BRIDGE THE GAP

Satisfy a full year of CLE credits in one weekend

CLE Materials
New Jersey Track | Saturday

January 11, 2020

Fordham Law School
Skadden Conference Center
Bateman Room (Second Floor)
150 W 62nd Street
New York, NY 10023
NEW JERSEY
DAY 1 – Saturday January 11, 2020
Table of Contents

1. Speaker Biographies (view in document)

2. CLE Materials

**Panel 1: NJ Family Law Practice**

*N.J. Court Rules, R. 5:4-2.* (View in document)

**Panel 2: NJ Civil Trial Preparation**

Campi, Ryan Patrick. *Fordham Law School 2020 Bridge the Gap NJ Civil Trial Preparation Presentation Outline.* (View in document)

150-JAN N.J. Law. 48. *New Jersey Lawyer, the Magazine. A Primer on Attorney-Client Privilege.* (View in document)

Supplemental Material: *An Overview of New York Bail Reforms.* (View in document)

Garcia, Norberto. 313-AUG N.J. Law. 61. *New Jersey Lawyer, the Magazine. Obstacles to Securing a Diverse Jury in New Jersey Courts: Why Do We Want Diversity in Trial Juries.* (View in document)


**Panel 3: NJ Municipal Courts: Face of the Judiciary to the New Jersey Public**

Barry-Austin, Clarence. *NJ Municipal Court Practice Detailed Outline.* (View in document)


**Panel 4: NJ Landlord-Tenant Practice**

*New Jersey Landlord-Tenant Law Basics: Outline.* (View in document)

2A:18-53 Removal of Tenant in Certain Cases; Jurisdiction. (View in document)

**Panel 5: Estate Planning**


Supplemental Material. *Estate Planning Questionnaire Template.* (View in document)

Bergen County Surrogate’s Court. Intestacy Information. (View in document)

Justia 108 N.J.L.J 501. *Attorney’s Including Person Gain in Client’s Will.* (View in document)

Legal Ethics Opinion 1515: *Attorney Drafting Instrument Which Names Self Either As Personal Representative or Trustee or Which Directs Such Other Designee to Employ Attorney as Fiduciary Administrator.* (View in document)

NJ Inheritance Tax Guide 2019. (View in document)

New Jersey Division of Taxation. *A Guide to Being an Executor.* (View in document)

*Will Form 1 Simple with Trusts Last Will and Testament.* (View in document)

Mahon, Joseph C.. *Durable Power of Attorney.* (View in document)

Mahon, Joseph C.. *Advance Directive for Health Care (Living Will).* (View in document)
Panel 6: Ethical Issues Associated with Trial Practice

Klein, Sharon R.; Stio III, Angelo A.; Zurich, Brian. New Jersey Lawyer, the Magazine. Ethical Issues That Arise from Social Media Use in Courtrooms. [View in document]

Berman, Mark A.; Grande, Ignatius A. and Hedges, Ronald J. Social Media Ethics Guidelines of the Commercial and Federal Litigation Section of the New York State Bar Association. [View in document]


Formal Opinion 745. Advising A Client Regarding Posts on Social Media Sites. [View in document]


Rules of Professional Conduct (includes all amendments through those effective September 10, 2019). [View in document]
Bridge the Gap 2020 Speaker Bios

Janelle Baptiste  
**Immigration Attorney, Spar & Bernstein, P.C.**  
Immigration Attorney at Spar & Bernstein, P.C.

Lindsay Baretz  
**Attorney, Law Office of Jeffrey R. Kuschner**  
Lindsay R. Baretz, Esq. is an experienced landlord-tenant attorney who specializes in subsidized housing programs. She has been working in housing related issues for eight years. She graduated with honors from both New York University’s Gallatin School of Individualized Study and from Seton Hall University School of Law. After graduation, she clerked for the Honorable Camille M. Kenny, J.S.C. in the Union County Superior Court of New Jersey. She has been with the Law Office of Jeffrey R. Kuschner since 2011.

Honorable Clarence Barry-Austin  
**Chief Judge, Municipal Court, South Orange, New Jersey**  
Clarence Barry-Austin is a Martindale Hubbell AV-Preeminent Rated Certified Civil Trial Attorney with a practice concentration in personal injury litigation. Clarence is an undergraduate of Fordham University and Law graduate of Rutgers-Newark Law School. He practiced civil defense law for Allstate Company Insurance from 1977 to 1984. Then started his own practice where he concentrated in Plaintiff personal injury cases. In 1994, Clarence was appointed to the South Orange Municipal Court.

Tanya Blocker  
**Senior Counsel; Immediate Past President, Association of Black Women Attorneys**  
A Senior Counsel in Labor & Employment, Ms. Blocker has extensive experience litigating management-side employment matters. This includes federal and state anti-discrimination laws, state and local wage and hour, and class and collective actions. Ms. Blocker has successfully tried cases in both state and federal court and has significant experience litigating race, gender, age, disability, and retaliation actions. Prior to joining Gordon & Rees, Ms. Blocker served as Senior Counsel in the Labor & Employment Law Division of the New York City Law Department, Office of Corporation Counsel. There she successfully co-chaired a trial on significant First Amendment retaliation claims, defended numerous depositions in various employment and retaliation matters on behalf of municipal agencies, led the defense of a class/collective action involving a 50,000 employee municipal agency against gender discrimination and pay equity claims, and litigated an equal pay action involving executive compensation resulting in a favorable settlement for her client.

Ms. Blocker is also a complex commercial litigator. Preceding her tenure at the NYC Law Department, Ms. Blocker was an associate at the law firm Kaye Scholer LLP, where she concentrated on white collar criminal defense, securities litigation, and government and corporate investigations. Ms. Blocker played a key role in successfully defending a fraudulent inducement/conveyance action on behalf of the firm’s Fortune 500 client.

Recognizing the importance of community engagement and leadership, on November 1, 2017, Ms. Blocker was installed as the twenty-second President of the Association of Black Women Attorneys (ABWA), a non-profit bar association, established in 1976, committed to promoting and supporting both the personal and professional development and growth of Black women attorneys. Notably, the New York Law Journal recognized Ms. Blocker as a Distinguished Leader in the 2018 edition of the journal’s Professional Excellence Awards for her exemplary leadership of the organization.

Ms. Blocker also spent a significant portion of her time in West Africa engaging in diversity and governance work as well as presenting on international employment law. Ms. Blocker was recently selected to participate in the Center for Strategic & International Studies (CSIS) Abshire-Inamori Leadership Academy (AILA) 2019
Fellowship program—a flagship leadership program designed to equip aspiring global leaders to be effective and ethical changemakers. In addition, Ms. Blocker has volunteered a significant portion of her time serving as a mock trial coach for a public school in Harlem, New York, and she is a former board member of the After-School All-Stars (ASAS) NY/NJ Chapters—a not-for-profit organization committed to sustaining after school programming for middle schoolers. Ms. Blocker currently serves as the Co-Chair of the Metropolitan Black Bar Association (MBBA) Labor and Employment Law Section, is an Executive Council for the Network of Bar Leaders, and is a member of the New York City Bar Association Labor and Employment Committee.

Association of Black Women Attorney’s (ABWA) – President (2017 – 2019)
New York City Bar Association – Labor and Employment Committee Member (2018 – present)
Metropolitan Black Bar Association (MBBA) – Labor and Employment Section Co-Chair (2013 – present)
National Bar Association – 2018-2019 Legislative Committee Chair
Council of Urban Professionals (CUP) Executive Leadership Participant (ELP)
Abshire-Inamori Leadership Academy (AILA) 2019 Fellow

Ms. Blocker’s awards include, the National Bar Association Women Lawyers Division’s Outstanding Young Lawyers award, the NAACP Mid-Manhattan Branch Women of Excellence Award, the NAACP Jamaica Branch Community Service Award, the Assembly Member Nick Perry Outstanding Legal Advocate Award and the St. John’s University Law School Women’s Law Society Influencer Award. She has also been named a Network Journal 40 Under Forty Achievement honoree, a Diversity Journal 2019 Women Worth Watching honoree, a National Bar Association 40 Under 40 Nation’s Best Advocates honoree and a New York Law Journal 2018 Professional Excellence Awardee.

Cristin M. Boyle
Associate, Riker Danzig Scherer Hyland Perretti LLP
Cristin M. Boyle is an associate in the Firm’s Governmental Affairs Group and Cannabis Law Group. Her practice includes general litigation, litigation for and against government agencies, condemnation and eminent domain litigation, representation of state agencies and local authorities and governments, white collar defense, and representation of utilities in rate proceedings. She received her law degree from Fordham University School of Law in 2013, where she served as a Board Member and Competitor for the Brendan Moore Trial Advocates, a Teaching Assistant for the Legal Writing Program, and an associate editor of the Intellectual Property, Media & Entertainment Law Journal. Cristin is a member of the New Jersey State Bar Association Cannabis Law Special Committee. She has served as an adjunct professor at Fordham Law School, teaching trial advocacy skills to students as part of the Brendan Moore Trial Advocacy program. Cristin graduated from New York University, cum laude, with a B.F.A. in Drama and B.A. in English and American Literature. Prior to law school, Cristin was a professional actor and worked at several New York casting and talent agencies. Thomson Reuters included Cristin on the New Jersey Super Lawyers “Rising Stars” list for State, Local and Municipal Law in 2019.

Mary Kate Brennan
Associate, Dentons
Mary Kate Brennan is an associate in the New York office. A professional chaser of “bad guys,” her practice focuses on protecting brands from counterfeiters around the world through multi-jurisdictional litigation, supply chain analysis, asset-tracing and client counselling on critical intellectual property enforcement issues. A seasoned litigator, Mary Kate accrued significant courtroom experience through both government service and private practice. During the course of her career, she has first and second chaired trials, prepared and argued dozens of motions and taken and defended well over 50 depositions. As a member of the litigation department of The Port Authority of New York and New Jersey, Mary Kate handled matters in both state and
federal courts, from inception through trial and appeal, including working on a three-attorney team responding to state and federal subpoenas related to the lane-closing scandal at the George Washington Bridge, better known as “Bridgegate.” Prior to joining Dentons, Mary Kate was an associate at an intellectual property boutique where she managed more than 60 anti-counterfeiting cases against e-commerce infringers in Manhattan federal court.

Mary Kate holds a JD from Fordham University School of Law and an LL.M. in Fashion Law, also from Fordham. She received the LL.M. Fashion Law Award, presented to the graduate with the highest cumulative GPA in the program. An article she wrote on Amazon’s attempt to control the international maritime transportation of goods, based upon her LL.M. thesis, was published in the first fashion-focused edition of the *Fordham Intellectual Property, Media & Entertainment Law Journal*.

**Ryan Patrick Campi**  
**Attorney, Graziano & Campi, LLC**

Ryan Patrick Campi, of the law firm Graziano & Campi, LLC, represents individuals and corporations in civil litigation at both the trial and appellate levels, estate matters including probate litigation, as well as commercial contract transactions and disputes. He began his career as a litigation attorney in New York City advocating in trial and appellate cases ranging from construction defect, World Trade Center litigation, mass toxic tort and transportation litigation.

Ryan was named to the 2020 New Jersey SuperLawyer’s Rising Stars List. He is a member of the Bar Association of the City of New York, the New York County Lawyers Association, the New Jersey State Bar Association and the New York State Bar Association. Admitted to practice in both New York and New Jersey, he holds a Juris Doctor degree from Fordham University School of Law. Ryan also practices in federal courts, holding admissions to the Supreme Court of the United States, the U.S. Circuit Court for the Third Circuit, and the District Courts of New Jersey, and the Southern & Eastern Districts of New York.

**Natacha Carbajal-Evangelista**  
**Deputy Director, Regulatory Affairs, New York State Workers’ Compensation Board**

Natacha Carbajal-Evangelista is Deputy Director, Regulatory Affairs, for the New York State Workers’ Compensation Board. In this role, she is responsible for all aspects of regulatory affairs for the agency, including developing and interpreting policy for the Board’s risk management program; overseeing New York State’s Paid Family Leave and Disability Benefits programs; and serving as an advisor to the Chair and Executive Director on policy matters.

Prior to joining the Workers’ Compensation Board, Ms. Carbajal-Evangelista served as the Governor’s Assistant Secretary for Labor and Workforce at the Office of the Governor of the State of New York. As a key member of the State’s leadership team, she assisted, oversaw and directed program and fiscal activities of New York State's dynamic labor and workforce-related agencies and boards, including providing daily strategic operational, legal, policy and budgetary management. Drawing upon her legal training and experience, Ms. Carbajal-Evangelista negotiated budget initiatives on behalf of the Governor through four successful on-time budget cycles. She also led the Statewide implementation of groundbreaking initiatives, including New York's Paid Family Leave, the strongest paid family leave policy in the nation.

Before that, Ms. Carbajal-Evangelista served as the Special Counsel for Ethics, Risk and Compliance to the Commissioner for the New York State Department of Labor, where she focused on government efficiency, responsiveness and accountability.

