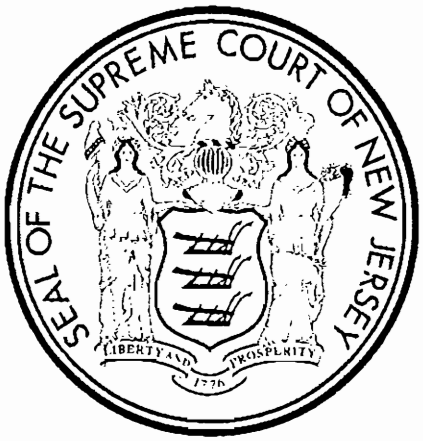
SPECIAL COMMITTEE ON ATTORNEY ETHICS AND ADMISSIONS



REPORT AND RECOMMENDATIONS

May 12, 2015

Chair: Hon. James R. Zazzali
Vice Chair: Paula A. Franzese

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INTRODUCTION

The New Jersey Supreme Court created the Special Committee on Attorney Ethics and Admissions (Special Ethics Committee) to review recent American Bar Association (ABA) amendments to the Model Rules of Professional Conduct and standards for admission to practice law. The ABA had formed a "Commission on Ethics 20/20" to consider these rules and standards "in light of advances in technology and global legal practice developments." The ABA Commission examined issues relating to lawyer mobility; practice of out-of-state lawyers; practice of foreign (licensed outside the United States) lawyers in the United States; client confidentiality in a digital age; ethics issues arising from new forms of advertising; outsourcing of legal services; choice of law problems related to conflicts of interest; and other matters. It recommended various rule changes.

The Special Ethics Committee divided into three subcommittees that reviewed admission by motion; technology and confidentiality; and other matters raised by the ABA, Committee members, and interested people in the legal community. It presented the ABA recommendations and other matters to the legal community via a Notice to the Bar and solicited written comments. It also held a public hearing. After extensive review of the ABA proposals and the comments of members of the legal community, the Special Committee hereby sets forth its recommendations for consideration by the Court.

The pertinent ABA Model Rules, Model Rules of Professional Conduct, and Comments to Rules are noted at the beginning of each section below, along with the ABA Resolution discussing each recommendation.

1. ADMISSION BY MOTION

MODEL RULE (Resolution 105E): A lawyer who is admitted to practice in another United States jurisdiction, holds a law school degree, has practiced law in another state for three of the last five years, is in good standing, is not subject to discipline, possesses character and fitness, and designates the Clerk of the Court for service of process, may be admitted to practice law in this jurisdiction on motion. The ABA further urges jurisdictions that permit admission by motion to eliminate restrictions such as reciprocity.

The Special Ethics Committee was deeply and evenly divided on the issue of admission by motion. Half of the Committee supported admission by motion (with additional restrictions) while the other half opposed it. Of the half who opposed admission by motion, some Committee members flatly rejected the idea in principle, while others based their opposition on the current economic climate, suggesting that admission by motion may be appropriate at a future date if reliable information about the number of potential new admittees, and the effect of new admittees on the New Jersey legal community, could be obtained.

Currently, applicants for admission to the New Jersey bar must hold a juris doctor degree from an ABA-accredited law school; demonstrate fitness and character to practice law after being reviewed and so certified by the Committee on Character; attain a qualifying score on the Multi-State Professional Responsibility Examination; and pass the New Jersey bar examination. R. 1:24-2; R. 1:25; R. 1:27-1(a). Admission by motion would remove only the requirement that lawyers take the bar examination in New Jersey, provided the applicant has practiced a specified number of years in another jurisdiction.

The Committee notes that there currently is no requirement that New Jersey lawyers who pass the bar examination maintain a law office in New Jersey. Since 2004, Rule 1:21-1(a) has not required New Jersey lawyers to maintain a bona fide office in New Jersey; the bona fide office could be located in any United States jurisdiction. The

Court amended Rule 1:21-1(a) in 2013 to delete the requirement that New Jersey lawyers have a bona fide office at all. The Rule currently provides that a New Jersey lawyer "must structure his or her practice in such a manner as to assure . . . prompt and reliable communication with and accessibility by clients, other counsel, and judicial and administrative tribunals before which the attorney may practice . . . ." R. 1:21-1(a).

The arguments for and against admission by motion are set forth below.

A. In Favor of Admission by Motion

Admission by motion would remove only the requirement that applicants take the New Jersey bar examination. All applicants for admission in New Jersey still would be required to hold a juris doctor degree from an ABA-accredited law school and demonstrate fitness and character as certified by the Committee on Character. The proponents recommend that applicants be permitted to seek admission by motion if they practiced law in another state for five of the last seven years; sat for and passed a bar examination in another jurisdiction; and are admitted in a jurisdiction that would extend a reciprocal license by motion to New Jersey lawyers. In addition, all applicants for admission by motion would be required to complete a course on New Jersey ethics and professionalism as a condition precedent to admission.

Two New Jersey Supreme Court advisory committees previously studied the issue in 1983 and 2002.[1] Many of the arguments currently put forward in support of and in opposition to admission by motion are familiar, having been presented in the past.

[1] The Supreme Court Advisory Committee on Bar Admissions issued a report in 1983; the Ad Hoc Committee on Bar Admissions (Wallace Committee) issued a report in 2002.

Proponents suggest that the time has come for New Jersey to join the majority of United States jurisdictions and adopt admission by motion, in a modified and restrictive form.

The practice of law in the United States and, more importantly, in New Jersey has shifted as cases, clients, and family needs require lawyers to be more mobile. Families now often have two professional spouses, requiring one spouse to accommodate geographical changes to further the professional life of the other. New Jersey lawyers who must relocate to another jurisdiction suffer from New Jersey's lack of admission by motion and non-reciprocal stance. Out-of-state lawyers with distinguished careers practicing in specialized areas are unwelcome in New Jersey unless they revisit the law school curriculum to prepare for and take the New Jersey bar examination.

New Jersey currently requires all applicants for admission to the bar, whether they be recent law school graduates or seasoned older lawyers with lengthy careers in other jurisdictions, to sit for and pass the entry-level bar examination. The bar examination administered in New Jersey does not test applicants' knowledge of New Jersey law. The multi-state test (commonly known as the MBE) is designed to explore applicants' knowledge of law in general and is given by virtually all United States jurisdictions. The essay portion of the bar examination does not test New Jersey law; it is designed to test applicants' ability to analyze facts and express general legal concepts in writing and in clear English.

The proponents recognize the legitimate purpose of the bar examination: it is a test designed to protect the public from incompetent lawyers. Given this salutary purpose, they recommend that all applicants for admission by motion to New Jersey demonstrate that they have taken and passed a bar examination – albeit in another state.

Hence, all applicants for admission by motion in New Jersey will have already demonstrated their entry-level general knowledge of law by passing the bar examination (in another state). They will have practiced law in another state for at least five of the last seven years. They will hold a juris doctor degree from an ABA-accredited law school and be required to demonstrate good character and fitness to practice law as certified by the New Jersey Committee on Character. The proponents could not identify a legitimate reason, grounded in the public interest, to support the contention that an out-of-state lawyer who already passed the entry-level examination in another state and has practiced elsewhere for at least five years must re-take the examination.

The New Jersey legal community has a tradition of adhering to high standards of legal professionalism and lawyers seeking admission by motion should have a solid grounding in the New Jersey ethics rules. Therefore, as noted above, the proponents recommend that lawyers seeking admission by motion must take a continuing legal education course on New Jersey ethics and professionalism prior to submitting the motion.

Opponents argue that admission by motion will dilute the high standards of professionalism in the New Jersey legal community, since there will be an influx of out-of-state lawyers who are unfamiliar with New Jersey law and procedure.[2] As noted

[2] In its comments to the Committee, the New Jersey State Bar Association (NJSBA) stated that "diluting New Jersey's criteria for admission to practice law" does not serve the public interest since the public "has a right to expect that a lawyer licensed here is familiar with New Jersey law, procedures, rules and customs and is conversant with state disciplinary procedures, traditions of the organized bar as well as often unwritten expectations about how lawyers should behave." Another commenter stated that the ABA proposal "permitting individuals not licensed in New Jersey to practice in New Jersey" will result in a proliferation of lawyers "who are unstudied in New Jersey law." Another commenter disagreed. She pointed to study materials for the multi-state bar

above, however, the New Jersey bar examination does not test New Jersey law; it is a test of general knowledge. Both the recent law school graduates who pass the New Jersey bar examination and the experienced practitioners who become admitted by motion will need to become familiar, on their own, with New Jersey law and procedure in order to competently serve their clients. The proponents do not believe that out-of-state practitioners admitted by motion will neglect this obligation any more than their law school graduate counterparts who are admitted after having passed the bar examination.

