keep in mind the importance of advance public notice and the posting process timeframes. (In the rare event there is outside interest in a hearing and an individual feels aggrieved by insufficient notice, that individual can seek a stay.)

*4. Permitting Visual Recording Equipment Consistent with the Guidelines and Encouraging Advance Notice of Attendance and Press Coverage*

The Committee has also determined not to require advance notice of attendance, and that press coverage should be permitted consistent with the *Courtroom Guidelines* to the extent reasonably possible. To address possible accommodations issues, however, the public and the press should be encouraged to provide reasonable advance notice. That way, the ethics system will have a reasonable opportunity to resolve any issues in advance.

As previously noted, not all DECs have ready access to courtrooms for hearing sites. Some county courthouses may need several months' advance notice to accommodate requests to use a courtroom. If the interest is in mere attendance by one or a few individuals, or a member of the press with a small audio recorder, generally there should not be an issue. When there is great interest in attendance, or when extensive media coverage is contemplated, advance notice will allow DECs to assess, on a case-by-case basis, whether the hearing location is an issue and, if so, whether it is feasible to reschedule the hearing in a different location. DECs should exercise reasonable efforts to accommodate increased attendance and press coverage. The more notice a DEC has, the better opportunity it will have to address venue issues. In sum, the goal is to encourage advance notice so that interested members of the public and media can optimize their chances of being accommodated.

The Committee notes again that public attendance and press coverage at DEC hearings historically has been rare. The DEC usually will be aware when a particular matter will generate attention and should consider that when scheduling hearing locations in the first instance. Also, individuals interested in attending a particular disciplinary hearings always have the option of being placed on an advance notice list by completing a "Request for Notice of Hearings" form and returning it to the DEC Secretary. That request form, which has been in use since at least 2000, provides for the interested individual to receive advance written notice of hearings.

B. Alternative Form of "Certification of Retirement" for Retired New Jersey Attorneys Providing *Pro Bono* Services to the Poor by Volunteering for Legal Services of New Jersey or Volunteer Public Interest Legal Services Organizations

As the Committee considered the Lawyers' Fund petition for rule amendments relating to annual registration and payment of the assessment by non-New Jersey attorneys permitted to practice here in a limited manner (addressed *supra*, Part I.B), the Committee asked the Fund for its position on a payment exemption for New Jersey lawyers who are otherwise retired and who wish to volunteer to represent the poor *pro bono* through Legal Services of New Jersey.

By way of background, an attorney can request the "retired completely" exemption from payment of the annual assessment by submitting a "Certification of Retirement," completed without alteration. (See Appendix A for a copy of the form that has been used for many years.)

The Fund responded that it is willing to recommend a slight loosening of the definition of the "retired" exemption for (1) New Jersey lawyers (2) otherwise "completely retired from the practice of law" who (3) represent the poor (4) without pay (5) under the direction and auspices of Legal Services of New Jersey. To accomplish this, the Fund suggested a second form of Certification of Retirement for such an attorney, which adds the following statement that the attorney must be able to certify: "My only participation in any aspect of legal practice is as a volunteer for Legal Services of New Jersey, for which services I receive no remuneration."

The Committee has determined to recommend a slightly revised version of the second Certification form suggested by the Fund. The Committee agrees that otherwise-retired attorneys who provide uncompensated legal services to the poor – pure *pro bono* work – should not be required to pay the annual assessment. The Committee recommends loosening the retirement exemption to include attorneys whose practice is limited to volunteering through Legal Services of New Jersey or with "an organization identified in R. 1:21-1(e) that engages in

the volunteer public interest legal services described in RPC 6.1." The second Certification of Retirement form recommend by the Committee is attached as Appendix B to this report.