Prior to joining State government, Ms. Carbajal-Evangelista was a senior associate at Baker & Hostetler LLP, where she was Counsel to the Trustee in the Liquidation of Bernard L. Madoff Investment Securities LLC and advised on issues of international insolvency and bankruptcy. She also previously served as a Judicial Law
Clerk for the Hon. Elizabeth S. Stong of the United States Bankruptcy Court of the Eastern District of New York and for the Hon. Arthur J. Gonzalez (retired), former Chief Judge of the United States Bankruptcy Court of the Southern District of New York. She is a proud graduate of Fordham Law School and Cornell University’s School of Industrial and Labor Relations.

**Jana Checa Chong, Esq.**  
**Senior Intellectual Property Counsel, Louis Vuitton Americas**

Jana Checa Chong currently serves as Senior Intellectual Property counsel for Louis Vuitton and has been with the company since February 2014. In her role, Ms. Checa Chong is involved in the civil enforcement of the intellectual property rights of Louis Vuitton as well as various LVMH fashion group brands including Christian Dior, Céline, Givenchy, Marc Jacobs, Emilio Pucci, Berluti, and Loewe. Prior to joining Louis Vuitton, Ms. Checa Chong was an associate attorney in the New York office of Gibson, Dunn & Crutcher LLP. Her practice focused on intellectual property litigation and white collar defense and investigations. As part of Jana’s intellectual property practice, she had extensive experience representing brand owners in trademark infringement actions relating to internet-based counterfeiters. Jana received a Bachelor of Arts degree in International Affairs from the George Washington University. She received a Juris Doctor degree from Fordham University School of Law, where she served as Managing Editor of the Fordham Moot Court Board and as Associate Editor of the *Fordham Law Review*.

**Pei Pei Cheng-de Castro**  
**Executive Deputy Inspector General for Legal, MTA Office of the Inspector General; Adjunct Professor, Fordham Law School**

Pei Pei Cheng-de Castro serves at the MTA Office of the Inspector General as Executive Deputy Inspector General for Legal. She recently served at the New York State Joint Commission on Public Ethics for over six years as Deputy Counsel and the Director of Investigations and Enforcement. Prior to that, she was a partner at the law firm Peluso & Touger, LLP where she practiced criminal defense and commercial litigation. She co-founded a charter school, Central Queens Academy Charter School, serving immigrant and underprivileged youth. She currently teaches Legal Writing at Fordham Law School and formerly taught legal writing and drafting litigation at New York Law School. Ms. Cheng-de Castro is a graduate of the University of California at Berkeley (Double major in Economics and Environmental Science; minor in Education) and New York Law School.

**Honorable Chandra Cole**  
**Chief Judge, Municipal Court, Township of Irvington, New Jersey**

The Honorable Chandra Rainey Cole, C.J.M.C. is the Chief Judge in the Township of Irvington, New Jersey where she grew up. Judge Cole completed her undergraduate education at Rutgers University in New Brunswick, New Jersey attending Livingston College where she double majored in Criminal Justice and African American Studies, graduating Cum Laude. She completed a joint degree program at Rutgers University Law School in Camden, where she earned her Juris Doctorate and her Master’s Degree in Public Administration and Politics from the Edward J. Bloustein School of Public Policy in New Brunswick. During the summers, she interned at the New Jersey Office of the Attorney General, Division of Law and Public Safety in both the Trenton and Newark offices.

After completing her law school education, Judge Cole immediately began her life of public service. She served as a judicial clerk with the Office of Administrative Law in Newark, New Jersey. She then began practicing at the Law Offices of Love and Randall in East Orange, New Jersey where she represented several public Boards of Education.

Judge Cole was appointed to the Municipal Court bench in February of 2015 where she continues to faithfully serve as the Chief Municipal Court Judge. Prior to her appointment as a Judge, she was the Chief Prosecutor of the Township of Irvington for over ten (10) years. She is also currently an Assistant County Counsel in the County of Union where she has been for three (3) years and prior to that an Assistant County Counsel for the
Judge Cole is passionate about children having equal access to education. She is the founder and creator of College bound, Inc., an organization that mentors inner city youth and assists them with entrance and successful completion of higher education. She is also a Board Member of the Leaguers, Inc., the oldest and largest Headstart Program in the State of New Jersey. Finally, Judge Cole is a proud member of Alpha Kappa Alpha Sorority, Inc. – Beta Alpha Omega Chapter in Newark, New Jersey.

Judge Cole has a husband, Carl Cole, Sr. and two sons aged 14 and 10, Carl (CJ) and Chase. Her boys are the apples of her eye and chasing after them keeps her young.

We are what we repeatedly do. Excellence, then, is not an act, but a habit.
– Aristotle

Jordana Alter Confino
Director of Professionalism; Adjunct Professor of Law, Fordham Law School
Jordana Alter Confino joined Fordham Law School in summer 2019 as the Director of Professionalism and Special Projects in the Office of Academic Affairs. In that role, Jordana is responsible for overseeing the 1L house system and developing additional programs to promote student wellness and professionalism. Jordana also serves as an Adjunct Professor of Law, co-teaching Peer Mentoring and Leadership and overseeing the upper-year peer mentorship program.

Prior to joining Fordham, Jordana served as the Assistant Director of Academic Counseling and Acting Clerkship Advisor at Columbia Law School, where she continues to co-teach the Federal Appellate Court Externship. Jordana previously clerked for the Honorable Robert D. Sack on the United States Court of Appeals for the Second Circuit, and for the Honorable Paul A. Engelmayer on the United States District Court for the Southern District of New York.

Jordana is Vice Chair of the Law Firm/Law School Collaboration Work Group of the National Association for Law Placement's Well-Being Interest Group. She is also an active member of the Law School Assistance Committee of the ABA Commission on Lawyer Assistance Programs and the New York City Bar Association’s Mindfulness & Well-Being in Law Committee. Jordana earned a Certification in Applied Positive Psychology from the New York Open Center in 2018.

Mark Conrad
Associate Professor of Law and Ethics; Director of Sports Business Concentration, Fordham University Gabelli School of Business
Mark Conrad directs the sports business concentration and is an associate professor of law and ethics at Fordham University’s Gabelli School of Business. In addition to teaching sports law and the business and ethics of sports, he also has taught courses covering contracts, business organizations, and media law.

Professor Conrad’s books and articles have appeared in academic, legal, and general-circulation publications. The third edition of his book The Business of Sports — Off the Field, In the Office, On the News was published by Routledge in 2017. Prior editions have been cited in leading journals as among the most comprehensive texts on the subject.

In addition to his full-time responsibilities at Fordham, Professor Conrad has lectured at leading sports business and law programs, including Columbia University’s sports management program and at St. John’s University’s LLM program in international sports practice. He has appeared on panels at Duke, Fordham, Cardozo, and the University of Virginia Law Schools. He was president of the Sport and
Recreation Law Association from 2014 to 2015 and is serving as president of the Alliance for Sport Business from 2016 through 2018. He has been asked to advise international programs in sports and communications.

Professor Conrad has been quoted in The New York Times, Boston Globe, and Chicago Tribune and has appeared on CNN and Bloomberg TV. He holds a BA from City College of New York and a JD from New York Law School. He also received an MS from Columbia University’s Graduate School of Journalism. He resides in New York City.

Elizabeth Crotty
Founding Member, Crotty Saland PC

Founding member, Elizabeth “Liz” Crotty, has a varied legal career garnering extensive experience in both criminal law and complex civil litigation. Since joining with her partner, Jeremy Saland, to establish Crotty Saland PC, Liz has handled countless cases and represented both those accused of crimes as well as those who are victims of the same. An aggressive advocate, Liz also knows when zealous representation mandates a subtler approach. Irrespective of the case, Liz has secured dismissals, declination of prosecutions, and host of successful dispositions in a wide variety of cases including Grand Larceny, Frauds, Assault, Rape, DWI, Weapon Possession and other crimes. If a case requires mitigation or a trial, Liz is prepared to do whatever is ethically necessary to best achieve success for a client. It is this experience and character that resulted in her selection as a Super Lawyer, an honor given to those attorneys who have attained a high-degree of peer recognition and professional achievement as a result of independent research, peer nominations and peer evaluations.

Liz began her career at the New York County District Attorney's Office under Robert M. Morgenthau where she served as an Assistant District Attorney in the Trial Division. In that capacity, Liz handled the entire spectrum of crimes. Whether the offenses were “street crimes” such as assault, drug sales and weapons possession or more sophisticated crimes including falsifying business records, identity theft and money laundering, Liz had tremendous success investigating these matters and securing convictions before both juries and judges. While far from an exhaustive list of the offenses Liz prosecuted, the cases she handled included the white collar crimes of scheme to defraud, forgery and grand larceny to violent offenses including burglary, kidnapping and attempted murder.

After serving over four years in the Trial Division, Liz continued her training and expanded her legal skills by moving to the Investigation Division of the Manhattan District Attorney's Office. For two years, Liz prosecuted cases as a member of the Special Prosecutions Bureau. While there, Liz handled and supervised complex white-collar cases that were not merely perpetrated locally, but on a national and international level. Notably, Liz worked on a complex international investigation involving an international organization, banks and foreign governments.

Upon leaving the Manhattan District Attorney's Office Liz worked at a well-known boutique civil practice for over two years. While there, Liz honed her investigatory and litigation skills further while working on complex international litigation. At the firm she handled both State and Federal matters regarding aviation litigation, wrongful death, negligence and product liability. Specifically, Liz worked on cases involving foreign banks, governments, charities, airlines, municipalities, and large corporations. In some instances, these resulted in settlements in excess of a million dollars.

Liz is admitted to New York State Courts, the Southern and Eastern Districts. Liz currently serves as board member for the Manhattan District Attorney’s Association, the not-for-profit official alumni organization for the Manhattan District Attorney’s Office. Additionally, Liz serves on New York City Bar Association’s Judiciary Committee where she and her colleagues evaluate candidates for election, reelection, appointment,
reappointment, designation and certification to judicial office and other offices connected with the administration of justice in state and federal courts in City of New York. Liz also belongs to the Federal Bar Council and previously served on the International Human Rights Committee at the Association of the City Bar.

**Benjamin I. Dach**  
**Associate, Quinn Emmanuel Urquhart & Sullivan, LLP**  
Ben Dach is an associate in Quinn Emanuel’s New York office. He is a life sciences patent attorney with a focus on patent litigation in the chemical, biological, and pharmaceutical sciences. He is also part of Quinn Emanuel’s Cannabis Litigation Practice Group. Before joining the firm in 2018, Ben worked six years at an intellectual property boutique where he focused on patent litigation, prosecution, counseling, opinion work, and patent strategy in a broad range of technologies. He has experience in all stages of patent litigation, including pre-suit investigation, fact and expert discovery, trial, post-trial, and appeals. Ben has represented innovative brand name pharmaceutical companies in complex Hatch-Waxman litigations against multiple defendants.

His practice also includes performing diligence on IP portfolios regarding the patentability of inventions, the validity of patents, and the freedom-to-operate new technologies.

Ben received his J.D. from Fordham Law School. As a graduate researcher, Ben earned a Ph.D in Chemistry from Columbia University in 2012. And he received a B.A. in Chemistry from Yeshiva University in 2007.

**Edgar De Leon**  
**Attorney, The De Leon Firm PLLC**  
Edgar De Leon is a graduate of the Fordham University School of Law (J.D.) and Hunter College (M.S. & B.A.). He has worked as a Detective-Sergeant and an attorney for the New York City Police Department (“NYPD”). His investigative assignments included investigating hate motivated crimes for the Chief of Department and allegations of corruption and serious misconduct by members of the service for the Deputy Commissioner of Internal Affairs and the Chief of Detectives. While assigned to the NYPD Legal Bureau, Mr. De Leon litigated both criminal and civil matters on behalf of the Police Department. He conducted legal research on matters concerning police litigation and initiatives and advised members of the department on matters relating to the performance of their official duties. Mr. De Leon has counseled NYPD executives and law enforcement and community-based organizations domestically and internationally, concerning policy and procedure development in police related subjects including cultural diversity. In 2005, Mr. De Leon was part of an international team that traveled to Spain and Hungary. Working under the auspices of the Office for Democratic Institutions and Human Rights (“ODIHR”), a subdivision of the Organization for Cooperation and Strategy in Europe (“OCSE”), the team drafted a curriculum and implemented the first ever training program for police officers in the European Union concerning the handling and investigation of Hate Crimes.

In January of 1999, Mr. De Leon retired from the NYPD with the rank of “Sergeant S.A.” (Special Assignment) and began his private law practice. In 2003, he was one of the founding partners of De Leon & Martin, PLLC, now known as The De Leon Firm, PLLC. The firm practices in the areas of criminal defense, matrimonial/family law, employment litigation and general litigation matters. Mr. De Leon has also worked on a per-diem basis representing members of the NYPD Patrolman's Benevolent Association. Mr. De Leon serves as Impartial Hearing Officer for the New York State Department of Education, whereby he adjudicates claims arising under the Individuals with Disabilities in Education Act (“IDEA”). He has on many occasions trained newly appointed Impartial Hearing Officers and has been a speaker for the New York State Bar Association’s continuing legal education class on special education law. Mr. De Leon serves as a Trial Officer for the New York City Housing Authority where he adjudicated cases concerning employee discipline pursuant to the New York Civil Service Law § 75, and currently serves as a Hearing Officer for the City of New York - Office of Administrative Trials & Hearings (“OATH”). OATH is the City's central
independent administrative law court, that is responsible for holding hearings on summonses issued by a variety of City agencies.