Concerns about the likelihood of unethical behavior by newly-admitted out-of-state lawyers cannot be substantiated. Indeed, it is probable that lawyers in other jurisdictions cast similar aspersions on visiting New Jersey lawyers. In any event, should lawyers admitted by motion breach the New Jersey ethics rules, such conduct can be addressed through the disciplinary system.

Opponents have expressed concern that there are already too many licensed New Jersey lawyers and admission by motion will inundate the legal community.[3] Staff to the Committee attempted to gauge the level and duration of the expected influx by canvassing other jurisdictions that shifted from a bar examination requirement to admission by motion, but only very limited (anecdotal) information was available. While it is likely that there will be a significant number of applicants for admission on motion

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examination that divide jurisdictions into those that adopt the majority or minority positions on a legal issue; applicants who successfully pass the New Jersey bar examination need not know anything about New Jersey law.

[3] According to the 2013 Office of Attorney Ethics Annual Report, as of the end of December 2013 there were 95,500 lawyers admitted to practice law in New Jersey. Of these 95,500 lawyers, 36,668 lawyers are engaged in private practice of New Jersey law.

when first introduced, the proponents expect the number of applications to taper, as it did in other states.

A vast majority of New Jersey lawyers are already licensed in neighboring jurisdictions. According to the 2013 Office of Attorney Ethics Annual Report, of 95,500 licensed New Jersey lawyers, 70,444 are also admitted to the bar of another state and only 23,003 lawyers are admitted solely in New Jersey.[4] While New Jersey is uniquely situated between two major metropolitan centers, New York City and Philadelphia, most New Jersey lawyers are already admitted in one or both of our neighboring states. Of the 70,444 New Jersey lawyers admitted in other states, 43.33% of them are admitted in New York while 26.26% of them are admitted in Pennsylvania. Recent law school graduates would still take the bar examination in New Jersey as well as in a neighboring state if they do not yet know where they will be working. Only those lawyers not already licensed in New Jersey, who have been practicing for at least five years elsewhere, and whose business, practice, or family circumstances lead them to New Jersey, will seek admission by motion. The proponents do not expect the initial influx of applicants seeking admission by motion to be overwhelming.

New Jersey is one of only eight states that require all applicants for admission to revisit the law school curriculum to prepare for and pass the same bar examination offered to recent law school graduates. The other states are Delaware, Florida, Hawaii, Louisiana, Montana, Nevada, and South Carolina. There are six states (California, Georgia, Idaho, Maine, Maryland, and Rhode Island) that offer a modified or truncated

[4] These numbers do not add up to 95,500 because some lawyers did not provide this information on their annual attorney registration forms.

"attorney examination" to out-of-state lawyer applicants. The remaining 36 states plus the District of Columbia offer admission by motion without the requirement of sitting for and passing its bar examination.

Like many of the other states that currently do not offer admission on motion, New Jersey is unique in its geographical location. It is in close proximity to two major metropolitan areas, New York City and Philadelphia. However, unlike Florida, South Carolina, Nevada, or Hawaii, lawyers do not flock to New Jersey to retire or establish a vacation home. Nor, like Delaware, does New Jersey hold a unique national position in the domain of business.

The proponents are not unaffected by the concerns about the high number of New Jersey licensed lawyers, the fear of dilution of "our brand," and the potential economic effect on the business of already-licensed New Jersey lawyers. But it could not identify a legitimate reason, grounded in the public interest, to support the contention that an out-of-state lawyer who already passed the entry-level examination in another state and has practiced elsewhere for at least five years must re-take the examination.

The proponents also considered the benefits of admission by motion of lawyers admitted in a state that would extend a reciprocal license by motion to New Jersey lawyers. Just as out-of-state lawyers may need to follow clients, cases, or a family member to New Jersey, New Jersey lawyers may need to seek opportunities in other jurisdictions and would have a ready means to do so through reciprocal admission by motion. While the NJSBA, in its comment, argued that reciprocal admission of New Jersey lawyers to other jurisdictions is not a relevant consideration since it rests on "self-interest," the real benefit to New Jersey lawyers of such a rule is undeniable. Many New

Jersey lawyers retain a secondary law license in another state that has a reciprocal stance, and pay the annual assessments, merely as an insurance policy so they do not have to take the bar examination again should business or personal interests require them to relocate.

The New Jersey Supreme Court recognizes a public interest in clients' access to counsel of their choice. Jacob v. Norris, McLaughlin & Marcus, 128 N.J. 10, 18 (1992). Clients' counsel of choice may practice in a highly specialized area of law. The current approach in New Jersey requires out-of-state lawyers whose clients have recurring matters in New Jersey to revisit the law school curriculum and pass the bar examination (again) in order to be admitted to practice.

If admission by motion is adopted, out-of-state lawyers who have developed expertise in a specialized area would find a welcome and reasonable avenue to admission. These lawyers could make significant contributions in New Jersey and offer local clients the benefit of their concentrated experience. Lawyers who have practiced in specialized areas for long periods of time are no longer familiar with the broad areas of law – the law school curriculum – that are tested in a bar examination. The examination process, familiar to recent law school graduates, becomes unnerving after the passage of time. While the bar examination is a recognized means of testing for capacity to practice law, it does not serve this purpose for older lawyers who have practiced for many years.

New Jersey is the home to many large corporations whose in-house lawyers are currently admitted only in a limited manner. See R. 1:27-2 (limited license for in-house counsel). Permitting admission on motion may prompt some in-house counsel to obtain a plenary license and thereby nurture deeper roots in the New Jersey legal community.

The Court recently has shown its willingness to offer admission by motion to out-of-state lawyers who present compelling reasons. Newly-enacted Rule 1:27-4 permits temporary admission of a military spouse during military assignment in New Jersey. The Rule provides that an applicant who is the spouse of an active member of the United States armed forces, assigned to serve in New Jersey, "may be temporarily admitted as an attorney of this State, without examination," provided the applicant was admitted, after examination, as a lawyer in another United States jurisdiction, possesses moral character and fitness, has not failed the New Jersey bar examination, resides in New Jersey, and is in good standing in another jurisdiction. R. 1:27-4(a).

Further, in-house counsel who are admitted to practice in a different state may obtain a limited license to provide legal services to his or her New Jersey employer, without taking the bar examination. R. 1:27-2. Law professors in New Jersey schools do not need to take the bar examination, provided they have been teaching law in New Jersey for five years. R. 1:27-3.

The Court has recognized that for these lawyers, re-taking and passing the entry-level bar examination is not necessary to protect the public. Rather, lawyers can be admitted to practice in New Jersey if they have already passed the bar examination in another jurisdiction, have been found to have good character and fitness, and have shown exigent circumstances (military spouses), offer specialized legal knowledge (in-house counsel), or engage in educational pursuits (law professors).

In its comment, the NJSBA argued that admission by motion is not necessary because rules on multijurisdictional practice have lessened the demand. The multijurisdictional practice rule, Rule of Professional Conduct 5.5(b)(3), balances the

need to ensure that out-of-state lawyers do not establish a continuous or systematic presence in New Jersey while carving out certain tightly-restricted, permissible practice activities. Since the multijurisdictional practice rule addresses only very limited practice areas, the proponents do not agree that its provisions have, as the NJSBA put it, "lessened the clamor from some quarters for admission on motion."

New Jersey's current rule, requiring seasoned out-of-state lawyers to revisit the law school curriculum and pass a bar examination that does not test New Jersey law, is a substantial barrier to admission and can be viewed as a form of economic protectionism. The requirement does not shield the public from incompetent lawyers, as the out-of-state lawyers will have already taken, and passed, a bar examination in another jurisdiction. Its continued existence as a requirement for admission of seasoned out-of-state lawyers appears to be a stratagem to protect our already-licensed New Jersey lawyers from professional competition.