The Committee also noted concerns with some policies embodied in the current Certification, which the Committee wishes to call to the Court's attention. The current Certification of Retirement form has been used by the Fund for decades. The Fund understands that the form was long ago approved by the Court. The Certification form explicitly provides that for purposes of the retirement exemption from payment of the annual assessment, a retired attorney cannot "teach law, or serve in a court system in any capacity, in any jurisdiction." The Committee views lecturing, teaching, and serving the judicial system in an unpaid, non-judge capacity (for example, by membership on a committee of the Court) as activities that may be considered as something other than the "practice of law." From a policy standpoint, the Court may wish to consider allowing otherwise-retired attorneys who engage in such activities to claim an exemption from attorney assessment and registration requirements.

C. Establishing an Ad Hoc Committee on Malpractice Insurance

The ABA Model Court Rule on Insurance Disclosure requires lawyers to disclose on their annual registration statements whether they maintain professional liability insurance. The stated purpose of the Model Rule is "to provide a potential client with access to relevant information related to a lawyer's representation in order to make an informed decision about whether to retain a particular lawyer." ABA Standing Committee on Client Protection, Report to House of Delegates (2004), *available at* www.abanet.org/cpr/clientpro/malprac_disc_report.pdf. The Model Rule does not mandate that attorneys maintain malpractice insurance.

The Committee briefly addressed the Model Rule in its 2006-2008 report to the Court. As noted, individual New Jersey lawyers are not obligated to maintain professional liability insurance or to inform clients or the Court whether they carry such insurance.[3] As of November 2009, eighteen states require disclosure on annual attorney registration statements; seven states require disclosure directly to clients; four states are considering a reporting requirement; four states have voted not to adopt a disclosure rule; and Oregon remains the only state that requires attorneys to maintain professional liability insurance. *See* ABA Standing Committee on Client Protection, State Implementation of ABA Model Court Rule on Insurance Disclosure (Nov. 16, 2009), *available at* www.abanet.org/cpr/clientpro/malprac_disc_chart.pdf.

As the Committee previously observed, a potential disclosure requirement raises several issues that warrant consideration. Those issues include: whether disclosure should be required only on the annual registration statement or also to clients at the inception of the representation; whether it would be misleading to require disclosure of the fact of insurance to clients without

[3] Law firms organized as professional corporations, limited liability companies, and limited liability partnerships are required to maintain professional liability insurance pursuant to Rule 1:21-1A, Rule 1:21-1B, and Rule 1:21-1C.

also requiring disclosure of the amount of insurance; whether a disclosure rule would encourage more attorneys to obtain insurance; whether a disclosure requirement would unfairly burden small firms and solo practitioners; and whether a disclosure requirement serves any substantial purpose if there is not also a mandate to maintain insurance.

The Committee's resumed discussion of the Model Rule also touched upon the related issue of compulsory professional liability insurance. At first glance, mandatory insurance seems worthwhile because it would close the claims circle by providing coverage for attorney negligence, which is not covered by the Lawyers Fund for Client Protection. *See* R. 1:28-3(a) (allowing Fund to consider claims resulting from attorneys' dishonest conduct). As with an insurance disclosure requirement, however, the prospect of mandatory insurance raises many questions, including: whether there is some great unmet need that would be satisfied by a mandate to carry professional liability insurance; whether such a mandate would unfairly burden small firms and solo practitioners, who may have more difficulty than larger firms finding affordable coverage; and if it were determined that compulsory insurance is justified, what would be the required minimum policy limits and terms of coverage.

The Committee ultimately concluded that it is necessary to have data from various sources to accurately gauge the practical implications – the potential benefits and burdens – that realistically may flow from an insurance disclosure requirement or a mandate to maintain insurance coverage. The Committee recommends that the Court appoint a special commission (perhaps an "Ad Hoc Committee on Lawyers' Professional Liability Insurance"), which may include representatives from the Bar, the lawyers' professional liability insurance industry, and other affected groups, to carefully study the issues.