Mr. De Leon has served as a member of the advisory board of the Advanced Systems Technology Corporation (“AST”) located in Lawton, Oklahoma and Instructional Systems Incorporated (ISI) located in Hackensack, New Jersey. He counseled both companies in legal and related issues regarding computer-based training in the area of cultural diversity for the law enforcement community and private security industry nationwide. Mr. De Leon also served on the Board of Directors of Loisaida, Inc., a not-for-profit corporation founded in 1979, to address the problem of social and economic disenfranchisement of poor and low-income residents in the Lower East Side of Manhattan. In September of 2003, Mr. De Leon was appointed by the Mayor of the City of New York, Michael R. Bloomberg, to serve on the Mayor’s Committee on City Marshals. He served on the committee until the end of the Mayor’s term in office in 2013. Mr. De Leon also served as the President of the Puerto Rican Bar Association (“PRBA”) from June 1, 2004 to June 1, 2005. All PRBA Presidents serve a one-year term. In June of 2012, Mr. De Leon was appointed to the Board of Directors of Equal Justice USA (“EJUSA”) where he served a one-year term. EJUSA is a national, grassroots organization working to build a criminal justice system that is fair, effective, and humane, starting with repeal of the death penalty and increased services to families of homicide victims. Mr. De Leon has served as a legal analyst and frequent guest on Court TV and the WWRL Radio show, Legally Speaking.

Mr. De Leon currently sits as an executive board member of the New York State Association of Criminal Defense Lawyers. He has at various times been a member of the American Bar Association, the New York State Bar Association (Criminal and Family Law Section Member), the Association of the Bar of the City of New York, the New York County Lawyers Association (Civil Rights and Small Firm Committee Member), the Hispanic Bar Association of New Jersey, the Puerto Rican Bar Association and the Dominican Bar Association. He is a recipient of the Network for Woman’s Services Commitment to Justice Award in 2000, the Borough of Manhattan Community College's Latino Honor Society Award for 2001, the Fordham University School of Law LALSA Alumni Award for 2004 and the El Diario - Most Notable and Outstanding Latinos Award in 2012. Mr. De Leon is admitted to practice law in the state and federal courts of New York and New Jersey.

Kevin DeMaio
Associate, Drinker Biddle & Reath LLP

Kevin DeMaio is an associate at the Florham Park office at Drinker Biddle & Reath LLP, who represents a wide range of clients in civil litigations. Kevin’s experience includes a variety of complex commercial and business disputes, including disputes involving contracts, commercial leases, and consumer class actions. Kevin is a regular contributor to the firm’s TCPA blog, which provides important news and insights about the Telephone Consumer Protection Act.

Upon graduation from law school and prior to joining the firm as an associate, Kevin served as a law clerk to the Hon. Anne E. Thompson of the United States District Court for the District of New Jersey from 2016-2017. While in law school, Kevin served as a judicial intern for the Hon. Cathy L. Waldor, also of the United States District Court for the District of New Jersey.

Raymond Dowd
Partner, Dunnington, Bartholow & Miller LLP; Adjunct Professor of Law, Fordham Law School

Raymond Dowd is a partner in the law firm of Dunnington Bartholow & Miller LLP in New York City. He authored Copyright Litigation Handbook (now in its 10th edition). His practice consists of federal and state trial and appellate litigation, arbitration and mediation, having served as lead trial counsel in broadcasting.
fashion, publishing, art law, copyright, trademark, cybersquatting, privacy, trusts and decedents estates, licensing, corporate and real estate cases.

He has litigated questions of Austrian, Canadian, French, German, Italian, Russian and Swiss law. He litigated landmark decisions from Surrogate’s Court to the New York Court of Appeals, including the Estate of Doris Duke and recovering an ancient Assyrian tablet for Berlin’s Pergamon Museum. Mr. Dowd lectures internationally on copyright litigation and on Nazi art looting. He serves on the Board of Governors of the National Arts Club, co-founded the annual Art Litigation and Dispute Resolution Institute at New York County Lawyers’ Association, served as President of the Network of Bar Leaders and served as the Federal Bar Association’s General Counsel. He co-chairs Fordham Law School’s International Affinity Group.

After graduating from Westhampton Beach High School, he graduated cum laude from Manhattan College and earned his law degree at Fordham Law School. He maintains a residence in Westhampton Beach and his interests include restoration of the wild oyster population. He speaks French and Italian. On January 10, 2018 at the United States District Court for the Southern District of New York, the Network of Bar Leaders awarded Mr. Dowd the Harold Baer, Jr. Award for service to the legal profession.

Veronica Escobar
Attorney, The Law Office of Veronica Escobar

Native New Yorker Veronica Escobar has been practicing law in her home state for fourteen years. For the past eight years, she has been the Principal and Founder of The Law Offices of Veronica Escobar, a practice focusing exclusively in the areas of Elder Law, Special Needs Planning, and Trusts and Estates. She has two offices, one in her home borough of Queens and the other on the island of Manhattan. What she likes most about her practice is being able to connect to individuals and families during what can be difficult life moments and creating solutions through careful and considered planning. As she often says, “I like leaving my clients in a better place than when I encountered them.” Naturally, she extends this into her experience as a lecturer to lawyers and the public on issues in elder law and special needs.

Veronica is admitted to practice in the state of New York. She is also admitted to practice before the U.S. District Courts for the Eastern and Southern Districts of New York. She graduated summa cum laude from Fordham College at Rose Hill, Fordham University, where she was also elected to Phi Beta Kappa, with a degree in American Studies and a minor in Latin American/Latino Studies. Veronica also received her law degree from Fordham, where she was a Notes and Articles Editor of the Fordham International Law Journal. She is a member of NYSBA and the New York City Bar. She is also chair of the Solo and Small Firm Affinity Group and the AAC Solo and Small Firm Subcommittee at her alma mater, Fordham Law.

Nicole Fisher
Municipal Prosecutor, Municipal Court, Township of Irvington, New Jersey

Nicole R. Fisher is a native of New Jersey; born and raised in the Township of Orange. Ms. Fisher attended Pennsylvania State University in University Park, Pennsylvania as a Bunton-Waller Fellow. She completed her undergraduate course work at Penn State with a major in Criminal Justice and a minor in Sociology. While working full-time as a commercial litigation paralegal, she later attended Seton Hall University School of Law, earning her Juris Doctor degree. During her time at Seton Hall Law, Ms. Fisher participated in the School’s prestigious Interscholastic Moot Court Program.

Upon graduating from Seton Hall Law, Ms. Fisher served as a Judicial Law Clerk to the Honorable Michael J. Nelson, in the Essex County Civil Division. After completing her clerkship, Ms. Fisher worked as an Associate Attorney at Hardin, Kundla, McKeon & Poletto, LLP in Springfield, New Jersey, working in the Firm’s medical malpractice defense unit. Ms. Fisher now proudly serves the
public as the Chief of the Welfare & Support Section with the Office of Essex County Counsel in Newark, New Jersey. She also serves as an Assistant Municipal Prosecutor for the Township of Irvington.

Ms. Fisher believes strongly in giving back to her community. As such, she serves as the Church Clerk for the Canaan Missionary Baptist Church in Newark, New Jersey. She also serves as volunteer at the food pantry of Saint Peter’s of Chelsea, New York. Ms. Fisher is a proud member of Alpha Kappa Alpha Sorority, Incorporated.

Ms. Fisher is truly humbled by all the opportunities that she has been afforded and seeks to continue to be an agent of change for her community.

Norberto A. Garcia  
Attorney, Blume Forte Fried Zerres & Molinari
As a Certified Civil Trial Attorney and member of the American Board of Trial Advocates (ABOTA), Norberto A. Garcia has represented clients in a broad spectrum of personal injury matters including automobile accidents, construction cases, premises liability and medical malpractice. He has been named as a New Jersey Super Lawyer from 2013 through the present year.
Mr. Garcia is currently the Vice President of the New Jersey State Bar Foundation, an organization dedicated to promoting law-related education and giving all New Jersey residents a basic understanding of the legal system. He has also served the organization as a trustee since 2009. He is the co-chairperson of the New Jersey State Bar Association’s Diversity Committee.

Mr. Garcia is the past president of the Hudson County Bar Association, where he served as a trustee from 2000 through 2013, He is currently a trustee of the Hudson County Bar Foundation.

Mr. Garcia has been certified by the New Jersey Supreme Court as a civil trial attorney since 2001. He has been active in the Hudson County Inns of Court program since 1996 and is currently a master in the program. He served as a president of the North Hudson Lawyers Club in 2003. He has been co-chairperson of the Hudson County Civil Practice Committee since 2003. The committee serves as a liaison between the civil bench and bar on issues affecting civil practice, arranges seminars and holds an annual meeting between all the civil judges and the bar to address rule changes and other concerns.

Mr. Garcia is a member of the executive committee of the Civil Trial Bar Section of the New Jersey State Bar Association. The section provides a forum for the professional advancement of civil trial attorneys. He served on the Supreme Court Office of Attorney Ethics, District VI Fee Arbitration Committee from 2004 through 2009, becoming its chairperson in 2009. From 2005 through 2008 he served on the Supreme Court Committee on Minority Affairs, which advises the New Jersey Supreme Court on how the state judiciary can assure fairness, impartiality and equal access to the courts. It also monitors legislation that may affect minority citizens of the state.

He is an incoming 2019 trustee of the New Jersey State Bar Association.

Additionally, he lectures on civil practice issues for various bar organizations including the New Jersey Institute for Continuing Legal Education, the New Jersey State Bar Association, the New Jersey Association for Justice, The National Business Institute of Continuing Legal Education and the Hudson County Bar Association.
Mr. Garcia has had numerous jury trial verdicts in cases where the defendant’s insurance company was not making any offers. In recent years these verdicts on “no-pay” cases include Ryou v. Kim (Bergen County) $420,000.00, Savi v. Cohen (Hudson County) $300,000.00, Manzanal v. Manzanal (Hudson County) $237,000.00, Pak v. Lee (Bergen County) $200,000.00, Magner v. Geico (Essex County) $124,000.00 and Lowery v. Smith (Union County) $70,000.00. Other significant recent trial verdicts include Suarez v. Benoit (Hudson County, Fatal Bus Crash) $1,240,000.00, and Baldeon v. Molfetta (Hudson County, fall on ice) $829,000.00. In addition to these jury trial verdicts, Mr. Garcia has achieved millions of dollars in settlements for his clients throughout his career. Recent settlements include a $450,000.00 dram shop case, a $625,000.00 auto case and a $2.1 million trucking accident case.

Mr. Garcia’s first exposure to the law was in college at Seton Hall University where he worked for Pressler & Pressler in East Hanover as a collection team manager. While attending the University of Pennsylvania Law School, he worked for the Bronx Legal Aid Society assisting public defenders. Shortly upon graduation from Law School, he joined Sinins & Bros in Newark and began working for the rights of negligence victims. He later joined Blume, Goldfaden, Berkowitz, Donnelly, Fried & Forte where he became a partner in 2008. He became Of Counsel and later partner with Javerbaum, Wurgraft in 2013. He returned to the Blume firm as a partner effective April 1, 2019.

Born in Camaguey, Cuba, he came to the United States with his parents as a young child and grew up in Hudson County. He has a B.A. cum laude in history from Seton Hall University and graduated from the University of Pennsylvania Law School. He has been admitted to the bars of New Jersey, New York, and Pennsylvania. He is fluent in Spanish. Mr. Garcia resides in Kinnelon, New Jersey with his wife and two sons. He is a member of St. Mary’s Church in Pompton Lakes.

Samantha Gleit
Partner, Feuerstein Kulick LLP

Samantha Gleit is a partner at Feuerstein Kulick, focusing on debt and equity financing, alternative capital sources, leveraged buyouts, senior and mezzanine investments, asset-based lending, and other commercial transactions. Samantha has extensive experience advising companies (ranging from startups to large public companies), investors, sponsors, and financial institutions on risk management, debt structure, acquisitions, capitalization, compliance, workouts, restructuring, and distressed debt. Beyond traditional legal advice, Samantha also assists startups and growing companies identify liquidity sources, formulate strategy and negotiate efficient financing solutions.

Samantha is well known for her knowledge and experience in the debt market and is regularly interviewed and published in leading debt media outlets, including a recent interview with Debtwire discussing distressed debt in the pharmaceutical industry, and an article featured on the cover of the ABI Journal discussing suggested reforms to the federal bankruptcy process. Samantha was selected as a Rising Star in the 2015 – 2019 editions of New York Metro Super Lawyers® and featured in The New York Times Magazine Super Lawyers® Top Women Attorneys in the New York Metro Area. Samantha was also awarded the International Bar Association’s Insolvency Scholarship in 2013 for her award winning article on distressed law firms. Prior to joining Feuerstein Kulick, Samantha worked at King & Spalding LLP in New York, in the corporate finance and investments group.