B. Opposition to Admission by Motion

If admission by motion is approved, out-of-state lawyers would no longer need to take the New Jersey bar examination. It is generally accepted that this loosening of the admission requirements would lead to an influx of lawyers to practice in New Jersey. To date, empirical data is not yet available to confirm or rebut this presumption. Other jurisdictions that shifted from a bar examination requirement to admission by motion could not provide reliable data at present. They only confirmed that they experienced a substantial initial influx of newly-admitted lawyers. The level and duration of the anticipated influx cannot be measured at this time.

New Jersey sits in a unique geographical position between the major metropolitan centers of New York City and Philadelphia and, more broadly, between the states of New York and Pennsylvania. Because of our unusual position, the argument that other states appear to have survived admission by motion, like most analogies, withers. In any event, it is likely that significant numbers of lawyers from our neighboring cities and states would seek admission by motion. How large the numbers will be, and how long the rise in admissions will last, is not known at present.

Our profession is at a critical stage, facing substantial challenge. It is arguably the most difficult period since the Great Depression when numerous attorneys were building boardwalks on the Jersey Shore or chopping down trees in the Northwest for the Civilian Conservation Corps. Today, for myriad reasons, large, medium and small-sized firms are cutting back, laying off, or not hiring. The plight of solo practitioners, and of newly-admitted, unemployed young attorneys, glares at us daily. We cannot in good conscience put the profession, collectively and individually, at further risk until we are reasonably confident that admission by motion will not occasion further harm.

There already are too many licensed New Jersey lawyers. According to the 2013 Office of Attorney Ethics Annual Report, as of the end of December 2013, there were 95,500 lawyers admitted to practice in New Jersey. Some Committee members observed that the demand for legal services in New Jersey has diminished. At this time, New Jersey may not be able to absorb a surge of newly-admitted lawyers. The existing New Jersey bar serves the public well and a disproportionate inundation of newly-admitted lawyers may adversely affect the delicate legal ecosystem.

Specific Comments

There is no assurance that out-of-state lawyers admitted by motion will be associated with New Jersey counsel. Indeed, we think it unlikely. The New Jersey legal community has a tradition of adhering to high standards of legal professionalism, collegiality and civility. These newcomers simply will not be familiar with the State of New Jersey or its legal practice and procedure. In its comments to the Committee, the NJSBA stated that "diluting New Jersey's criteria for admission to practice law" does not serve the public interest since the public "has a right to expect that a lawyer licensed here is familiar with New Jersey law, procedures, rules and customs and is conversant with the state disciplinary procedures, traditions of the organized bar as well as often unwritten expectations about how lawyers should behave." Another commenter stated that admission by motion will result in a proliferation of lawyers "who are unstudied in New Jersey law" and, it bears adding, our great cultural tradition.

Out-of-state lawyers' lengthy legal experience in another state may provide them a false sense of familiarity with pertinent law. In contrast to recent law school graduates who anticipate the steep learning curve that transition to the practice typically requires, more seasoned out-of-state lawyers are likely to assume a certain conversancy without taking the time to adequately study the areas of law and ethics that are unique to New Jersey. Clients may be misled into thinking that their newly-admitted counsel who claims, for example, a decade of practice elsewhere, actually has the knowledge and experience to handle their New Jersey matter.

The present rules for admission (including the rules governing pro hac admission and multijurisdictional practice) provide ample opportunities for non-New Jersey

attorneys to engage in a limited practice here if they choose. The fact that so many have already utilized those procedures demonstrates that for those who are interested in practicing in New Jersey on a part-time basis, the present standards are not unreasonable.

Present procedures prompt those who have an interest in practicing in New Jersey to learn about New Jersey law, practice, ethics and ethos. Admission by motion may discourage such interest and overlook the interest the public and the courts have in a bar that is conversant with the rules and norms of New Jersey practice.

Global Concern

To be sure, the above concerns express some legitimate self-interest. Given our difficult geographical position, we should not be timid about the potential threat to our profession. Other states that are also attractive places to practice, including Delaware, California and Florida, continue to require a bar exam to be taken. Still, opponents to admission by motion are not driven by raw economic or cultural protectionism; rather, they are impelled by a healthy caution to proceed slowly and deliberately. It is the public that will suffer most if we move too quickly and without knowing more.

In any event, appropriate self-interest is present on both sides of the issue. The public did not prompt this proposal. Rather, its genesis is from those within the legal profession, and organizations associated with them, who believe they may benefit from admission by motion. There is nothing improper with those efforts, but it is what it is.

That said, there is no public or client need for an indeterminate number of attorneys from other States to be admitted here. Already, our total now approaches 100,000 lawyers. While the number of those engaged in active practice falls below that figure, the State has more than sufficient attorneys in virtually every specialty to address

the needs of our residents and business entities. In those rare instances when a specialty is lacking, or perceived to be lacking, pro hac admission and the multijurisdictional practice rules work well and provide clients with a practical way to import an attorney from outside New Jersey.

The flow of newly-admitted lawyers must be managed prudently and carefully to further the interests of clients, the existing legal community, the judiciary's regulatory system, and the public. To those who say that its time has come, the answer is not quite yet -- not until there is more experience with this challenge. There is nothing to be lost and much to be gained if we place a hold on this matter for a modest period of time -- three years -- during which we can assess developments. If the experience here and elsewhere is positive, we may want to adopt the motion. If it is inconclusive, we may implement a rule change but with stronger conditions. If the evidence demonstrates significant problems, then the game was worth the candle. "They also serve who only stand and wait."

Nor can we adopt admission now and amend later. That naïve approach ignores the trite but true metaphor that the barn door will have been opened. There is no risk in waiting until we are reasonably confident that there is no significant threat. With so many of our colleagues struggling not simply to thrive, but to survive, it is unfair to them to do otherwise.

We add only this. Chief Justices Vanderbilt and Weintraub cautioned long ago that ours is a profession first and a business second. The fight to protect and preserve the nobility of our craft is still worth waging. We are professionals, not fungible commodities.

As noted above, the proponents and opponents of admission by motion were evenly divided. The Committee hereby has respectfully presented both positions on this issue for the Court's consideration.

2. PRACTICE PENDING ADMISSION

MODEL RULE (Resolution 105D): If a lawyer has been practicing in another United States jurisdiction for three of the last five years, the lawyer may provide legal services in an office or other systematic and continuous presence in this jurisdiction for up to a year provided the lawyer is not disbarred or suspended from practice in any jurisdiction, has not previously been denied admission to practice in this jurisdiction or failed the bar exam, notifies the jurisdiction bar counsel that he or she is practicing here, applies for admission by motion or exam within 45 days, expects to fulfill the jurisdiction's admission requirements, associates with a lawyer admitted in this jurisdiction, does not advertise for legal services in this jurisdiction, and pays the annual client fund assessment. The same general provisions would apply to a foreign legal consultant licensed in another United States jurisdiction.

The Special Ethics Committee does not recommend a rule permitting practice pending admission. It finds that the ABA proposal offers little benefit and presents significant risk to the public.

The task of monitoring out-of-state lawyers to ensure they are associated with a New Jersey lawyer and also to confirm that they have ceased to practice if they do not gain admission in New Jersey would be administratively difficult. There could be practical problems when disciplining such a lawyer, especially if the out-of-state lawyer leaves New Jersey after failing to be admitted.

Further, a lawyer who practices pending admission but then is not admitted to the New Jersey bar, having failed the bar examination or being found unsuitable by the Committee on Character, would have to abruptly abandon the clients he or she was

serving. These clients would need to immediately find a new lawyer and the disruption could be costly.

Lastly, lawyers who are either subject to, or at risk of, disciplinary action in other states could continue practicing law in a new jurisdiction – New Jersey – as a ruse, purporting to seek admission to the New Jersey bar and practicing while the application is pending. An unscrupulous lawyer could register for the examination, for example, and then simply not take it, allowing him or her to practice in New Jersey for some time.

The ABA proposal allows local counsel to informally vouch for the fitness and competence of the out-of-state lawyer by "associating" with that lawyer. The NJSBA, in its comments, supported this proposal, since "the lawyer works with, and is accountable to, a member of the bar of New Jersey." Another commenter noted that it is not clear what level of involvement the local lawyer, who "associates with" the out-of-state lawyer, would have, or to what level of responsibility the local counsel would be held. The Committee recommends that the Court not delegate its solemn responsibility to ensure that lawyers practicing in this state have demonstrated fitness and character and are competent to practice law to local counsel who merely agrees to "associate" with the newcomer.