## IV. OUT-OF-CYCLE ACTIVITY

### A. Pro Bono Services by In-House Counsel

In an out-of-cycle report, the Committee made an administrative recommendation to the Court concerning in-house counsel and the voluntary provision of pro bono services. The Committee proposed an amendment to the Court's Supplemental Administrative Determinations to state that in-house counsel licensed pursuant to Rule 1:27-2 are permitted to provide pro bono services not only through Legal Services of New Jersey, but also with other pro bono organizations described in Rule 1:21-1(e). The Committee viewed that amendment as consistent with the Court's 2006 amendment to Rule 1:21-3(c), which provides that out-of-state attorneys "employed by, associated with, or serving as a volunteer pro bono attorney with an organization described in R. 1:21-1(e) and approved by the Supreme Court, shall be permitted to practice, under the supervision of a member of the bar of the State, before all courts of this State in all causes in which the attorney is associated or serving pro bono with such legal services program."

By Notice to the Bar dated June 3, 2009, available at www.judiciary.state.nj.us/notices, the Court amended its Supplemental Administrative Determinations to clarify that in-house counsel may volunteer for pro bono work with Legal Services of New Jersey or with other approved Rule 1:21-1(e) legal services organizations provided that the requirements of Rule 1:21-3(c) are satisfied. At the same time, the Court made other changes (not initiated by the PRRC) regarding part-time contract work and the time period within which in-house counsel must secure new employment without having to reapply for a limited license.

### B. Referral to PRRC, CAA and ACPE from the Decision of the Court in In re Opinion 39 of the Committee on Attorney Advertising

In an out-of-cycle report, the PRRC reported to the Court its recommendations on referral from the decision of the Court in In re Opinion 39 of the Committee on Attorney Advertising,

197 N.J. 66 (2008), concerning comparative attorney advertising and amendments to RPC 7.1. A joint report of the Committee on Attorney Advertising and Advisory Committee on Professional Ethics was included as an appendix to that report. By Notice dated May 1, 2009, *see* www.judiciary.state.nj.us/notices/2009/n090504a.pdf, the Court published the reports and solicited the submission of comments by June 1, 2009. A public hearing was held on September 30, 2009. *See* www.judiciary.state.nj.us/notices/2009/n090707b.pdf. In November 2009, the Court amended RPC 7.1 to provide that a communication is false or misleading if it compares the lawyer's services with other lawyers' services, "unless (i) the name of the comparing organization is stated, (ii) the basis for the comparison can be substantiated, and (iii) the communication includes the following disclaimer in a readily discernable manner: 'No aspect of this advertisement has been approved by the Supreme Court of New Jersey[.]'" The Court also adopted an Official Comment that provides guidance concerning communications about receipt of an honor or accolade. *See* www.judiciary.state.nj.us/notices/2009/n091104g.pdf.

C. Requests to Amend RPC 7.3 to Ban Direct Solicitation Letters

In another out-of-cycle report, the Committee reported on its review of referred requests for amendments to RPC 7.3 to ban attorneys' direct solicitation letters to potential clients. The Committee found that the First Amendment precludes a complete ban of all solicitation letters. The Committee recommended extending the existing thirty-day waiting period, which currently applies to communications sent after a mass-disaster event, to solicitations concerning events causing personal injury or death, unless the person contacted has a family, close personal, or prior professional relationship with the lawyer. By Notices to the Bar dated July 1, 2009, *see* www.judiciary.state.nj.us/notices/2009/n090707c.pdf, and July 17, 2009, *see* www.judiciary.state.nj.us/notices/2009/n090720a.htm, the Court directed the publication of RPC

7.3 report and invited the submission of comments through October 5, 2009. As of the date of this report, the matter is pending before the Court.

D. Technical Corrections to RPC 7.1(b) and RPC 7.5(a)

Effective January 5, 2009, the Court sua sponte corrected the reference in RPC 7.1(b) to Rule 1:19A-3(d), which for twenty years had erroneously been shown as Rule 1:19-3(d). The Court also corrected the reference in RPC 7.5(a) to Rule 1:21-1(e), which since 1998 had been erroneously shown as Rule 1:21-1(d). (In 1998, an amendment to Rule 1:21-1 resulted in a paragraph redesignation, but a conforming amendment to RPC 7.5(a) was not made. The January 2009 amendment corrected that oversight.) Those RPC corrections were made by the Court during this PRRC reporting cycle and are simply noted here for the sake of completeness.