Edward W. Greason
Counsel, Dunnington, Bartholow & Miller LLP

Edward W. Greason is Counsel at Dunnington, Bartholow & Miller, LLP where he is a member of the Trust, Estates and Private Clients Group. In his practice he advises clients on estate planning, Wills and Trusts of various types, closely held businesses, public and private charities, probate and administration, art law, estate litigation, estate taxation, trust administration and fiduciary accounting. He has advised a broad spectrum of
individual clients varying from retired teachers to billionaires to royalty, executors, trustees, bank and trust companies, corporations and public charities.

Mr. Greason is admitted to practice in New York and before the Supreme Court of the United States. He is a member of the American Bar Association (Real Property, Trusts and Estates Section), New York State Bar Association (Trusts and Estates Law Section) and the New York County Lawyers Association (Estates, Trusts and Surrogate Court Practice Committee). Mr. Greason graduated from Lafayette College with majors in History and Art History. He received his Juris Doctorate from Fordham University School of Law where he was a Notes Editor on the Entertainment, Intellectual Property and Media Law Forum. He is involved in a number of charitable activities and has served on the board of several charitable and not for profit entities.

Divya Jayachandran  
**Vice President & Deputy Head, Marketing Legal (TV & Film), NBCUniversal Media**  
Divya Jayachandran is Vice President & Deputy Head of Marketing in the legal department at NBCUniversal Media. Her primary role involves collaborating with marketing teams across NBCU’s portfolio of film and television properties, including Universal Pictures, Focus Features, Dreamworks Animation, NBC, Bravo, SYFY, Oxygen, and USA Network. Prior to joining NBCU, she was an intellectual property associate in the New York office of Kilpatrick Townsend & Stockton. She graduated with honors from Cornell University, and holds a JD from Fordham University and an MBA from NYU Stern.

Natalya G. Johnson  
**Attorney, Riker, Danzig, Scherer, Hyland & Perretti LLP**  
Natalya earned her J.D. from Cornell Law School and a bachelor’s degree with honors and distinction in Government, graduating magna cum laude from Cornell University. Natalya is a past member of the Executive Board of Directors of the Cornell Law School Alumni Association and sits on the inaugural board of the Mary Kennedy Brown Society. She is also a member of Cornell Mosaic and the President’s Council of Cornell Women.

Natalya has held various leadership roles. She serves on the Board of Directors as Northern Region Director and Co-Chair of the Continuing Legal Education committee of the Garden State Bar Association (GSBA), co-founded a women’s network called the Advancement Initiative (AI), which reaches approximately 200 attorneys in the tristate area, and is President of the Cornell Black Lawyers Alumni Network (CBLAN).

On behalf of CBLAN, Natalya successfully helped to fundraise money in support of its endowed scholarship fund for diverse law students. She spearheads alumni programs around North America in cities and states such as California, New Orleans, New York City, San Francisco, Toronto, New Jersey, and Washington, D.C.

Committed to pro bono service, Natalya started her legal career as an attorney fellow with Volunteer Lawyers for Justice (VLJ). At VLJ, she helped clients with criminal records address the civil legal barriers that serve as obstacles to successful community reintegration through its Criminal Record Expungement Clinic. Natalya also volunteers and takes cases with organizations such as Pro Bono Partnership and Kids in Need of Defense (KIND).

In 2018, Natalya received the Young Lawyer Award from the GSBA for her dedicated service to the legal profession. In 2019, she was named by the National Bar Association to its 40 under 40 Nation’s Best Advocates List. Natalya has been included in the Super Lawyers “Rising Star” list published by Thomson Reuters every year since 2016.

Sean Kane  
**Co-Chair, Interactive Entertainment Group, Frankfurt Kurnit Kein + Selz, P.C.**  
Sean F. Kane is co-Chair of the Interactive Entertainment Group at Frankfurt Kurnit, where he represents a variety of companies in the video game and social media industries. Mr. Kane’s clients often are on the cutting-edge of media, content and technology creation where rapid innovation is leading to the birth of new
Mr. Kane is a founding member of the Video Game Bar Association. He is a member of the American Bar Association Section of Intellectual Property Law, where he recently served as Chair of the Computer Games and Virtual Worlds Committee. Additionally, he is a member of the Section of Science & Technology Law, where he served as the founding Chair of the Virtual Worlds and Multiuser Online Games Committee.

Prior to joining Frankfurt Kurnit, Mr. Kane was special counsel to Pillsbury Winthrop Shaw Pittman LLP and founder of Kane & Associates LLC, where he served as Chair of the firm’s Interactive Entertainment Practice Group. He is admitted to practice in the United States District Courts for the Southern and Eastern District of New York and in New Jersey.

Melissa E. Katsoris
Immigration Attorney, Spar & Bernstein, P.C.

Melissa E. Katsoris handles various types of immigration matters. She has extensive experience in managing and preparing employment-based immigrant and non-immigrant visa petitions for a wide variety of professionals including artists, athletic coaches, tech professionals, business executives, engineers and more. She also handles family-based petitions, waivers, asylum, naturalization and many other types of immigration petitions and applications. Melissa takes a creative approach in handling her client’s immigration cases to boast a successful outcome. She understands that a strategic approach and attention to detail can be the deciding factors for immigration cases.

Prior to practicing immigration law, Melissa was an Adviser to the Permanent Mission of Greece at the U.N. where she covered multiple topics, including Migration. While advising on migration issues, she represented Greece during high-level negotiations and meetings leading up to the adoption of the Global Compacts for Migration and Refugees, the first intergovernmental negotiations under the auspices of the U.N. to cover all
aspects of international migration. Her work on migration policy at the U.N. piqued her interest in U.S. immigration, which led her to practice immigration law.

**Honorable Grace E. Lee**  
**Administrative Law Judge, New York State Office of Temporary and Disability Assistance**  
Honorable Grace E. Lee has dedicated her career to public service. Judge Lee currently serves as an Administrative Law Judge for the New York State Office of Temporary and Disability Assistance, adjudicating over 2000 cases involving public benefits including Public Assistance, SNAP benefits, Medical Assistance and temporary housing. Prior to her judicial role, Judge Lee worked as an attorney for the Division of Legal Affairs at the New York State Office of Children and Family Services where she managed a robust caseload of child care enforcement matters and facilitated laws and policies impacting the welfare of children and communities in the state. Judge Lee was also a Special Assistant for Legislative Affairs at the New York State Governor's Office, identifying pertinent legal and legislative issues for senior government officials. She received her B.A. from Boston College and J.D. from Fordham University School of Law, graduating with honors. Judge Lee is a member of the New York City Bar Association, Brooklyn Women's Bar Association, Asian American Bar Association of New York, and Korean American Lawyers Association of Greater New York. Judge Lee has previously served on the New York State Bar Association's President's Committee on Access to Justice.

**Samuel P. Madden**  
**Managing Member, The Madden Firm PLLC**  
Samuel P. Madden is the founder and managing member of The Madden Firm PLLC, his own solo practice started after two years of practicing entertainment law at a boutique firm in downtown Manhattan. Prior to that, Mr. Madden worked for three years at one of the nation’s preeminent plaintiff’s litigation firms. Mr. Madden’s practice has focused on both litigation and transactional work for clients in the entertainment industries, particularly music, film, and television. Mr. Madden earned his Juris Doctor from Fordham Law in 2013. He is licensed to practice law in state and federal courts in New York and California.

**Joseph C. Mahon**  
**Partner, Cooper Levenson PC**  
Joseph C. Mahon is a partner in Cooper Levenson, P.A., Taxation Group, advising high net worth clients, executives and business owners on family wealth planning, administration and succession. Mr. Mahon regularly assists clients in structuring, documenting and implementing plans and transactions to transfer, maximize and protect wealth.

For more than 35 years, Mr. Mahon has advised clients on a range of issues, including: Estate Planning, Estate, Gift and Income Tax Planning, Generation Skipping Transfer Tax Planning, State Death Taxes, Family Office Services, Family Governance, Liquidity Events, Business Succession, Insurance, Lifetime Gifts, including Valuation Discounts, Grantor Trusts, Dynasty Trusts, Family Limited Partnerships, Intra-Family Loans, Grantor Retained Annuity Trusts, Private Annuities, Qualified Personal Residence Trusts, Crummey Trusts, Trust Terminations, Trustee Succession, Trust Protectors, Pre-Nuptial Agreements, Powers of Attorney, and Health Care Proxies. Mr. Mahon also regularly advises clients on trust and estate litigation and dispute resolution, including contested guardianships, and on tax and other issues unique to Non-U.S. persons and assets.

Mr. Mahon is a frequent writer on Trusts and Estates matters. His articles have appeared in Trusts & Estates magazine, Estate Planning magazine, New Jersey Lawyer, Unique Homes, and other publications. His leading 2011 article on the impact of income taxes on estate planning pursuant to recent tax changes -- "The 'TEA"
Factor: How Much Appreciation Must Occur for a Gift to Provide Estate Tax Savings Greater Than Income Tax Costs?"— was published by Trusts & Estates magazine in August 2011. Mr. Mahon has lectured frequently on estate planning for leading organizations including New York City Bar Association, New York State Bar, New Jersey Institute for Continuing Legal Education, New Jersey Society of Certified Public Accountants, and Princeton Bar Association.

Mr. Mahon served as a member of the New York City Bar's Committee on Trusts & Estates (1987-1989), and the New York State Bar Association’s Committee on Legislation -- Trusts & Estates Section (1990-1996). He has also served on several charitable boards, including the Board of Trustees of the Hudson Valley Shakespeare Festival, in Cold Spring, New York.

Alexander Serrano Mercado  
Associate Immigration Attorney, Spar & Bernstein, P.C.
Alexander Serrano Mercado has been a licensed attorney for almost 6 years the majority of it practicing immigration law. He is currently an Associate Immigration Attorney at Spar and Bernstein in Downtown Manhattan. His areas of expertise include removal defense before the Executive Office of Immigration Review and Board of Immigration Appeals and family based petitions before the U.S. Citizenship and Immigration Services. These include asylum, specialized waivers to obtain lawful permanent resident status (a.k.a. green cards) overcoming fraud, criminal, and unlawful presence issues, self-petitions such as Violence Against Women Act (VAWA) and Special Immigrant Juvenile (SIJ), and naturalization. He is a native of Puerto Rico and is fluent in English and Spanish as well as proficient in French and Portuguese.

A graduate of the University of Puerto Rico-School of Law, Mr. Serrano Mercado’s passion for advocacy started during his law school studies when he was elected to the Academic Senate. There he advocated for numerous policy changes geared towards higher representation of low income students and a revision of the University’s Student Handbook. Furthermore he participated in his law school’s Pro Bono program particularly working on issues regarding gender, sexual identity and reproductive rights for indigent and low income youths many of whom were immigrants. After graduating from law school, Mr. Serrano Mercado was named Attorney Mentor of the same Pro Bono Program and in this capacity worked with the Legislative Assembly of Puerto Rico to pass the first sexual identity and gender employment discrimination bill in Puerto Rico. Mr. Serrano Mercado has also collaborated with a number of pro bono organizations in New York City such as Legal Services of New York and Center for the Integration and Advancement of New Americans (CIANA) providing free legal advice to impoverished immigrants with regards to green card and naturalization applications.

Andrew Moskowitz  
Partner, Javerbaum Wurgaft Hicks Wikstrom & Sinins, P.C.
Andrew Moskowitz is a partner with the law firm of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins (www.lawjw.com). He has been an attorney for twenty-two (22) years. For most of that time, he has focused on employment law as well as commercial and personal injury litigation cases.

Andrew was named one of New Jersey’s Super Lawyers for the years 2012 through 2019 in the Employment & Labor category. Prior to that, from 2007 to 2010, he was a Rising Star in the Employment & Labor category. Andrew is a member of the NELA-NJ Board of Directors and has served as a Co-Chair for the NJAJ Employment Law Section.
Andrew is a graduate of Duke University and attended the Fordham University School of Law, where he graduated in the top 25% of his class.

Roger R. Quiles  
Founding Partner, Quiles Law
Roger R. Quiles, Esq. is a leading attorney servicing the esports industry. Roger represents dozens of businesses and individuals who operate on all sides of the esports industry, including teams, players, shoutcasters, event hosts, Twitch streamers, Youtube content creators, tournament providers, marketing and apparel companies, and more. Roger is one of the few attorneys experienced in representing both an esports and traditional sports clientele, having also represented athletes and sports businesses. Roger counsels his clients on a variety of business, intellectual property, corporate, mergers and acquisitions, sports and gaming matters. As one of the preeminent esports attorneys, Roger's work has been featured in publications such as ESPN, Dot Esports, Law 360, and more.

An avid legal writer, Roger authored The Little Legal Handbook for Esports Teams, an ebook discussing the basic legal principles involved in creating an esports team. Roger also wrote several articles on recent and emerging Sports Law and Business Law developments.

In addition to representing individuals in the esports industry through his law practice, Roger also is the Co-Founder of FTW Talent, a full service esports talent management agency representing players, coaches, and influencers.