For the reasons set forth above, the Committee recommends that the ABA proposal on practice pending admission not be adopted, as it presents little benefit and significant risk to the public.

3. IN-HOUSE PRACTICE BY FOREIGN LAWYERS

MODEL RULE OF PROFESSIONAL CONDUCT 5.5(d) (Resolution 107A): A lawyer admitted in a foreign jurisdiction may provide legal services through an office or other systematic and continuous presence in this jurisdiction when the services are provided to the lawyer's employer, do not require pro hac vice admission, and do not involve advice on United States law, unless the foreign lawyer has consulted with a United States lawyer.

MODEL RULE OF PROFESSIONAL CONDUCT 5.5(e) (Resolution 107A): The foreign lawyer must be a lawyer in good standing in the foreign jurisdiction and subject to effective regulation and discipline by a professional body or public authority.

MODEL RULE OF PROFESSIONAL CONDUCT Comment [16] (Resolution 107A): When a foreign lawyer is advising on United States law, the foreign lawyer needs to base that advice on the advice of a lawyer licensed and authorized by the local jurisdiction to provide it.

MODEL RULE FOR REGISTRATION OF IN-HOUSE COUNSEL (Resolution 107B): Adds reference to a foreign lawyer, so that either a United States lawyer or a foreign lawyer who is employed by an organization that is not in the business of practicing law shall register as in-house counsel.

The Special Ethics Committee supports a rule permitting in-house practice by foreign (licensed outside the United States) lawyers, with restrictions. Specifically, the Committee recommends that while a foreign lawyer may provide legal advice on foreign law to its employer company, the foreign lawyer may not provide advice on United States law, even if the foreign lawyer is associated with a United States lawyer in the matter.

The Committee considered how the credentials of a foreign lawyer could be evaluated and verified to determine whether the lawyer is sufficiently competent to provide legal advice on foreign law in New Jersey. Assessing the equivalent amount of education offered at foreign institutions, compared to United States ABA-accredited juris doctor programs, and reviewing documentation regarding licensure, is a daunting task. The Committee recognized, however, that the company hiring the foreign lawyer presumably has international business and in-depth knowledge of the country involved

and can determine its own needs. It will evaluate and verify the lawyer's foreign credentials when hiring him or her. Hence, the burden of assessing whether the foreign lawyer can competently advise on foreign law is placed on the employing company. The NJSBA supports this proposal, stating that "sophisticated employers can judge the performance of their employed attorneys and there is little risk of harm to the public."

The Committee, however, rejects the notion that a foreign lawyer should be permitted to advise the employer company on United States law. The foreign lawyer's legal education and competence to practice law has not been evaluated or verified by the New Jersey Judiciary. While the employing company can assess whether to hire the foreign lawyer to advise it on foreign law, the task of advising on United States law should be undertaken only by a lawyer who has satisfied the rigorous United States licensing standards.

Therefore, for the reasons set forth above, the Committee recommends a rule permitting in-house practice by foreign lawyers, with restrictions.

4. PRO HAC VICE ADMISSION OF FOREIGN LAWYERS

MODEL RULE (Admission of Foreign Lawyer in Pending Litigation Before a Court or Agency) (Resolution 107C): Permits the court to admit a foreign lawyer pro hac vice in that proceeding with an in-state lawyer. The in-state lawyer must be responsible to the client and for the conduct of the proceeding, independently advise the client on substantive United States law and procedural issues in the proceeding, and advise the client whether the in-state lawyer's judgment differs from that of the foreign lawyer.

The Special Ethics Committee supports a rule permitting pro hac vice admission of foreign (licensed outside the United States) lawyers who are licensed and in good standing in the foreign jurisdiction, with restrictions. The New Jersey population is becoming increasingly foreign-born and may have international legal issues. Foreign

attorneys would know about a country's laws, language, and customs, which may help litigants better understand their alternatives. Many other states, and the United States Supreme Court, permit foreign attorneys to appear pro hac vice. See Sup.Ct.R. 6(2). When a foreign lawyer is admitted pro hac vice, local counsel will be responsible for his or her conduct. The NJSBA supports this proposal.

The Committee, however, remains concerned about proper verification of the license and credentials of the foreign lawyer. The Committee recommends that local counsel be held responsible for verifying the credentials of the foreign lawyer and certifying his or her satisfaction with those credentials to the court in the pro hac vice application.

The Committee, while supporting the concept of pro hac vice admission of foreign lawyers, also recommends conditioning such admission on a requirement that local counsel must accompany the foreign lawyer for all court or related proceedings. The Committee notes that the current pro hac vice rule, Rule 1:21-2, does not specify whether local counsel must always accompany the pro hac vice admitted lawyer. The Rule states merely that local counsel must sign all pleadings, briefs and other papers filed with the court and is "held responsible for them and for the conduct of the cause and of the admitted attorney therein."

In the Committee members' experience, some judges permit pro hac vice admitted lawyers to appear at court conferences and out-of-court proceedings such as depositions without the presence of the local lawyer, while other judges require the two lawyers always to appear together. The Committee recommends that a foreign lawyer admitted pro hac vice must not appear in any proceeding, whether in-court or out-of-

court, without being accompanied by local counsel. The Committee further recommends that the language of Rule 1:21-2 be reviewed by the Court to clarify whether this same standard will apply to United States lawyers admitted pro hac vice in a New Jersey case.

Therefore, the Committee supports a rule permitting pro hac vice admission of foreign lawyers who are licensed and in good standing in the foreign jurisdiction, with restrictions.

5. COMPETENCE WITH TECHNOLOGY – RPC 1.1

MODEL RULE OF PROFESSIONAL CONDUCT 1.1, Comment [8] (Resolution 105A Revised and Resolution 105C): Requires a lawyer to "keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology" in order to "maintain requisite knowledge and skill."

The Special Ethics Committee declines to recommend this new language in Rule of Professional Conduct 1.1 or an official comment. Competency is of utmost importance to the responsible practice of law. However, the language and intent of New Jersey Rule of Professional Conduct 1.1 differs significantly from the language of the corresponding Model Rule. The Committee finds that it would not be appropriate to graft the proposed ABA language onto our New Jersey Rule.

Model Rule of Professional Conduct 1.1 provides: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." In 1983, the Debevoise Committee recommended, and the Court agreed, not to adopt the Model Rule 1.1 formulation but to draft our own version. New Jersey Rule of Professional Conduct 1.1 does not provide a definition of "competence" but, rather, focuses on gross negligence or a pattern of negligence. Specifically, it provides:

A lawyer shall not:

(a) Handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence.

(b) Exhibit a pattern of negligence or neglect in the lawyer's handling of legal matters generally.

[RPC 1.1.]

The ABA proposal requires that lawyers must, as a matter of ethics, "keep abreast" of the "benefits and risks associated with relevant technology." This aspirational standard would introduce a new element into our ethics rules. It would require practitioners, who may otherwise be entirely competent, to develop immediate facility with new and emerging technologies or face allegations that they no longer provide competent (and ethical) representation. Compliance with this rule could place a significant financial burden on smaller firms and solo practitioners.

New Jersey lawyers who use technology in their practice are guided by Advisory Committee on Professional Ethics Opinion 701 (April 2006). This Opinion sets forth the standard of care that lawyers who use modern electronic technology to communicate with clients or to store or transmit client files and confidential information should exercise in order to act consistently with their ethical duties.

"Gross negligence," which would include gross negligence in the use of technology, is prohibited by Rule of Professional Conduct 1.1. The Committee does not recommend that the Rule be amended to single out technology, which is just one component of lawyers' general duties.

6. CONFIDENTIALITY AND COMPETENCE WHEN USING TECHNOLOGY – RPC 1.6

MODEL RULE OF PROFESSIONAL CONDUCT 1.6(c) (Resolution 105A Revised and 105F Revised): "A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client."

MODEL RULE OF PROFESSIONAL CONDUCT 1.6 Comment [18] (Resolution 105A Revised and 105F Revised): Requires a lawyer to act competently to safeguard information against unauthorized access by third parties and from inadvertent or unauthorized disclosure. It is not a violation if the unauthorized access was accomplished after the lawyer has taken reasonable steps to prevent such access. Factors to be considered in determining the reasonableness of the lawyer's efforts include the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of such additional safeguards, the difficulty of implementing the safeguards, and the extent to which such safeguards adversely affect the lawyer's ability to represent his/her clients. A client can give informed consent to implement extra security measures not required by the RPC, or give informed consent to forego security measures otherwise required.

