

NOTICE TO THE BAR

SUPREME COURT COMMITTEE ON THE RULES OF EVIDENCE REQUEST FOR COMMENTS ON DISCUSSION DRAFT OF UNIFIED MENTAL HEALTH SERVICE PROVIDER EVIDENTIARY PRIVILEGE

In 2011, the Supreme Court authorized its Committee on the Rules of Evidence (“Committee”), chaired by Appellate Division Presiding Judge Carmen Messano, to undertake a comprehensive study of the various mental health care provider evidentiary privileges with the goal of determining whether to recommend that New Jersey replace these many privileges with one unified privilege for all mental health care providers. Judge Messano appointed a subcommittee to study the issue, chaired by Appellate Division Judge Mitchel Ostrer.

A previous Notice to the Bar dated June 11, 2012 requested input from any interested parties on the concept of a unified mental health care provider privilege. The subcommittee at that time also wrote to over fifty organizations that might have an interest in the subject of mental health service provider privileges requesting their comments. The subcommittee received approximately twenty comments from a variety of interested private organizations and government agencies. Most supported the concept of a unified mental health care provider privilege, though many differed as to the preferred parameters of such a privilege. Subsequently, the Supreme Court authorized the Committee to continue its work on the unified privilege.

Based on the comments it received, the subcommittee prepared a draft rule, N.J.R.E. 534, on the mental health care provider evidentiary privilege. Draft N.J.R.E. 534 (“Mental Health Service Provider-Patient Privilege”) is captioned as a “Discussion Draft” so as to reflect that it is a work in progress. The Discussion Draft is posted on the Judiciary website at <http://www.judiciary.state.nj.us/notices/2014/discussiondraft.pdf> . This rule, if adopted, may modify the current privileges found in the following:

- N.J.R.E. 505 (N.J.S.A. 45:14B-28), the Psychologist-Patient Privilege
- N.J.R.E. 506 (N.J.S.A. 2A:84A-22.1 to -22.7), the Patient and Physician Privilege
- N.J.R.E. 510 (N.J.S.A. 45:8B-29), the Marriage Counselor Privilege
- N.J.R.E. 511 (N.J.S.A. 2A:84A-23), the Cleric-Penitent Privilege
- N.J.R.E. 517 (N.J.S.A. 2A:84A-22.13 to -22.16), the Victim Counselor Privilege
- N.J.R.E. 518 (N.J.S.A. 45:15BB-13), the Social Worker Privilege
- N.J.S.A. 45:2D-11, the Alcohol and Drug Counselor Privilege
- N.J.S.A. 45:8B-49, the Licensed Professional Counselor Privilege
- N.J.A.C. 13:42A-6.3, a State-Certified Psychoanalyst Privilege

The subcommittee also prepared an Interim Report summarizing the Discussion Draft and reviewing the issues the subcommittee considered in developing the

Discussion Draft. The subcommittee's Interim Report is posted on the Judiciary's website at <http://www.judiciary.state.nj.us/notices/2014/interimreport.pdf>.

The Committee seeks comments on the Discussion Draft and Interim Report from groups and individuals with an interest in the subject. Accordingly, please send any comments on the Discussion Draft of the unified mental health care provider evidentiary privilege in writing by June 2, 2014 to:

Carol A. Welsch, Esq., Committee Staff
Committee on the Rules of Evidence
Hughes Justice Complex; P.O. Box 986
Trenton, New Jersey 08625

Comments may also be submitted via Internet e-mail to the following address:
Comments.Mailbox@judiciary.state.nj.us.

The Committee will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address and those submitting comments by e-mail should include their name and e-mail address. Comments submitted in response to this notice will be subject to public disclosure. Former or present mental health patients or their family members who wish to comment on the proposed unified privilege while preserving their privacy may do so by submitting their comments through an identified representative.

The Committee on the Rules of Evidence expects to make its recommendation to the Supreme Court on a unified mental health care provider evidentiary privilege in January 2015. Public comments on the Committee's recommendations will also be solicited at that time.

/s/ Glenn A. Grant

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Date: April 1, 2014