Prior to starting his own law practice, Roger worked for a New York City judge and a small firm in Manhattan. Roger firmly believes that most of life's problems can be solved with Up, Up, Down, Down, Left, Right, Left, Right, B, A, Start.

Leah A. Ramos

**Regulatory Compliance Counsel, Structure Tone**

Leah Ramos is Regulatory Compliance Counsel at Structure Tone, a global leader in construction management and general contracting services with offices in the US, Canada, UK, and Ireland. Leah’s role includes instituting and developing company policies and procedures, integrating new business units, leading ethics and compliance training, and investigating potential violations of policies, laws, and regulations. She is also an Adjunct Professor at Fordham Law School, teaching Legal Research and Writing to first-year students.

Leah graduated from the University of Pennsylvania, and worked in finance and accounting at PricewaterhouseCoopers and Merrill Lynch before she attended law school. She earned her JD in 2004 from Fordham Law School, where she was captain of the National Moot Court team. She worked for two years as a litigation associate at Kirkpatrick & Lockhart before clerking for the Honorable Denny Chin in the Southern District of New York from 2006 to 2007. She then spent over seven years as a litigator focusing on complex commercial and employment matters, first as an associate at Morrison & Foerster and then as senior counsel at Thompson Hine. Before joining Structure Tone, Leah was Associate Counsel and Director of Financial Disclosure Compliance at the New York State Joint Commission on Public Ethics, an independent state agency created to restore public trust in government by ensuring compliance with the state's ethics and lobbying laws, regulations, and guidance.

Anthony Ricco

**Attorney-at-Law; Adjunct Professor, Fordham Law School**

Anthony L. Ricco specializes in state and federal criminal defense litigation, particularly capital defense litigation. Over the past two decades, Mr. Ricco has represented over 50 defendants in federal death penalty prosecutions throughout our county.

Throughout his career, Mr. Ricco has received many professional recognitions and honors, including his induction as a Fellow in the American College of Trial Lawyers in 2010; and various awards from both local, regional and national Bar associations, including the New York State Association of Criminal Defense Lawyers’ Hon. Thurgood S. Marshall Award for Outstanding Criminal Practitioner in 2016. However, Mr. Ricco is most proud of the fact that in 2008 he was the recipient of the United States Court of Appeals for the Second Circuit and the American Inns of Court Professionalism Award, as it reflects a recognition of his long time commitment to providing opportunities for younger attorneys.
During his career Mr. Ricco has handled numerous high profile and controversial cases, including, inter alia, the World Trade Center bombing conspiracy case (USA v. Omar Abdel Rahman, et. al.); the U.S. Embassy bombing case (USA v. Usama Bin Laden, et. al.); and counsel for one of the police officers in the so-called Sean Bell police murder case in New York; and many of New York City, State and Federal politicians.

Mr. Ricco has been married for 30 years and has two children; his daughter is a 2011 graduate of Loyola University School of Law and his son is a 2012 graduate of Penn State University.

Sam Roberts
Senior Staff Attorney, Homicide Defense Task Force, Legal Aid Society

Sam Roberts is a Senior Staff Attorney with the Legal Aid Society's citywide Homicide Defense Task Force. Sam graduated from Fordham Law School, summa cum laude in 2006, where he was an Editor of the Fordham Law Review and a Stein Scholar for Public Interest. After graduation, Sam served as a Law Clerk for the Honorable John Keenan, Senior District Judge for the Southern District of New York. After his clerkship, Sam joined the Legal Aid Society as a staff attorney with the Society's Criminal Defense Practice in Manhattan. As a public defender, Sam has acted as lead counsel in approximately 40 felony jury trials and numerous hearings, representing indigent clients in cases ranging from drug possession to first degree murder.

During his tenure at Legal Aid, Sam has assisted in Trial Advocacy Training for newly admitted attorneys. He has also been a faculty member at Harvard Law School's Trial Advocacy Program, administered by Harvard's Criminal Justice Institute. In 2017-2018, Sam volunteered as a Fellow for the International Legal Foundation, where he worked in Myanmar to help establish public defender offices in the cities of Yangon and Mandalay.

He is a proud New Yorker and the even prouder relatively new dad of a 19 month old daughter, Olivia.

Diana Santos
Associate Counsel, New York Genome Center, Inc.

Diana G. Santos, Esq. is Associate Counsel at the New York Genome Center, Inc., an independent, nonprofit academic research institution focused on genomic research. Diana specializes in handling NYGC's technology and intellectual property-related transactions, including licensing and transfer agreements; commercial agreements; SaaS agreements; software license agreements; and outsourcing and service agreements. She develops and maintains NYGC's policies on IP, privacy, and cybersecurity.

Prior to joining NYGC, Diana worked at Willkie Farr & Gallagher LLP and Ropes & Gray LLP. As outside counsel, she advised major technology, automotive, pharmaceutical, consumer product, and medical device companies in the development of offensive and defensive legal strategies. Diana has experience in a variety of patent litigation stages, and has represented clients in various forums, including district courts, the International Trade Commission, the Patent Trial and Appeal Board, and the American Arbitration Association. She also counseled clients on IP issues for investments, product development, and branding, including as related to trademarks, copyrights, and consumer law.

Diana is a member of the LatinoJustice PRLDEF Líderes Board and a Deputy of the Hispanic National Bar Association’s Region II. Diana is also a member of the New York Intellectual Property Law Association’s Women in IP Law Committee; Fordham Law's Recent Graduates Committee; Fordham Law’s Alumni Attorneys of Color Affinity Group; and NYIPLA’s Women in Law Committee.

Diana received her J.D. from Fordham’s University’s School of Law and LL.M. in European Law from Université Panthéon–Assas, Collège Européen de Paris. Diana received her Master of Biotechnology from the University of Pennsylvania and Bachelor of Engineering from The Cooper Union for the Advancement of Science and Art.

Matthew Siegal
Of Counsel, Dilworth & Barrese LLP
Matthew Siegal is currently Of Counsel to Dilworth and Barrese LLP on Long Island and was formerly a partner at Stroock & Stroock & Lavan in NYC. He received his J.D. from Fordham Law School in 1987 and a B.S. in Chemical Engineering from Cornell University in 1984.

Mr. Siegal has spent his 30 year legal career practicing all aspects of Intellectual Property law. This has included obtaining patents and trademarks for large companies such as Epson and Fujifilm as well as start-ups and solo inventors. He has also litigated patent, trademark and copyright disputes for those companies and others such as Merck and Bayer. He holds a rare distinction of obtaining a preliminary injunction for one of his clients on a patent that he wrote and obtained for them in the USPTO.

Mr. Siegal spends his spare time negotiating Intellectual Property licenses and preparing freedom to operate and patentability opinions. He has published over 70 articles in the field of Intellectual Property and has spoken both nationally and internationally on a variety of intellectual property topics and is frequently quoted in various Intellectual Property related publications such as IP360.

Elina Teboul
Founder, The LightUp Lab
Elina Teboul is the founder of The LightUp Lab, through which Elina seeks to inspire and empower people and organizations through positive psychology, mindfulness and coaching training. Elina combined her previous experience working in big law with her passion and knowledge of positive psychology and mindfulness to help lawyer’s flourish, personally and professionally. Previously, Elina was a corporate lawyer at Davis Polk & Wardwell, LLP and Credit Suisse in New York and managed philanthropic projects and initiatives in Bermuda for the Allan & Gill Gray Foundation. Elina holds a Bachelor's degree in Economics from New York University and a J.D. from Columbia Law School. Elina is currently pursuing her executive coaching degree through the Columbia Coaching Certification Program and is a candidate for her M.A. in Psychology at Columbia University, Teacher’s College.

Pratin Vallabhaneni
Partner, White & Case LLP
Pratin Vallabhaneni is a partner in White & Case's global Banking and Financial Institutions Advisory practices. He represents both US and non-US fintech, banking, broker-dealer, exchange, insurance, asset management and specialty finance companies, as well as their directors, senior officers and investors, on transactional, enforcement and regulatory matters. Clients often call upon Prat to strategically navigate cutting-edge fintech issues that are complex, rapidly evolving and multijurisdictional in nature.

Prat's transactional practice focuses on public and private M&A, capital raising, bank finance, commercial agreements and activism matters. Prior to joining the firm, Prat was an investment banker at Morgan Stanley, where he advised clients on valuation and execution of M&A, capital markets, bank finance, securitization, activism defence and restructuring mandates.

Prat's financial regulatory and enforcement practice focuses on advising financial services clients on matters before the Federal Reserve, OCC, FDIC, SEC, CFTC, CFPB, FTC, Treasury Department, FinCEN, OFAC and state banking and securities agencies. Earlier in his career, Prat served as an attorney at the FDIC during the global financial crisis where he worked on numerous crisis-related, private equity-backed bank M&A transactions, bank receiverships and enforcement actions against banks, consumer finance firms, and directors and officers. He was also actively involved in the interagency implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Alexander Wentworth-Ping
Associate, Quinn Emanuel Urquhart & Sullivan, LLP
Alexander Wentworth-Ping is an associate in Quinn Emanuel’s New York office. He practices criminal defense, complex commercial litigation, and international dispute resolution, with experience in white collar criminal defense and investigations and cross-border disputes, as well as securities, employment, antitrust, and appellate litigation. He advises clients on a broad range of white collar issues, including alleged corruption, healthcare fraud, securities fraud and insider trading, money laundering, and other disputes with federal and state prosecutors and enforcement agencies. He has also advised and successfully represented clients in multiple Section 1782 proceedings, a mechanism that allows a foreign litigant to obtain discovery in the United States for use in a foreign proceeding. He is a member of the firm’s Latin America Practice and has published articles on Section 1782 discovery, civil procedure and constitutional law issues.

Prior to joining the firm, Alex worked at a prominent London-based law firm, Allen & Overy LLP, and also served as a law clerk to Magistrate Judge James Orenstein of the United States District Court for the Eastern District of New York. Alex graduated cum laude from Fordham University School of Law in 2013, where he was actively involved in the Fordham Law Review, Moot Court, and Dispute Resolution Society. Prior to law school, he served as a Peace Corps volunteer from 2008 to 2010. Alex is fluent in Spanish.

Greg Xethalis  
Partner, Chapman and Cutler LLP  
Greg Xethalis is a partner in Chapman's Corporate and Securities Department and a member of the firm's Investment Management Group. He represents clients in financial services and emerging technology matters.

Greg counsels clients in the investment management, corporate, and digital asset/blockchain ecosystems. His representation of clients in the digital asset space has included registered and private fund sponsors, operators of digital asset trading, lending and custody platforms, bitcoin mining companies, clients developing tokenized platforms, and entrepreneurs and institutional clients experimenting with blockchain/DLT projects. He also counsels clients in developing ventures and building consortia to leverage blockchain technology in existing and new frameworks. Greg is a frequent speaker on developing regulatory issues relating to bitcoin, ethereum, and the adoption of distributed ledger technology.

Greg also advises investment advisers and boards of exchange-traded fund (ETF) and mutual fund platforms in matters including fund formation, registration of shares with the Securities and Exchange Commission (SEC), and ongoing compliance matters. He represents sponsors of exchange-traded commodities (ETC) and advisers to private funds.

Michael D. Yim  
Partner, Putney, Twombly, Hall & Hirson LLP  
Michael D. Yim is a Partner at Putney, Twombly, Hall & Hirson LLP. His labor & employment law practice is multidisciplinary and international in scope. Michael offers extensive skill in resolving complex wage and hour claims, including class actions with millions of dollars in dispute. He regularly serves as lead counsel in high-stakes matters, and works diligently with each client to develop comprehensive strategies for all workplace issues. Notably, his practice includes executive employment strategies such as noncompetition, trade secrets and cross-border mobility and compensation, as well as discrimination, whistleblower and other labor-related matters.

Michael represents a broad range of international and domestic clients, and is known and consistently valued for his creative and aggressive solutions for all types of employment problems. In addition to his proven legal acuity, Michael's industry experience is both broad and deep, and includes hospitality, financial services, retail, manufacturing, technology and lifestyle businesses, to name only a few.

Michael is a graduate of Fordham University School of Law where he was a Crowley Scholar and recipient of the Dean’s Special Achievement Award.
Amanda M. Yu  
**Associate Attorney, Lesnevich, Marzano-Lesnevich, O’Cathain & O’Cathain, LLC**
Amanda M. Yu, Esq. is an associate with the law firm of Lesnevich, Marzano-Lesnevich, O’Cathain & O’Cathain, LLC, in Hackensack, New Jersey, where she practices exclusively family and matrimonial law. Ms. Yu is admitted to practice in New Jersey, the District of New Jersey, and New York, and is also a member of the Family Law Section and Young Lawyers Division of the New Jersey State Bar Association. She serves on the Social/Sponsorship Committee of the Young Lawyers Subcommittee of the Family Law Executive Committee for the 2019-2020 term. Ms. Yu received her B.A. from Rutgers University and her J.D. from Fordham University School of Law. She served as a law clerk to the Honorable Linda E. Mallozzi, J.S.C., Union County Superior Court, Chancery Division, Family Part.