MODEL RULE OF PROFESSIONAL CONDUCT 1.6 Comment [19] (Resolution 105A Revised): Complying with state and federal laws that govern data privacy is beyond the scope of the RPC.

The Special Ethics Committee recommends that a new paragraph be added to Rule of Professional Conduct 1.6 (Confidentiality of Information) addressing the lawyer's duty to prevent inadvertent or unauthorized disclosure of information relating to the representation of a client. Rule of Professional Conduct 1.6 protects the lawyer-client relationship; it sets forth the fundamental principle that, in the absence of a client's informed consent, the lawyer shall not reveal information relating to the representation. The proposed new paragraph would explicitly require lawyers to take reasonable measures to prevent unintended disclosure of client information and unauthorized access by third parties. Lawyers will be on notice that they must evaluate the adequacy of their electronic security measures.

The Committee further proposes an official comment to the Rule that should provide guidance and allay concerns. As the ABA Commission on Ethics 20/20 stated, "lawyers cannot guarantee electronic security any more than lawyers can guarantee the physical security of documents stored in a file cabinet or offsite storage facility." Lawyers would not be held to an unattainable standard; they will be required to take reasonable precautions. A lawyer would not be found in violation of the Rule simply because a data breach occurred.

The proposed comment balances the interest in data security and the costs to the lawyer. It would provide, in pertinent part: "Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use)."

A lawyer would be permitted to obtain written client consent to forgo security measures otherwise required. The proposed comment also notes that a lawyer may be required to comply with state and federal laws that govern data security beyond what is required by the Rules of Professional Conduct.

The NJSBA opposed the addition of the new language in the Rule. To the extent the new language imposes a new duty on lawyers, the NJSBA urged that the terminology did not explain that duty in a sufficiently clear manner. The Committee disagrees.

The Committee recommends that Rule of Professional Conduct 1.6 be amended to add this new paragraph and new Official Comment:

> (f) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.
>
> Official Comment:
>
> Paragraph (f) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons or entities who are participating in the representation of the client or who are subject to the lawyer's supervision. The unauthorized access to, or the inadvertent or unauthorized disclosure of, confidential information relating to the representation of a client does not constitute a violation of paragraph (f) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent in writing to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules.

7. NONLAWYER ASSISTANCE – RPC 5.3

MODEL RULE OF PROFESSIONAL CONDUCT 5.3 (Resolution 105C): Title changed from "Assistants" to "Assistance."

MODEL RULE OF PROFESSIONAL CONDUCT 5.3 Comment [1] (Resolution 105C): Extends the responsibility of a lawyer with managerial authority in the law firm to nonlawyers outside the firm who work on firm matters.

MODEL RULE OF PROFESSIONAL CONDUCT 5.3 Comment [3] (Resolution 105C): Duties when a lawyer contracts with nonlawyers outside the firm to provide support services, including retaining document management companies for discovery and litigation, printers and scanners, and Internet-based services to store client information

("the cloud"). The lawyer "must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations." Factors include "education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environment of the jurisdictions in which the services will be performed, particularly with regard to confidentiality."

MODEL RULE OF PROFESSIONAL CONDUCT 5.3 Comment [4] new language (Resolution 105C): If the client directs selection of a particular nonlawyer service provider outside the firm, the lawyer should reach an agreement with the client as to responsibility for monitoring that provider's services.

The Special Ethics Committee recommends that the title of Rule of Professional Conduct 5.3 (Responsibilities Regarding Nonlawyer Assistants) be amended to "Responsibilities Regarding Nonlawyer Assistance." Nonlawyer assistance refers to both support services and the person providing the support service, and the amendment reinforces that lawyers have the responsibility to supervise nonlawyers both inside and outside the firm.

The Committee also recommends the adoption of an official comment that would recognize the reality of legal outsourcing and lawyers' duty to ensure that outsourcing will not compromise the lawyer's professional obligations. Additionally, the comment would clarify that a client can agree in writing with a lawyer to assume monitoring responsibility for a particular service provider.

The NJSBA supported both the title change, the extension of the rule to "nonlawyers outside the firm who work on firm matters," and the proposed comments.

The Committee recommends that the Rule title be amended and an Official Comment be added:

> Rule of Professional Conduct 5.3 (Responsibilities Regarding Nonlawyer Assistan[ts]ce)

* * *

Official Comment:

Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

Nonlawyers Within the Firm

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Nonlawyers Outside the Firm

A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdiction in which the services will be performed, particularly with regard to confidentiality. When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the

nonlawyer's conduct is compatible with the professional obligations of the lawyer.

Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer should reach an agreement in writing with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

8. DEFINITIONS – RPC 1.0

MODEL RULE OF PROFESSIONAL CONDUCT 1.0(n) (Resolution 105A Revised): The term "writing" includes "electronic communication," replacing "email."

MODEL RULE OF PROFESSIONAL CONDUCT 1.0 Comment [9] (Resolution 105A Revised): A firm may ask a "screened" lawyer to agree in writing not to access electronic information about the matter, and may deny access by the screened lawyer to electronic information relating to the matter.

The Special Ethics Committee recommends that the word "e-mail" in Rule of Professional Conduct 1.0 be changed to "electronic communication" to reflect the presence of modern communication methods beyond e-mail, such as instant and text messaging. The NJSBA supported this rule change.

The Committee declines to recommend the adoption of the proposed official comment to this Rule regarding "screened" lawyers and access to information about the matter. Lawyers who are "screened" from a case should not access any information about the case; a comment to that effect is unnecessary.

Rule of Professional Conduct 1.0(o) would be amended as follows:

"Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and [e-mail] electronic communications. A "signed" writing includes an electronic sound, symbol or process attached to or

logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

9. COMMUNICATION WITH CLIENTS – RPC 1.4

MODEL RULE OF PROFESSIONAL CONDUCT 1.4 Comment [4] (Resolution 105A Revised): Language on returning client telephone calls is replaced with a sentence saying that a lawyer should promptly respond to or acknowledge client communications.

The Special Ethics Committee does not recommend the adoption of this official comment to Rule of Professional Conduct 1.4, which requires that lawyers "promptly comply with reasonable requests for information." Although the Committee appreciates that many clients now communicate with their lawyers through electronic means rather than through phone calls, it does not believe that an official comment is necessary.

10. DISCLOSURE OF CONFIDENTIAL INFORMATION TO DETERMINE CONFLICTS OF INTEREST – RPC 1.6

MODEL RULE OF PROFESSIONAL CONDUCT 1.6 paragraph (7) (Resolution 105F Revised): A lawyer may reveal information to the extent the lawyer believes reasonably necessary "to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client."

MODEL RULE OF PROFESSIONAL CONDUCT 1.6 Comment [13] (Resolution 105F Revised): Lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts when a lawyer is joining a firm or when firms are considering merging. Disclosure should be limited and occur only after substantive discussions of hiring or merging have begun.

MODEL RULE OF PROFESSIONAL CONDUCT 1.6 Comment [14] (Resolution 105F Revised): The information disclosed for this purpose may only be used or further disseminated within the law firm for the purpose of detecting conflicts.

MODEL RULE OF PROFESSIONAL CONDUCT 1.17 Comment [7] (Resolution 105F Revised): This revision allows limited disclosure of confidential information to detect conflicts in context of sale of law firm.

The Special Ethics Committee recommends that Rule of Professional Conduct 1.6 (Confidentiality of Information) be amended to include a paragraph permitting a lawyer to reveal client information to detect and resolve conflicts of interest arising from the lawyer's change of employment, changes in the composition or ownership of a firm, or the sale of a firm. The NJSBA supported this rule amendment.

The Committee is not recommending that a comment on this subject be added to Rule of Professional Conduct 1.17 (Sale of Law Practice). The proposed language permitting limited disclosure of client information to detect conflicts in Rule of Professional Conduct 1.6 would apply to the sale of a law practice.