V. HELD MATTERS

A. Post-Retirement Employment Discussions by Sitting Judges

In DeNike v. Cupo, 196 N.J. 502 (2008), the Court held that negotiations between a trial judge and an attorney concerning the judge's post-retirement employment created an appearance of impropriety and required a new trial under the circumstances. The Court also set forth guidance for retiring judges seeking post-retirement employment, and it asked the PRRC and the Advisory Committee on Extrajudicial Activities (ACEA) for additional recommendations. The PRRC asked the ACEA to make initial proposals to the PRRC. The PRRC recently received the ACEA recommendation. After considering and discussing it with the ACEA, the PRRC will return to the Court with a recommendation.

B. Confidentiality of Judicial Disciplinary System (Rule 2:15-20)

The Court asked the PRRC to work with the Advisory Committee on Judicial Conduct (ACJC) to review the confidentiality provisions governing the operation of the judicial disciplinary system, in light of R.M. v. Supreme Court of New Jersey, 185 N.J. 208 (2005), and other relevant considerations. The ACJC has undertaken the task of preparing a first draft of recommendations. Upon receipt of an inter-committee report from the ACJC, the PRRC will resume consideration of this referral.

C. Settlement of Aggregate (Non-class Action) Litigation (RPC 1.8(g))

In the 2006-2008 Rules Cycle Report of the Professional Responsibility Rules Committee, at 91, *available at* www.judiciary.state.nj.us/reports2008/prrc.pdf, the PRRC reported its preliminary discussions on the referral of the Court in its decision in Tax Authority v. Jackson Hewitt, 187 N.J. 4 (2006). The PRRC noted that there was no immediate need to amend RPC 1.8(g), and that it would await further information on the subject. Specifically, the

PRRC noted that the American Law Institute was conducting a civil procedure study project, "Principles of the Law of Aggregate Litigation," which was addressing the issue. At the ALI's May 2009 annual meeting, the ALI approved a proposed final draft report, subject to corrections and editing revisions. *See* ALI, *Current Projects: Principles of the Law of Aggregate Litigation*, at http://www.ali.org/index.cfm?fuseaction=projects.proj_ip&projectid=7. Upon the ALI's publication of the official text of its project (anticipated mid-2010), the PRRC will resume consideration of this referral.

Respectfully submitted,

PROFESSIONAL RESPONSIBILITY RULES COMMITTEE[4]

Honorable Peter G. Verniero, Former Associate Justice, Chair, PRRC

Honorable Alan B. Handler, Associate Justice (ret.), Chair, Advisory Comm. on Judicial Conduct

Honorable John E. Keefe, Sr., P.J.A.D. (ret.), Chair, IOLTA Fund of the Bar of New Jersey

Kenneth J. Bossong, Esquire, Director and Counsel, Lawyers Fund for Client Protection

Joseph A. Bottitta, Esquire, New Jersey State Bar Association

Cynthia A. Cappell, Esquire, Chair, Committee on Attorney Advertising

Charles M. Lizza, Esquire, Chair, Committee on the Unauthorized Practice of Law

Steven C. Mannion, Esquire, Chair, Advisory Committee on Professional Ethics

Louis Pashman, Esquire, Chair, Disciplinary Review Board

Sherilyn Pastor, Esquire, Appointed Member

Melville D. Lide, Esquire, Appointed Member

(Staff: Holly Barbera Freed, Staff Attorney, Supreme Court Clerk's Office)

[4] This report is the result of deliberations that spanned the 2008-2010 rules cycle. In addition to the members listed here, the Committee is indebted to retired Supreme Court Associate Justice Stewart G. Pollock, who stepped down effective August 31, 2009, after nine years of service as its Chair. Many thanks are also due to Michael S. Stein, Esq., who served as an appointed member from September 2000 through August 2009, and to former *ex officio* members Melville D. Miller, Jr., Esq., ACPE Chair, 1994 through December 2008; Raymond S. Londa, Esq., CUPL Chair, 2001 through December 2008; and Mary Lou Parker, Esq., IOLTA Chair, March 2008 through February 2009.