Michael C. Zogby  
**Partner, Drinker Biddle & Reath LLP**
Michael C. Zogby is a trial lawyer whose clients trust him to handle a variety of complex, aggregate litigation, including products liability, medical device, life sciences, class action, consumer disputes, intellectual property, trade secrets, toxic tort, and multidistrict proceedings. Mike also has significant experience counseling clients and coordinating cross-border discovery, privacy, information governance, cybersecurity, and data collections involving Asian and European companies. Mike co-chairs the firm’s 60-attorney nationally ranked Products Liability and Mass Tort Group, as well as the firm wide Pharma and Life Sciences Group.

He serves as a faculty member at the National Trial Advocacy College at the University of Virginia School of Law, an intensive hands-on trial advocacy training program for practicing attorneys and law students. Mike is an elected trustee of the Trial Attorneys of New Jersey, a nonprofit organization whose mission is to preserve and improve the civil and criminal justice system in New Jersey, providing its plaintiff and defense attorneys with a wide range of services, including legal education, leadership and advocacy on issues that affect the quality of life of lawyers, judges and litigants at the trial bar. Mike is a member of the Product Liability Advisory Council (PLAC), an organization comprised of more than 100 leading product manufacturers and 350 of the most elite product liability defense counsel operating in the U.S. and abroad. PLAC focuses on achieving balance and fairness in the application of existing law within the civil litigation system and its many facets, leveraging litigation—and trials—to shape the common law.

Mike is also a member of the International Association of Defense Counsel (IADC). The IADC is an invitation-only, peer-reviewed organization founded in 1920 and comprised of leading corporate defense trial lawyers and in-house counsel from across the United States and more than 35 countries. Mike was elected to membership in the Trial Attorneys of America. This national organization of trial counsel, founded in 1969, is limited to 200 attorneys who devote a substantial portion of their practice to the defense of product liability litigation and to corporate counsel who work primarily in that area. Mike was appointed to the Law360 Life Sciences Editorial Advisory Board and the Law360 Product Liability Advisory Board. He co-chairs the Pharmaceutical and Medical Device Subcommittee of the ABA’s Mass Torts Litigation Committee, and he has served as a Master in the William J. Brennan, Jr.-Arthur Vanderbilt Inn of Court, as ethics investigator for the District V Attorney Ethics Committee, and on the New Jersey State Bar Equity Jurisprudence, Class Actions, and Antitrust Special Steering Committees.

Steven Zweig, Esq.  
**Attorney, Law Office of Steven J. Zweig**
Steven Zweig has been practicing law for 27 years, as a Securities Exchange Commission enforcement attorney, as corporate counsel, and—for the last 10 years—as a landlord-tenant attorney in New Jersey, handling public housing, private landlord, and commercial tenancy matters for both landlords and tenants. He also has hands-on business and negotiating experience, having been a vice president of operations, executive
vice president, and president/founder of various publishing companies. In addition to practicing law, he also writes about the law for several legal websites and is the Managing Editor for a legal journal.
Rule 5:4-2. Complaint

(a) Complaint Generally.

(1) Caption. All family actions shall be captioned in the Chancery Division-Family Part.

(2) Contents. Every complaint in a family part action, in addition to the special requirements prescribed by these rules for specific family actions shall also include a statement of the essential facts constituting the basis of the relief sought, the statute or statutes, if any, relied on by the plaintiff, the street address or, if none, the post office address of each party, or a statement that such address is not known; a statement of any previous family actions between the parties; and, if not otherwise stated, the facts upon which venue is based. If a civil union or domestic partnership exists between the parties, it shall be stated in the complaint. When dissolution or termination of that relationship is sought, the complaint shall contain a separate cause of action seeking such relief.

In any action involving the welfare or status of a child, the complaint shall include the child's name, address, the date of birth, and a statement of where and with whom the child resides.

(b) Corespondent.

(1) Identification of Corespondent. In family actions in which adultery or deviant sexual conduct is charged, the pleading so charging shall state the name of the person with whom such conduct was committed, if known, and if not known, shall state any available information tending to describe the said person, and shall also state such designation of the time, place and circumstances under which the act or series of acts were committed as will enable the party charged therewith and the court to distinguish the particular offense or offenses intended to be charged. If it is stated that the name is unknown, it must be shown at the hearing that it was not known at the time of the filing of the pleading containing the charge.

(2) Notice to Corespondent. A person named as a corespondent in any pleading seeking or resisting relief on the ground of adultery or deviant sexual conduct shall, within 30 days after filing of such a pleading, be served by the party making the charge, either personally or by registered or certified mail to the corespondent's last-known address, return receipt requested, or, if the corespondent refuses to claim or to accept delivery, by ordinary mail, with a copy of such pleading and a written notice of the pendency of the action, of the charge, and of the right to intervene in accordance with R. 4:33. If the name and address of the corespondent are discovered thereafter and before the trial, the party making the charge shall give such notice forthwith. If the name and address of the corespondent appear at the trial, and such notice has not been given, an adjournment may be ordered and such notice given. An affidavit of compliance with the requirements of this rule shall be filed.

(c) Affidavit of Verification and Non-Collusion. There shall be annexed to every complaint or counterclaim for divorce, dissolution of civil union, termination of domestic partnership, or nullity an oath or affirmation by the plaintiff or counterclaimant that the allegations of the complaint or counterclaim are true to the best of the
party's knowledge, information and belief, and that the pleading is made in truth and good faith and without collusion for the causes set forth therein.

(d) Counterclaim. A counterclaim may state any family cause of action, and any other cause or causes of action which exist at the time of service of the counterclaim. A counterclaim not stated in an answer may be filed by leave of the court at any time prior to final judgment. Failure to counterclaim for divorce, dissolution of civil union, termination of domestic partnership, or nullity shall not bar such cause of action. In any action involving the welfare or status of a child the counterclaim shall include the child's name, address, date of birth and a statement of where and with whom the child resides.

(e) Amended or Supplemental Complaint or Counterclaim in Dissolution Matters. In any action for divorce, dissolution of civil union, termination of domestic partnership, nullity, or separate maintenance, a supplemental complaint or counterclaim may be allowed to set forth a cause of action which has arisen or become known since the filing of the original complaint, and an amended complaint or counterclaim may be allowed to change the action from the originally pleaded cause to any other cognizable family or family type action.

(f) Affidavit or Certification of Insurance Coverage. The first pleading of each party shall have annexed thereto an affidavit listing all known insurance coverage of the parties and their minor children, including but not limited to life, health, automobile, homeowner's and renter's insurance and any umbrella policy related thereto, long-term care, and disability insurance. The affidavit shall specify the name of the insurance company, the policy number, the named insured and, if applicable, other persons covered by the policy; a description of the coverage including the policy term, if applicable; and in the case of life insurance, an identification of the named beneficiaries. The affidavit shall also specify whether any insurance coverage was canceled or modified within the ninety days preceding its date and, if so, a description of the canceled insurance coverage. Insurance coverage identified in the affidavit shall be maintained pending further order of the court. If, however, the only relief sought is dissolution of the marriage or civil union, or a termination of a domestic partnership, or if a settlement agreement addressing insurance coverage has already been reached, the parties shall annex to their pleadings, in lieu of the required insurance affidavit, an affidavit so stating. Nevertheless, if a responding party seeks financial relief, the responding party shall annex an insurance-coverage affidavit to the responsive pleading and the adverse party shall serve and file an insurance-coverage affidavit within 20 days after service of the responsive pleading. A certification in lieu of affidavit may be filed.

(g) Confidential Litigant Information Sheet. All pleadings of each party to any proceeding involving alimony, maintenance, child support, custody, parenting time, visitation or paternity shall be accompanied by a completed Confidential Litigant Information Sheet in the form prescribed by the Administrative Director of the Courts. The form shall be provided at the time of the filing of any pleading but shall not be affixed to the pleadings. The information contained in the Confidential Litigant Information Sheet shall be maintained as confidential and shall be used for the sole purposes of establishing, modifying, and enforcing orders. The Administrative Office of the Courts shall develop and implement procedures to maintain the Confidential Litigant Information Sheet as a confidential document rather than a public record. The Confidential Litigant Information Sheet shall contain a certification consistent with R. 1:4-4(b). No copy thereof shall be served on any opposing party.

(h) Affidavit or Certification of Notification of Complementary Dispute Resolution Alternatives. The first pleading of each party shall have annexed thereto an affidavit or certification in the form prescribed in Appendix XXVII-A or XXVII-B of these rules that the litigant has been informed of the availability of complementary dispute resolution ("CDR") alternatives to conventional litigation, including but not limited to mediation, arbitration, and collaborative law (New Jersey Family Collaborative Law Act, N.J.S.A. 2A:23D-1 through -18), and that the litigant has received descriptive material regarding such CDR alternatives.

(i) Complaint in Non-Dissolution Matters. Non-dissolution actions shall commence with the filing of a verified complaint cent(s) counterclaim form promulgated by the Administrative Director of the Courts, except that attorneys may file a non-conforming complaint, which must have appended to it a completed supplement promulgated by the Administrative Director of the Courts.

In any action involving the welfare or status of a child, the complaint shall include the child's name, address, the date of birth, and a statement of where and with whom the child resides.
In any non-dissolution action involving the support of a child in which paternity was previously acknowledged by the parents, a copy of the Certificate of Parentage or other written acknowledgment of paternity shall be filed with the complaint for support.

(j) Designation of Complex Non-Dissolution Matters. In any non-dissolution action, any party or attorney seeking to designate a case as complex may submit that request in a verified complaint counterclaim form promulgated by the Administrative Director of the Courts or in writing to the court prior to the first hearing. The procedure for the assignment of non-dissolution matters to the complex track is set forth in R. 5:5-7 (c).

History

Source - R. (1969) 4:77-1(a)(b)(c)(d), 4:77-2, 4:77-3, 4:77-4, 4:78-3, 5:4-1(a) (first two sentences). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (b)(2) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a)(2) and (d) amended November 2, 1987 to be effective January 1, 1988; paragraphs (b)(2) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a)(2) amended July 10, 1998 to be effective September 1, 1998; new paragraph (f) adopted January 21, 1999 to be effective April 5, 1999; paragraph (f) caption and text amendment July 12, 2002 to be effective September 3, 2002; new paragraph (g) adopted July 28, 2004 to be effective September 1, 2004; new paragraph (h) adopted July 27, 2006 to be effective September 1, 2006; paragraph (h) amended October 10, 2006 to be effective immediately; paragraph (g) amended June 15, 2007 to be effective September 1, 2007; paragraphs (g) and (h) amended July 16, 2009 to be effective September 1, 2009; paragraphs (c), (d), (e), (f) and (g) amended July 21, 2011 to be effective September 1, 2011; paragraph (g) amended July 9, 2013 to be effective September 1, 2013; subparagraph (a)(2) amended, paragraph (e) caption amended, paragraph (h) amended, and paragraphs (i) and (j) adopted July 27, 2015 to be effective September 1, 2015; subparagraph (a)(2) and paragraph (f) amended July 28, 2017 to be effective September 1, 2017.
§ 2A:34-10. Jurisdiction in divorce proceedings, dissolution of a civil union, legal separation from a partner in a civil union couple; service of process; residence requirements

Jurisdiction in actions for divorce, either absolute or from bed and board, and in actions for dissolution of a civil union or legal separation from a partner in a civil union couple may be acquired when process is served upon the defendant as prescribed by the rules of the Supreme Court, and

1. When, at the time the cause of action arose, either party was a bona fide resident of this State, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce or dissolution of a civil union shall be commenced for any cause other than adultery, unless one of the parties has been for the 1 year next preceding the commencement of the action a bona fide resident of this State; or

2. When, since the cause of action arose, either party has become, and for at least 1 year next preceding the commencement of the action has continued to be, a bona fide resident of this State.

History

N.J. Court Rules, R. 5:7-1

NJ - New Jersey State & Federal Court Rules > RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY > PART V. RULES GOVERNING PRACTICE IN THE CHANCERY DIVISION, FAMILY PART > CHAPTER II. SPECIFIC CIVIL ACTIONS > RULE 5:7. DIVORCE, DISSOLUTION OF CIVIL UNION, TERMINATION OF DOMESTIC PARTNERSHIP, NULLITY, SEPARATE MAINTENANCE

Rule 5:7-1. Venue

Except as otherwise provided by law, venue in actions for divorce, dissolution of civil union or termination of domestic partnership, nullity and separate maintenance shall be laid in the county in which plaintiff was domiciled when the cause of action arose, or if plaintiff was not then domiciled in this State, then in the county in which defendant was domiciled when the cause of action arose; or if neither party was domiciled in this State when the cause of action arose, then in the county in which the plaintiff is domiciled when the action is commenced, or if plaintiff is not domiciled in this State, then in the county where defendant is domiciled when service of process is made. For purposes of this rule, in actions brought under N.J.S.A. 2A:34-2 (c), the cause of action shall be deemed to have arisen three months after the last act of cruelty complained of in the Complaint. For purposes of this rule, in actions brought under N.J.S.A. 26:8A-10 for termination of a domestic partnership in which both parties are non-residents and without a forum available to dissolve the domestic partnership, venue shall be laid in the county in which the Certificate of Domestic Partnership is filed. For purposes of this rule, for the dissolution of a civil union created in New Jersey in which both parties are now non-residents and without a forum available to dissolve the civil union, venue shall be laid in the county in which the civil union was solemnized.