Lawyers are more mobile in the modern legal marketplace; they no longer spend their entire career serving only one local community from one location. Lawyers contemplating a job change, new ownership of a firm, or the sale of a firm must have information about potential conflicts of interest. The Committee is aware that limited disclosure of confidential client information to ascertain whether a new partner or a merged firm would create a conflict of interest occurs regularly. Hence, the Committee recommends new language in the Rule along with proposed comments that would authorize limited disclosure of otherwise confidential information for the purpose of detecting and resolving conflicts of interest. The NJSBA supported this rule amendment.

Rule of Professional Conduct 1.6 would be amended to include a new subparagraph (d)(5) and official comment:

(d) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

* * *

(5) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership, or

resulting from the sale of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client. Any information so disclosed may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest.

Official Comment:

Paragraph (d)(5) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering merger, or a lawyer is considering the purchase of a law practice. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed written consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

Any information disclosed pursuant to paragraph (d)(5) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (d)(5) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (d)(5). Paragraph (d)(5) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

11. RESPECT FOR RIGHTS OF THIRD PERSONS – RECEIPT OF ELECTRONIC INFORMATION – RPC 4.4(b)

MODEL RULE OF PROFESSIONAL CONDUCT 4.4(b) (Resolution 105A Revised): A lawyer who receives a document "or electronically stored information" relating to representation who knows or should know that it was inadvertently sent shall notify the sender.

MODEL RULE OF PROFESSIONAL CONDUCT 4.4 Comment [2] (Resolution 105A Revised): Defines the term "inadvertently sent" to include certain electronically stored information such as embedded data (metadata).

MODEL RULE OF PROFESSIONAL CONDUCT 4.4 Comment [3] (Resolution 105A Revised): A lawyer may choose to delete an electronic document unread if the lawyer knows before opening it that it was misaddressed.

The Special Ethics Committee recommends that Rule of Professional Conduct 4.4(b) (Respect for Rights of Third Persons) be amended to include a reference to "electronic information;" to refer to "wrongfully obtained" information as well as "inadvertently sent" information; and to authorize a lawyer who receives such a document electronically to delete it.

Rule of Professional Conduct 4.4(b) protects the lawyer-client relationship from unwarranted intrusion by imposing an obligation on a lawyer who inadvertently receives a document, particularly one containing confidential or privileged information, to stop reading the document. The Rule further requires the lawyer to notify the sender that the information has been disseminated beyond its intended recipient and return the document to the sender.

Currently, the language of the Rule solely addresses misdirected communications (documents that are "inadvertently sent"). The Supreme Court has read the phrase "inadvertently sent" broadly to encompass protected documents that had not actually been misdirected. In Stengart v. Loving Care Agency, 201 N.J. 300 (2010), the Court

considered lawyer-client electronic communications sent by an employee on her employer-issued computer but through a private, password protected, web-based personal email account. After the employee was terminated, the employer retained a computer forensic expert to review documents on the employee's computer, retrieved the lawyer-client communications, and gave them to its own lawyer. The employer argued that the communications had been left behind on the computer and were not inadvertently sent; the employee asserted that she was unaware that her personal email would be stored on the company computer.

The Court found that the employer's lawyer had an obligation, under Rule of Professional Conduct 4.4(b), to stop reading the emails "once [the lawyer] realized they were attorney-client communications" and notify adverse counsel. Id. at 325-26. The public interest in protecting the lawyer-client relationship from unwarranted intrusion triggered the ethical obligation even though the documents were not, technically, "inadvertently sent." See also Advisory Committee on Professional Ethics Opinion 680 (January 1995) (lawyer must notify adverse counsel that client gained unauthorized access to its confidential documents). Hence, the obligations under Rule of Professional Conduct 4.4(b) arise in circumstances that do not squarely fall within the intuitive meaning of "inadvertently sent" documents.

To further the public interest the Rule is intended to protect and provide notice and guidance to lawyers, the Committee recommends that the Rule expressly encompass electronic information and also specifically address documents containing lawyer-client communications that are wrongfully obtained. Given modern technology, electronic

information is more easily intercepted or misappropriated than traditional paper documents.

For example, the lawyer's own client may acquire or intercept an emailed document from adverse counsel to the adverse party and then forward the information to his or her own lawyer. This occurs when the client has access to a formerly-shared email account or knows the password on someone else's computer. In this situation, the lawyer has received a privileged document that is not inadvertently sent – the client fully intended to send this document to the lawyer – but the lawyer should know, given the sensitivity of the information, that his or her client wrongfully obtained the document.

When the lawyer receives, from his or her own client, a wrongfully obtained email between adverse counsel and the adverse client, the instruction to return the document to the sender results in the lawyer returning the document to the (wrongdoer) client. Adverse counsel is likely unaware that the document was intercepted and the pathway of communication is compromised. The lawyer should have an ethical obligation to notify adverse counsel.

The Committee further recommends that the instruction to the lawyer who realizes that an electronic document was inadvertently sent or wrongfully obtained be supplemented with the option of deleting the document. Currently, the Rule provides only that the lawyer should return the document to the sender but there are times when it is more appropriate to delete the document.

The Committee recommends limiting the application of the Rule to wrongfully obtained information that "contains lawyer-client communications involving an adverse or third party." The amended Rule would not expressly apply to documents taken from

employers to support discrimination claims, false claims, or the like, unless those documents contain lawyer-client communications involving an adverse or third party.[5]

Further, the Rule would expressly state that if the lawyer has questions as to his or her obligations, the lawyer may promptly bring the matter to the attention of the appropriate court. The lawyer may preserve the document or information (and not return it or delete it) pending review and disposition by the court. The lawyer whose lawyer-client communications are the subject of the document and who is notified that it was intercepted also has an obligation to preserve the document.

The Committee further considered the practice of "mining" for embedded information (metadata) in electronic documents and recommends that, in accordance with the spirit and language of Rule of Professional Conduct 4.4(b), such efforts generally should be prohibited when there is reason to believe the metadata was not intentionally included in the document. Unlike the Model Rule, New Jersey's version of Rule of Professional Conduct 4.4(b) requires the lawyer to stop reading the document when the lawyer realizes that it (or its accompanying embedded data) was inadvertently sent. Hence, a lawyer should not examine the metadata in an electronic document unless the metadata was specifically requested (such as in discovery). If metadata was specifically requested and is present in the electronic document, then its presence is not inadvertent. The Committee recommends that an official comment to the Rule highlight this issue.

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[5] The Committee's recommendation solely concerns lawyers' professional obligations and does not address other potential sanctions that may be imposed when a person wrongfully obtains documents, such as suppression or inadmissibility as evidence in a lawsuit. See, e.g., Tartaglia v. Paine Webber, Inc., 350 N.J. Super. 142 (App. Div. 2002).

The NJSBA submitted a comment expressing concerns about a potential "heightened substantive standard of attorney behavior" for lawyers sending or receiving an electronic document. The Committee does not agree that its recommendations create a heightened substantive standard; its recommendation codifies current law.

Hence, Rule of Professional Conduct 4.4(b) would be amended to state:

(b) A lawyer who receives a document or electronic information and has reasonable cause to believe that the document or information was inadvertently sent shall not read the document or information or, if he or she has begun to do so, shall stop reading [the document,] it. The lawyer shall (1) promptly notify the sender[,] and (2) return the document or information to the sender and, if in electronic form, delete it.

A lawyer who receives a document or electronic information that contains lawyer-client communications involving an adverse or third party and who has reasonable cause to believe that the document or information was wrongfully obtained shall not read the document or information or, if he or she has begun to do so, shall stop reading it. The lawyer shall (1) promptly notify the lawyer whose communications are contained in the document or information and (2) return the document or information to the other lawyer and, if in electronic form, delete it. A lawyer who has been notified about a document containing lawyer-client communications has the obligation to preserve the document.

If the lawyer who receives documents that were inadvertently sent or wrongfully obtained has questions as to his or her obligations under this subsection, the lawyer may promptly bring the matter to the attention of the appropriate court. The lawyer may preserve the document or information (and not return it or delete it) pending review and disposition by the court.

Official Comment:

A lawyer receiving a document electronically should not examine any accompanying metadata unless the metadata was specifically requested.