# C E R T I F I C A T I O N  O F  R E T I R E M E N T

## FOR THE CALENDAR YEAR(S) _____

**The retired exemption from payment is as defined, without alteration. We cannot grant the exemption if the language of this certification is altered or if "January 31" is deleted and a later date substituted.**

I, _____, Esq., of full age, say:
Printed Name

1. I am an attorney at law licensed to practice in the State of New Jersey;

2. I hereby request exemption from payment to the New Jersey Lawyers' Fund for Client Protection for the calendar year(s) indicated pursuant to *Rule* 1:28-2 because I am "retired completely from the practice of law" in every jurisdiction. I understand that attorneys are not exempt from payment solely by virtue of being out-of-state or exempt from *pro bono* assignment;

3. I am either unemployed or the employment in which I engage is not in any way related to the practice of law. I do not draft or review legal documents, render advice on the law or legal assistance, teach law, or serve in a court system in any capacity, **in any jurisdiction**. This is an accurate description of my activities at least since January 31 of the year for which exemption is sought;

4. I understand that I have an ongoing duty to immediately inform the Fund if I no longer qualify for the exemption granted;

5. I understand that I will remain officially retired until I inform the Fund otherwise;

6. I understand that it is my obligation to keep my address current with the Fund and respond to the Annual Attorney Registration Statement and *Pro Bono* Assignment Questionnaire.

I hereby certify that these statements regarding my entitlement to the exemption are true and correct. If such statements are willfully false, I am subject to punishment.

_____ _____

(Date) (Signature)

# C E R T I F I C A T I O N  O F  R E T I R E M E N T
# *(LEGAL SERVICES VOLUNTEER)*

## FOR THE CALENDAR YEAR(S) _____

**The retired exemption from payment is as defined, without alteration. We cannot grant the exemption if the language of this certification is altered or if "January 31" is deleted and a later date substituted.**

I, _____, Esq., of full age, say:
Printed Name

1. I am an attorney at law licensed to practice in the State of New Jersey;

2. I hereby request exemption from payment to the New Jersey Lawyers' Fund for Client Protection for the calendar year(s) indicated pursuant to *Rule* 1:28-2 because I am "retired completely from the practice of law" in every jurisdiction. I understand that attorneys are not exempt from payment solely by virtue of being out-of-state or exempt from *pro bono* assignment;

3. My only participation in any aspect of legal practice is as a volunteer for Legal Services of New Jersey or for an organization identified in *R.* 1:21-1(e) that engages in the volunteer public interest legal services described in *RPC* 6.1, for which practice I receive no remuneration.

4. [3.] Other than as stated in paragraph 3, I am either unemployed or the employment in which I engage is not in any way related to the practice of law. I do not draft or review legal documents, render advice on the law or legal assistance, teach law, or serve in a court system in any capacity, **in any jurisdiction**. This is an accurate description of my activities at least since January 31 of the year for which exemption is sought;

5. [4.] I understand that I have an ongoing duty to immediately inform the Fund if I no longer qualify for the exemption granted;

6. [5.] I understand that I will remain officially retired until I inform the Fund otherwise;

7. [6.] I understand that it is my obligation to keep my address current with the Fund and respond to the Annual Attorney Registration Statement and *Pro Bono* Assignment Questionnaire.

I hereby certify that these statements regarding my entitlement to the exemption are true and correct. If such statements are willfully false, I am subject to punishment.

Date: _____ Signature: _____