History

§ 2A:34-2. Causes for divorce from bond of matrimony

Divorce from the bond of matrimony may be adjudged for the following causes heretofore or hereafter arising:

a. Adultery;

b. Willful and continued desertion for the term of 12 or more months, which may be established by satisfactory proof that the parties have ceased to cohabit as man and wife;

c. Extreme cruelty, which is defined as including any physical or mental cruelty which endangers the safety or health of the plaintiff or makes it improper or unreasonable to expect the plaintiff to continue to cohabit with the defendant; provided that no complaint for divorce shall be filed until after 3 months from the date of the last act of cruelty complained of in the complaint, but this provision shall not be held to apply to any counterclaim;

d. Separation, provided that the husband and wife have lived separate and apart in different habitations for a period of at least 18 or more consecutive months and there is no reasonable prospect of reconciliation; provided, further that after the 18-month period there shall be a presumption that there is no reasonable prospect of reconciliation;

e. Voluntarily induced addiction or habituation to any narcotic drug as defined in the New Jersey Controlled Dangerous Substances Act, P.L.1970, c.226 [C.24:21-1 et seq.] or habitual drunkenness for a period of 12 or more consecutive months subsequent to marriage and next preceding the filing of the complaint;

f. Institutionalization for mental illness for a period of 24 or more consecutive months subsequent to marriage and next preceding the filing of the complaint;

g. Imprisonment of the defendant for 18 or more consecutive months after marriage, provided that where the action is not commenced until after the defendant’s release, the parties have not resumed cohabitation following such imprisonment;

h. Deviant sexual conduct voluntarily performed by the defendant without the consent of the plaintiff;

i. Irreconcilable differences which have caused the breakdown of the marriage for a period of six months and which make it appear that the marriage should be dissolved and that there is no reasonable prospect of reconciliation.

History

End of Document
§ 37:1-31. Legal benefits, protections, responsibilities of civil union couples equal to those of married couples

a. Civil union couples shall have all of the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage.

b. The dissolution of civil unions shall follow the same procedures and be subject to the same substantive rights and obligations that are involved in the dissolution of marriage.

c. The laws of domestic relations, including annulment, premarital agreements, separation, divorce, child custody and support, property division and maintenance, and post-relationship spousal support, shall apply to civil union couples.

d. Civil union couples may modify the terms, conditions or effects of their civil union in the same manner and to the same extent as married persons who execute an antenuptial agreement or other agreement recognized and enforceable under the law, setting forth particular understandings with respect to their union.

e. The rights of civil union couples with respect to a child of whom either becomes the parent during the term of the civil union, shall be the same as those of a married couple with respect to a child of whom either spouse or partner in a civil union couple becomes the parent during the marriage.

f. All contracts made between persons in contemplation of a civil union shall remain in full force after such civil union takes place.

g. A copy of the record of the civil union received from the local or State registrar shall be presumptive evidence of the civil union in all courts.

History

§ 2A:34-3. Causes for divorce from bed and board or legal separation from partner in a civil union couple

a. Divorce from bed and board may be adjudged for the same causes as divorce from the bonds of matrimony whenever both parties petition or join in requesting such relief and they or either of them present sufficient proof of such cause or causes to warrant the entry of a judgment of divorce from the bonds of matrimony, provided further that in the case of a reconciliation thereafter the parties may apply for a revocation or suspension of the judgment, and provided further that the granting of a bed and board divorce shall in no way prejudice either party from thereafter applying to the court for a conversion of said divorce to a divorce from the bonds of matrimony, which application shall be granted as a matter of right.

b. Legal separation from a partner in a civil union couple may be adjudged for the same causes as dissolution of a civil union whenever both parties petition or join in requesting such relief and they or either of them present sufficient proof of such cause or causes to warrant the entry of a judgment of dissolution of a civil union, provided further that in the case of a reconciliation thereafter the parties may apply for a revocation or suspension of the judgment, and provided further that the granting of a legal separation from a partner in a civil union couple shall in no way prejudice either party from thereafter applying to the court for a conversion of said legal separation from a partner in a civil union couple to a dissolution of a civil union, which application shall be granted as a matter of right.

History

Rule 5:5-10. Default; Notice for Final Judgment

In those cases where equitable distribution, alimony, child support and other relief are sought and a default has been entered, the plaintiff shall file and serve on the defaulting party, in accordance with R. 1:5-2, a Notice of Proposed Final Judgment ("Notice"), not less than 20 days prior to the hearing date. The Notice shall include the proposed trial date, a statement of the value of each asset and the amount of each debt sought to be distributed and a proposal for distribution, a statement as to whether plaintiff is seeking alimony and/or child support and, if so, in what amount, and a statement as to all other relief sought, including a proposed parenting time schedule where applicable. Plaintiff shall annex to the Notice a completed and filed Case Information Statement in the form set forth in Appendix V of these Rules. When a written property settlement agreement has been executed, plaintiff shall not be obligated to file such a Notice. When the summons and complaint have been served on the defendant by substituted service pursuant to R. 4:4-4, a copy of the Notice shall be filed and served on the defendant in the same manner as the summons and complaint or in any other manner permitted by the court, at least twenty (20) days prior to the date set for hearing. The Notice shall state that such Notice can be examined by the defendant during normal business hours at the Family Division Manager's office in the county in which the Notice was filed. The Notice shall provide the address of the county courthouse where the Notice has been filed. Defaults shall be entered in accordance with R. 4:43-1, except that a default judgment in a Family Part matter may be entered without separate notice of motion as set forth in R. 4:43-2.
New Jersey Judiciary
Confidential Litigant Information Sheet (R. 5:4-2(g))

To assure accuracy of court records - To be filled out by Plaintiff, or Defendant, or Attorney
Collection of the following information is pursuant to N.J.S.A. 2A:17-56.60 and R. 5:7-4.

Confidentiality of this information must be maintained

Please complete the entire form, leaving no blank spaces. If something does not apply to you, enter “N/A”. This form is confidential and will not be shared with the other party.

<table>
<thead>
<tr>
<th>Docket Number:</th>
<th>CS Number:</th>
<th>Do you have an active Domestic Violence Order with the other party in this case?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>☐ Yes ☐ No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Plaintiff</th>
<th>Defendant</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name (last, first, middle initial)</strong></td>
<td><strong>Name (last, first, middle initial)</strong></td>
</tr>
<tr>
<td>Social Security Number</td>
<td>Social Security Number</td>
</tr>
<tr>
<td>Date of Birth</td>
<td>Date of Birth</td>
</tr>
<tr>
<td>Address: Street</td>
<td>Address: Street</td>
</tr>
<tr>
<td>City</td>
<td>State</td>
</tr>
<tr>
<td>Plaintiff Telephone Number</td>
<td>Employer Telephone Number</td>
</tr>
<tr>
<td>Employer Name (or other income source)</td>
<td>Employer Name (or other income source)</td>
</tr>
<tr>
<td>Employer Address: Street</td>
<td>Employer Address: Street</td>
</tr>
<tr>
<td>City</td>
<td>State</td>
</tr>
<tr>
<td>Professional, Occupational, Recreational Licenses (include types and license numbers)</td>
<td>Professional, Occupational, Recreational Licenses (include types and license numbers)</td>
</tr>
<tr>
<td>Driver's License Number</td>
<td>State of Issuance</td>
</tr>
<tr>
<td>Sex</td>
<td>Race/Ethnicity</td>
</tr>
<tr>
<td>Auto: License Plate</td>
<td>State</td>
</tr>
<tr>
<td>Attorney Name</td>
<td>Attorney Name</td>
</tr>
<tr>
<td>Attorney Address: Street</td>
<td>Attorney Address: Street</td>
</tr>
<tr>
<td>City</td>
<td>State</td>
</tr>
</tbody>
</table>

**Children Information**

<table>
<thead>
<tr>
<th>Name (last, first, middle initial)</th>
<th>Date of Birth</th>
<th>Race</th>
<th>Sex</th>
<th>Social Security Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Health Coverage for Children - available through parent filling out this form (☐ Plaintiff / ☐ Defendant)

Health Care Provider: ___________________________ Policy Number: ___________________________ Group Number: ___________________________
Health Care Provider: ___________________________ Policy Number: ___________________________ Group Number: ___________________________
Health Care Provider: ___________________________ Policy Number: ___________________________ Group Number: ___________________________

I certify that the foregoing statements made by me are true to the best of my knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date ___________________________ Signature ___________________________
Appendix V
Family Part Case Information Statement

This form and attachments are confidential pursuant to Rules 1:38-3(d)(1) and 5:5-2(f)

Attorney(s):
Office Address:
Tel. No./Fax No.

Attorney(s) for:

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY

DOCKET NO.

CASE INFORMATION STATEMENT
OF

NOTICE: This statement must be fully completed, filed and served, with all required attachments, in accordance with Court Rule 5:5-2 based upon the information available. In those cases where the Case Information Statement is required, it shall be filed within 20 days after the filing of the Answer or Appearance. Failure to file a Case Information Statement may result in the dismissal of a party’s pleadings.

INSTRUCTIONS:

The Case Information Statement is a document which is filed with the court setting forth the financial details of your case. The required information includes your income, your spouse's/partner's income, a budget of your joint life style expenses, a budget of your current life style expenses including the expenses of your children, if applicable, an itemization of the amounts which you may be paying in support for your spouse/partner or children if you are contributing to their support, a summary of the value of all assets referenced on page 8 – It is extremely important that the Case Information Statement be as accurate as possible because you are required to certify that the contents of the form are true. It helps establish your lifestyle which is an important component of alimony/spousal support and child support.

The monthly expenses must be reviewed and should be based on actual expenditures such as those shown from checkbook registers, bank statements or credit card statements from the past 24 months. The asset values should be taken, if possible, from actual appraisals or account statements. If the values are estimates, it should be clearly noted that they are estimates.

According to the Court Rules, you must update the Case Information Statement as your circumstances change. For example, if you move out of your residence and acquire your own apartment, you should file an Amended Case Information Statement showing your new rental and other living expenses.

It is also very important that you attach copies of relevant documents as required by the Case Information Statement, including your most recent tax returns with W-2 forms, 1099s and your three (3) most recent paystubs.

If a request has been made for college or post-secondary school contribution, you must also attach all relevant information pertaining to that request, including but not limited to documentation of all costs and reimbursements or assistance for which contribution is sought, such as invoices or receipts for tuition, board and books; proof of enrollment; and proof of all financial aid, scholarships, grants and student loans obtained.

Revised to be effective September 1, 2017. CN: 10482 (Court Rules Appendix V)
**Part A - Case Information:**

<table>
<thead>
<tr>
<th>Date of Statement</th>
<th>Cause of Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of Divorce, Dissolution of Civil Union or Termination of Domestic Partnership (post-Judgment matters)</td>
<td>Custody</td>
</tr>
<tr>
<td>Date(s) of Prior Statement(s)</td>
<td>Parenting Time</td>
</tr>
<tr>
<td>Your Birthdate</td>
<td>Alimony</td>
</tr>
<tr>
<td>Birthdate of Other Party</td>
<td>Child Support</td>
</tr>
<tr>
<td>Date of Marriage, or entry into Civil Union or Domestic Partnership</td>
<td>Equitable Distribution</td>
</tr>
<tr>
<td>Date of Separation</td>
<td>Counsel Fees</td>
</tr>
<tr>
<td>Date of Complaint</td>
<td>Anticipated College/Post-Secondary Education Expenses</td>
</tr>
</tbody>
</table>

**Issues in Dispute:**

<table>
<thead>
<tr>
<th>Does an agreement exist between parties relative to any issue?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>If Yes, ATTACH a copy (if written) or a summary (if oral).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. **Name and Addresses of Parties:**

<table>
<thead>
<tr>
<th>Your Name</th>
<th>Street Address</th>
<th>City</th>
<th>State/Zip</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Party’s Name</td>
<td>Street Address</td>
<td>City</td>
<td>State/Zip</td>
</tr>
</tbody>
</table>

2. **Name, Address, Birthdate and Person with whom children reside:**

   a. **Child(ren) From This Relationship**

<table>
<thead>
<tr>
<th>Child’s Full Name</th>
<th>Address</th>
<th>Birthdate</th>
<th>Person’s Name</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

   b. **Child(ren) From Other Relationships**

<table>
<thead>
<tr>
<th>Child’s Full Name</th>
<th>Address</th>
<th>Birthdate</th>
<th>Person’s Name</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Part B - Miscellaneous Information:**

1. **Information about Employment (Provide Name & Address of Business, if Self-employed)**

<table>
<thead>
<tr>
<th>Name of Employer/Business</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of Employer/Business</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. **Do you have Insurance obtained through Employment/Business?**

<table>
<thead>
<tr>
<th>Medical</th>
<th>Dental</th>
<th>Prescription Drug</th>
<th>Life</th>
<th>Disability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other (explain)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain:</td>
</tr>
</tbody>
</table>

3. **ATTACH Affidavit of Insurance Coverage as required by Court Rule 5:4-2 (f) (See Part G)**

Revised to be effective September 1, 2017. CN: 10482 (Court Rules Appendix V)
4. Additional Identification:
Confidential Litigant Information Sheet: Filed ☐ Yes ☐ No

5. ATTACH a list of all prior/pending family actions involving support, custody or Domestic Violence, with the Docket Number, County, State and the disposition reached. Attach copies of all existing Orders in effect.