12. CONFLICT OF INTEREST – PROSPECTIVE CLIENTS – RPC 1.18

MODEL RULE OF PROFESSIONAL CONDUCT 1.18 Comment [2] (new) (Resolution 105B): Conflict due to consultation with a prospective client; whether communications comprise a "consultation" depends on the circumstances. If a lawyer specifically requests or invites submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and the person provides information in response, then it is a consultation. But it is not a consultation if the person provides information to lawyer in response to advertising that does not solicit a response. Also, a person who communicates with a lawyer solely to disqualify that lawyer is not considered a prospective client.

MODEL RULE OF PROFESSIONAL CONDUCT 1.18(b) (Resolution 105B): A lawyer who has "learned information from" a prospective client shall not reveal such information.

MODEL RULE OF PROFESSIONAL CONDUCT 1.18(a) (Resolution 105B): A prospective client is a person who "consults" with the lawyer.

The Special Ethics Committee recommends that Rule of Professional Conduct 1.18(a) and (d) be amended to change the word "discussion" to "communication," to encompass situations where prospective clients and lawyers do not speak to each other but, instead, the prospective client sends an email or document to the lawyer concerning the matter. In addition, the Committee considered the situation when prospective clients consult with a lawyer in an attempt to disqualify that lawyer from representing the adverse party. If the consultation is conducted under false pretenses, the lawyer is a victim of the prospective client's machinations and strict disqualification of the lawyer is unfair. Accordingly, the Committee recommends that an official comment be added to the Rule providing: "A person who communicates with a lawyer to disqualify that lawyer is not considered a prospective client."

Rule of Professional Conduct 1.18(a) would be amended to state:

(a) A lawyer who has had [discussions] communications in consultation with a prospective client shall not use or reveal information acquired in the consultation, even when no client-lawyer relationship ensues, except as RPC 1.9 would permit in respect of information of a former client.

Rule of Professional Conduct 1.18(d) would be amended to state:

(d) A person who [discusses] communicates with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a "prospective client," and if no client-lawyer relationship is formed, is a "former prospective client."

Official Comment:

A person who communicates with a lawyer to disqualify that lawyer is not considered a prospective client.

13. ADVERTISING – RPC 7.1, RPC 7.2, RPC 7.3

MODEL RULE OF PROFESSIONAL CONDUCT 7.2 Comment [5] (Resolution 105B): A communication "contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities." New language states that a lawyer may pay others for generating client leads as long as the lead generator does not recommend the lawyer, there is no improper division of fees and no interference with the professional judgment of lawyer, and the lead generator's communications are consistent with RPC 7.1.

MODEL RULE OF PROFESSIONAL CONDUCT 7.3 Comment [1] new (Resolution 105B): Defining "solicitation" as a targeted communication initiated by the lawyer directed to a specific person that offers to provide legal services. Communication generated in response to Internet searches is not a solicitation.

MODEL RULE OF PROFESSIONAL CONDUCT 7.3 Comment [3] (Resolution 105B): Permits "blasted" emails to solicit prospective clients.

MODEL RULE OF PROFESSIONAL CONDUCT 7.2 Comment [3] (Resolution 105B): Regarding Internet and other forms of electronic advertising.

MODEL RULE OF PROFESSIONAL CONDUCT 7.1 Comment [3] (Resolution 105B): Reference to misleading a "prospective client."

MODEL RULE OF PROFESSIONAL CONDUCT 7.3 (Resolution 105B): Title changed from "Direct Contact with Prospective Clients" to "Solicitation of Clients." Removes references to "prospective clients," exchanges "target of the solicitation" for "prospective client," and exchanges "anyone" for "prospective client."

The Special Ethics Committee does not recommend that any of the ABA proposals on advertising be incorporated into the New Jersey Rules.

Committee on Attorney Advertising Opinion 43 (June 2011) allows lawyers to pay for "leads" with certain restrictions that are consistent with the ABA proposal, and the Committee does not consider it necessary to codify this opinion in the Rules at this point in time. Further, the Committee suggests that it would be improvident to include an official comment to the advertising rules that is limited to "lead generation" issues.

The ABA proposal permitting "blasted" emails has recently been rejected by the New Jersey Supreme Court. Rule of Professional Conduct 7.3(b)(5) was amended effective September 1, 2014, to specifically prohibit solicitation of prospective clients regarding a specific event via email.

The ABA proposal that removes references to "prospective clients" and substitutes "target of the solicitation" could narrow the prohibitions in the advertising rules. The Committee recommends that the prohibitions in our advertising rules remain broad.

14. RESPONSIBILITIES WHEN OUTSOURCING LEGAL SERVICES – RPC 1.1

MODEL RULE OF PROFESSIONAL CONDUCT 1.1 Comment [6] new language (Resolution 105C): Before a lawyer retains or contracts with other lawyers outside the firm to provide legal services to a client, the lawyer should obtain informed consent from the client and must reasonably believe that the other lawyers' services will "contribute to the competent and ethical representation of the client." The reasonableness of the decision to retain or contract with such other lawyers depends on the circumstances,

including the education, experience and reputation of the nonfirm lawyers, the nature of the services assigned to the nonfirm lawyers, and legal protections, professional conduct rules, and ethical environments of the jurisdictions where the services will be performed, particularly relating to confidentiality of information.

MODEL RULE OF PROFESSIONAL CONDUCT 1.1 Comment [7] new language (Resolution 105C): When lawyers from more than one firm are providing legal services to the client in a matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them.

The Special Ethics Committee considered a new official comment to Rule of Professional Conduct 1.1 (Competence) to address the obligations of lawyers who outsource legal work but decided that it is not necessary. Lawyers have a fundamental duty to exercise independent judgment, in the client's best interests, concerning referrals for legal services, litigation support services, and ancillary services. ACPE Opinion 681 (July 1995); ACPE Opinion 657 (February 1992); ACPE Opinion 696 (May 2005). With specific regard to outsourcing legal work, the Advisory Committee on Professional Ethics decided that a law firm that contracts with outside lawyers must notify the client that the outside lawyer is not with the firm unless the lawyer is closely supervised (such as when the outside lawyer is doing document review work). ACPE Opinion 632 (October 1989). The Opinion does not require client consent.

A commenter objected to the ABA suggestion that informed client consent be obtained when matters are handled by an outside lawyer. The Committee accepts the reasoning in Advisory Committee on Professional Ethics Opinion 632 and does not recommend requiring client consent to outsourcing.

The Committee recommends that the ABA comment on outsourcing not be added to the New Jersey Rules of Professional Conduct at this point in time.

15. CHOICE OF LAW FOR DETERMINING WHETHER CONFLICT ARISES – RPC 8.5

MODEL RULE OF PROFESSIONAL CONDUCT 8.5 Comment [5] (Resolution 107D): A lawyer is not subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur. The lawyer and client may sign a written agreement that reasonably specifies a particular jurisdiction. The agreement must reflect the client's informed consent.

The Special Ethics Committee considered a new comment to Rule of Professional Conduct 8.5 expressly permitting lawyers and clients to enter into an agreement regarding the application of a particular jurisdiction's disciplinary rules. Lawyers and clients are free to enter into agreements and, should discipline proceedings be initiated, those agreements can be submitted to the disciplinary authority. The Committee found that an official comment referring to such agreements, which would not be binding on the disciplinary authority, is unnecessary.

16. MULTIJURISDICTIONAL PRACTICE & UNAUTHORIZED PRACTICE OF LAW – RPC 5.5

MODEL RULE OF PROFESSIONAL CONDUCT 5.5 Comment [21] (Resolution 105B): Out-of-state lawyers may not advertise their legal services to persons in this jurisdiction even though the lawyer is authorized to provide services in certain matters as a multijurisdictional practitioner.

MODEL RULE OF PROFESSIONAL CONDUCT 5.5 Comment [1] (Resolution 105C): A lawyer may not assist another person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

The Special Ethics Committee does not recommend that these comments be added to Rule of Professional Conduct 5.5. The Committee finds the comments to be unnecessary, as the activities described in these comments are clearly violations of New Jersey's rules.

The next five sections of this Report (numbered 17 through 21), present the Committee's recommendations on other matters, not specifically proposed by the ABA Commission.

17. NEW RULE OF PROFESSIONAL CONDUCT REGARDING CIVILITY AND PROFESSIONALISM – RPC 8.4

The Special Ethics Committee recommends that the Rules of Professional Conduct expressly reinforce the fundamental obligation of lawyers to conduct themselves professionally and civilly inside and outside court. Accordingly, the Committee recommends that a new paragraph be added to Rule of Professional Conduct 8.4 providing: "A lawyer shall treat with courtesy and respect all persons involved in the legal process."

The Committee recognizes that such a rule could be abused by disgruntled litigants and adverse counsel. To address such concerns, the Committee recommends that an official comment be added, cautioning lawyers that an ethics grievance alleging violation of the Rule shall not be filed solely to obtain leverage in litigation or in any other disputed matter, and that a grievance shall not be filed until underlying litigation is completed.

Committee staff surveyed other jurisdictions to ascertain whether they have adopted a Rule of Professional Conduct on professionalism and civility. Most jurisdictions address the issue in the attorney oath or aspirational (nonenforceable) guidelines or creeds. The New Jersey State Bar Association Commission on Professionalism has adopted such a guideline, called Principles of Professionalism.

The NJSBA did not support a new Rule on professionalism or civility. It stated that lawyers who engage in "extreme discourtesy or unprofessionalism" can be disciplined under existing Rules of Professional Conduct. Another commenter stated that there is no need to include a specific rule on civility since unprofessional lawyers tend to fare poorly in their practice.

The Committee finds that there is a need to reinforce, in the text of the Rules, the fundamental and overarching obligation of lawyers to conduct themselves professionally and civilly inside and outside court. The Rules of Professional Conduct set the standards for New Jersey lawyers; those standards should expressly include a requirement that lawyers treat all persons involved in the legal process with courtesy and respect. This essential standard of conduct should not be implied or deduced merely from the spirit of the rules. It should be stated expressly, simply, and clearly in the text of the Rules.

The Committee recognizes that there may be initial difficulties in enforcing the new Rule. It trusts that the Supreme Court, Disciplinary Review Board, and Office of Attorney Ethics will develop, through case law, an enforcement framework that will provide sufficient guidance to practitioners.

The Committee recommends that a conforming amendment be made to Rule of Professional Conduct 3.2 (Expediting Litigation). That Rule provides: "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client and shall treat with courtesy and consideration all persons involved in the legal process." The latter phrase of this Rule, "and shall treat with courtesy and consideration all persons involved in the legal process," is repeated, with a slight word modification, in this new proposed Rule of Professional Conduct 8.4(h). Accordingly, the Committee recommends

that the latter phrase be deleted from Rule of Professional Conduct 3.2 and an official comment be added to that Rule referring to the standard of courtesy and respect set forth in Rule of Professional Conduct 8.4(h).

Rule of Professional Conduct 8.4 would be amended to state:

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of the Code of Judicial Conduct or other law;

(g) engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judiciary determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap, where the conduct is intended or likely to cause harm.

(h) A lawyer shall treat with courtesy and respect all persons involved in the legal process.

Official Comment:

Lawyers shall not file a grievance alleging violation of Rule of Professional Conduct 8.4(h) solely to obtain leverage in litigation or any other disputed matter. Such grievances shall not be filed until any underlying litigation or dispute is completed or resolved.

Rule of Professional Conduct 3.2 would be amended to state:

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client [and shall treat with courtesy and consideration all persons involved in the legal process].

Official Comment:

The former provision of this Rule, requiring lawyers to treat with courtesy and consideration all persons involved in the legal process, is now set forth in Rule of Professional Conduct 8.4(h). All law construing the standard in Rule of Professional Conduct 3.2 of "courtesy and consideration" is deemed to apply to the standard requiring lawyers to "treat with courtesy and respect all persons involved in the legal process."

18. NEW RULE PROVIDING "SAFE HARBOR" FOR LAWYERS WHO PRESENT ISSUES OF ETHICAL CONDUCT IN GOOD FAITH TO FIRM ETHICS COUNSEL OR INDEPENDENT COUNSEL, AND WHO IN GOOD FAITH FOLLOW THE ADVICE RECEIVED IN RESPONSE – RPC 5.2

The Special Ethics Committee recommends that Rule of Professional Conduct 5.2 and its title be amended to provide a "safe harbor" for lawyers who, in good faith, seek advice from firm ethics counsel or independent counsel on ethical conduct and, in good faith, follow the advice received.

Rule of Professional Conduct 5.2(b) currently provides that "[a] subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty." The "safe harbor" in this Rule is not available to solo practitioners, who are not "subordinate" lawyers, nor is it clearly applicable to lawyers who present issues to firm ethics counsel and, arguably, are not "subordinate" lawyers. The Committee seeks to encourage all lawyers to obtain advice in good faith – meaning, by

presenting accurate details and full consideration of the issues – to firm ethics counsel or independent counsel when they are faced with difficult questions of professional duty.

The Committee recommends that a new paragraph be added to Rule of Professional Conduct 5.2, and the title of the Rule be amended. Rule of Professional Conduct 5.2's title would be "Responsibilities of a [Subordinate] Lawyer," and it would state:

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

(c) A lawyer does not violate the Rules of Professional Conduct if that lawyer presents an issue of ethical conduct in good faith to firm ethics counsel or independent counsel on an arguable question of professional duty and, in good faith, acts in accordance with the advice received in response.

19. CHOICE OF LAW – RPC 8.5

The Special Ethics Committee recommends that the last sentence in Model Rule 8.5(b)(2) regarding choice of law be added to New Jersey Rule of Professional Conduct 8.5(b)(2). That sentence states: "A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur." The NJSBA supported this Rule amendment.

Rule of Professional Conduct 8.5(b)(2) would be amended to state:

(b) Choice of Law. In the exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

20. REVISION OF RULE OF PROFESSIONAL CONDUCT 5.5 TO INCLUDE LAWYERS LICENSED IN JURISDICTIONS OUTSIDE THE UNITED STATES AS MULTIJURISDICTIONAL PRACTITIONERS

The Special Ethics Committee recommends that Rule of Professional Conduct 5.5(b)(3) (multijurisdictional practice) be revised to include foreign (licensed outside the United States) lawyers. Currently, only lawyers admitted to practice in a United States jurisdiction may engage in limited practice in New Jersey pursuant to this Rule. The Committee recommends that a lawyer admitted to practice in a jurisdiction outside the United States should similarly be permitted to practice in New Jersey, but only in the circumstances set forth in subparagraphs (i), (ii), (iii), and (iv) of this Rule.

Rule of Professional Conduct 5.5(b)(3) permits an out-of-state lawyer to engage in the practice of New Jersey law in certain limited circumstances. The Rule provides:

(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:

* * * *

(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 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;

(iv) the out-of-state lawyer's practice in this jurisdiction is occasional and the lawyer associates in the matter with, and designates and discloses to all parties in interest, 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) the lawyer practices under circumstances other than (i) through (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.

Multijurisdictional practitioners engaging in conduct permitted under Rule of Professional Conduct 5.5(b)(3)(iv) must associate with New Jersey counsel and the practice may only be "occasional." See Committee on Unauthorized Practice of Law

Opinion 49 (October 2012) ("occasional" practice generally means entering New Jersey to provide limited legal services only a few times per year). The Committee suggests that these requirements provide sufficient protection to foreign lawyers' clients in New Jersey matters. As subsection (b)(3)(v) of Rule of Professional Conduct 5.5 permits a more far-ranging practice in New Jersey, the Committee recommends that foreign lawyers be excluded from practice under that portion of the Rule.

21. COMMENTS TO ANY OR ALL OF NEW JERSEY'S RULES OF PROFESSIONAL CONDUCT

The Special Ethics Committee recommends that comments to all Rules of Professional Conduct be developed and adopted by a Court committee. The Committee finds that comments to rules are desirable and helpful to the legal community. The Committee recognizes that developing a full set of official, binding comments is a formidable task, and suggests that a committee be authorized to draft unofficial comments to the Rules that would be illuminating but not necessarily binding. Like the work of other Court committees, such comments could be published on the Judiciary website.

The NJSBA opposed adoption of comments to the Rules. It noted that New Jersey did not adopt comments when it enacted the Rules of Professional Conduct in 1984 and the framework -- without extensive comments -- has worked well.

CONCLUSION

This Report and Recommendations of the Special Committee on Attorney Ethics and Admissions regarding the ABA amendments to the Model Rules of Professional Conduct and standards for admission to practice law, and certain additional matters, is hereby presented to the Court for its consideration. The Committee thanks the Court for this opportunity to serve.

Respectfully submitted,

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