**Part C. - Income Information:**
Complete this section for self and (if known) for other party. If W-2 wage earner, gross earned income refers to Medicare wages.

1. Last Year’s Income
   - **Yours**
   - **Joint**
   - **Other Party**
   1. Gross earned income last calendar (year) $ $ $  
   2. Unearned income (same year) $ $ $  
   4. Net income (1 + 2 - 3) $ $ $  

ATTACH to this form a corporate benefits statement as well as a statement of all fringe benefits of employment. (See Part G)

ATTACH a full and complete copy of last year’s Federal and State Income Tax Returns. ATTACH W-2 statements, 1099’s, Schedule C’s, etc., to show total income plus a copy of the most recently filed Tax Returns. (See Part G)

Check if attached: ☐ Federal Tax Return ☐ State Tax Return ☐ W-2 ☐ Other

2. Present Earned Income and Expenses
   - **Yours**
   - **Other Party (if known)**
   1. Average gross weekly income (based on last 3 pay periods – ATTACH pay stubs) $ $  
      - Commissions and bonuses, etc., are: ☐ included ☐ not included* ☐ not paid to you.  
      - *ATTACH details of basis thereof, including, but not limited to, percentage overrides, timing of payments, etc.  
      - ATTACH copies of last three statements of such bonuses, commissions, etc.  
   2. Deductions per week (check all types of withholdings): $ $  
      - Federal ☐ State ☐ F.I.C.A. ☐ S.U.I. ☐ Other  
   3. Net average weekly income (1 - 2) $ $  

3. Your Current Year-to-Date Earned Income
   - **Provide Dates: From To**
   - **Yours**
   - **Total**
   1. GROSS EARNED INCOME: $ ☐ Number of Weeks  
      - $  
   2. TAX DEDUCTIONS: (Number of Dependents:____)  
      - c. Other State Income Taxes c. $  
      - d. F.I.C.A. d. $  
      - e. Medicare e. $  
      - g. Estimated tax payments in excess of withholding g. $  
      - h. h. $  
      - i. i. $  
      - TOTAL $  

Revised to be effective September 1, 2017. CN: 10482 (Court Rules Appendix V)
3. GROSS INCOME NET OF TAXES $ 

4. OTHER DEDUCTIONS 
   a. Hospitalization/Medical Insurance 
   b. Life Insurance  
   c. Union Dues 
   d. 401(k) Plans 
   e. Pension/Retirement Plans 
   f. Other Plans - specify 
   
   g. Charity 
   h. Wage Execution 
   i. Medical Reimbursement (flex fund) 
   j. Other:  

   TOTAL  $ 

5. NET YEAR-TO-DATE EARNED INCOME: $ 

   NET AVERAGE EARNED INCOME PER MONTH: $ 

   NET AVERAGE EARNED INCOME PER WEEK: $ 

4. Your Year-to-Date Gross Unearned Income From All Sources 
   (including, but not limited to, income from unemployment, disability and/or social security payments, interest, dividends, 
   rental income and any other miscellaneous unearned income) 

<table>
<thead>
<tr>
<th>Source</th>
<th>How often paid</th>
<th>Year to date amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

   TOTAL GROSS UNEARNED INCOME YEAR TO DATE  $ 

5. Additional Information: 

1. How often are you paid? 

2. What is your annual salary? $ 

3. Have you received any raises in the current year?  
   If yes, provide the date and the gross/net amount.  
   □ Yes □ No 

4. Do you receive bonuses, commissions, or other compensation, including distributions, taxable or non-taxable, in addition to your regular salary?  
   If yes, explain:  
   □ Yes □ No 

5. Does your employer pay for or provide you with an automobile (lease or purchase), automobile expenses, gas, repairs, lodging and other.  
   If yes, explain:  
   □ Yes □ No 

Revised to be effective September 1, 2017. CN: 10482 (Court Rules Appendix V)
6. Did you receive bonuses, commissions, or other compensation, including distributions, taxable or non-taxable, in addition to your regular salary during the current or immediate past 2 calendar years? 
If yes, explain and state the date(s) of receipt and set forth the gross and net amounts received: □ Yes □ No

7. Do you receive cash or distributions not otherwise listed? 
If yes, explain. □ Yes □ No

8. Have you received income from overtime work during either the current or immediate past calendar year? 
If yes, explain. □ Yes □ No

9. Have you been awarded or granted stock options, restricted stock or any other non-cash compensation or entitlement during the current or immediate past calendar year? 
If yes, explain. □ Yes □ No

10. Have you received any other supplemental compensation during either the current or immediate past calendar year? 
If yes, state the date(s) of receipt and set forth the gross and net amounts received. Also describe the nature of any supplemental compensation received. □ Yes □ No

11. Have you received income from unemployment, disability and/or social security during either the current or immediate past calendar year? 
If yes, state the date(s) of receipt and set forth the gross and net amounts received. □ Yes □ No

12. List the names of the dependents you claim: 

13. Are you paying or receiving any alimony? 
If yes, how much and from or to whom? □ Yes □ No

14. Are you paying or receiving any child support? 
If yes, list names of the children, the amount paid or received for each child and to whom paid or from whom received. □ Yes □ No

15. Is there a wage execution in connection with support? 
If yes explain. □ Yes □ No

16. Does a Safe Deposit Box exist and if so, at which bank? □ Yes □ No

17. Has a dependent child of yours received income from social security, SSI or other government program during either the current or immediate past calendar year? 
If yes, explain the basis and state the date(s) of receipt and set forth the gross and net amounts received. □ Yes □ No

18. Explanation of Income or Other Information:
**Part D - Monthly Expenses (computed at 4.3 wks/mo.)**

Joint Marital or Civil Union Life Style should reflect standard of living established during marriage or civil union. Current expenses should reflect the current life style. Do not repeat those income deductions listed in Part C – 3.

<table>
<thead>
<tr>
<th>SCHEDULE A: SHELTER</th>
<th>Joint Life Style Family, including _____ children</th>
<th>Current Life Style Yours and _____ children</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>If Tenant:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rent</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Heat (if not furnished)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Electric &amp; Gas (if not furnished)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Renter’s Insurance</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Parking (at Apartment)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Other charges (Itemize)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td><strong>If Homeowner:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mortgage</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Real Estate Taxes (if not included w/mortgage payment)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Homeowners Ins. (if not included w/mortgage payment)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Other Mortgages or Home Equity Loans</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Heat (unless Electric or Gas)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Electric &amp; Gas</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Water &amp; Sewer</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Garbage Removal</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Snow Removal</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Lawn Care</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Maintenance/Repairs</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Condo, Co-op or Association Fees</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Other Charges (Itemize)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td><strong>Tenant or Homeowner:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Telephone</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Mobile/Cellular Telephone</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Service Contracts on Equipment</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Cable TV</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Plumber/Electrician</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Equipment &amp; Furnishings</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Internet Charges</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Home Security System</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Other (itemize)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SCHEDULE B: TRANSPORTATION</th>
<th>Joint Life Style Family, including _____ children</th>
<th>Current Life Style Yours and _____ children</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auto Payment</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Auto Insurance (number of vehicles:_____)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Registration, License</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Maintenance</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Fuel and Oil</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Commuting Expenses</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Other Charges (Itemize)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>
SCHEDULE C: PERSONAL

Joint Life Style
Family, including

<table>
<thead>
<tr>
<th></th>
<th>Yours and</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><em>children</em></td>
</tr>
<tr>
<td>Food at Home &amp; household supplies</td>
<td>$__________</td>
</tr>
<tr>
<td>Prescription Drugs</td>
<td>$__________</td>
</tr>
<tr>
<td>Non-prescription drugs, cosmetics, toiletries &amp; sundries</td>
<td>$__________</td>
</tr>
<tr>
<td>School Lunch</td>
<td>$__________</td>
</tr>
<tr>
<td>Restaurants</td>
<td>$__________</td>
</tr>
<tr>
<td>Clothing</td>
<td>$__________</td>
</tr>
<tr>
<td>Dry Cleaning, Commercial Laundry</td>
<td>$__________</td>
</tr>
<tr>
<td>Hair Care</td>
<td>$__________</td>
</tr>
<tr>
<td>Domestic Help</td>
<td>$__________</td>
</tr>
<tr>
<td>Medical (exclusive of psychiatric)*</td>
<td>$__________</td>
</tr>
<tr>
<td>Eye Care*</td>
<td>$__________</td>
</tr>
<tr>
<td>Psychiatric/psychological/counseling*</td>
<td>$__________</td>
</tr>
<tr>
<td>Dental (exclusive of Orthodontic*)</td>
<td>$__________</td>
</tr>
<tr>
<td>Orthodontic*</td>
<td>$__________</td>
</tr>
<tr>
<td>Medical Insurance (hospital, etc.)*</td>
<td>$__________</td>
</tr>
<tr>
<td>Club Dues and Memberships</td>
<td>$__________</td>
</tr>
<tr>
<td>Sports and Hobbies</td>
<td>$__________</td>
</tr>
<tr>
<td>Camps</td>
<td>$__________</td>
</tr>
<tr>
<td>Vacations</td>
<td>$__________</td>
</tr>
<tr>
<td>Children’s Private School Costs</td>
<td>$__________</td>
</tr>
<tr>
<td>Parent’s Educational Costs</td>
<td>$__________</td>
</tr>
<tr>
<td>Children’s Lessons (dancing, music, sports, etc.)</td>
<td>$__________</td>
</tr>
<tr>
<td>Babysitting</td>
<td>$__________</td>
</tr>
<tr>
<td>Day-Care Expenses</td>
<td>$__________</td>
</tr>
<tr>
<td>Entertainment</td>
<td>$__________</td>
</tr>
<tr>
<td>Alcohol and Tobacco</td>
<td>$__________</td>
</tr>
<tr>
<td>Newspapers and Periodicals</td>
<td>$__________</td>
</tr>
<tr>
<td>Gifts</td>
<td>$__________</td>
</tr>
<tr>
<td>Contributions</td>
<td>$__________</td>
</tr>
<tr>
<td>Payments to Non-Child Dependents</td>
<td>$__________</td>
</tr>
<tr>
<td>Prior Existing Support Obligations this family/other families (specify)</td>
<td>$__________</td>
</tr>
<tr>
<td>Tax Reserve (not listed elsewhere)</td>
<td>$__________</td>
</tr>
<tr>
<td>Life Insurance</td>
<td>$__________</td>
</tr>
<tr>
<td>Savings/Investment</td>
<td>$__________</td>
</tr>
<tr>
<td>Debt Service (from page 7) (not listed elsewhere)</td>
<td>$__________</td>
</tr>
<tr>
<td>Parenting Time Expenses</td>
<td>$__________</td>
</tr>
<tr>
<td>Professional Expenses (other than this proceeding)</td>
<td>$__________</td>
</tr>
<tr>
<td>Pet Care and Expenses</td>
<td>$__________</td>
</tr>
<tr>
<td>Other (specify)</td>
<td>$__________</td>
</tr>
</tbody>
</table>

**unreimbursed only**

TOTAL $__________ $__________

Please Note: If you are paying expenses for a spouse or civil union partner and/or children not reflected in this budget, attach a schedule of such payments.

Schedule A: Shelter $__________ $__________
Schedule B: Transportation $__________ $__________
Schedule C: Personal $__________ $__________

Grand Totals $__________ $__________
### Part E - Balance Sheet of All Family Assets and Liabilities

**Statement of Assets**

<table>
<thead>
<tr>
<th>Description</th>
<th>Title to Property (P, D, J)</th>
<th>Date of purchase/acquisition. If claim that asset is exempt, state reason and value of what is claimed to be exempt</th>
<th>Value $</th>
<th>Date of Evaluation Mo./Day/ Yr.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Real Property</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Bank Accounts, CD’s (identify institution and type of account(s))</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Vehicles</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Tangible Personal Property</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Stocks, Bonds and Securities</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Pension, Profit Sharing, Retirement Plan(s), 401(k)s, etc. (identify each institution or employer)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. IRAs</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Businesses, Partnerships, Professional Practices</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Life Insurance (cash surrender value)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Loans Receivable</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Other (specify)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL GROSS ASSETS:** $________  
**TOTAL SUBJECT TO EQUITABLE DISTRIBUTION:** $________  
**TOTAL NOT SUBJECT TO EQUITABLE DISTRIBUTION:** $________

---

1 P = Plaintiff; D = Defendant; J = Joint

Revised to be effective September 1, 2017. CN: 10482 (Court Rules Appendix V)
<table>
<thead>
<tr>
<th>Description</th>
<th>Name of Responsible Party (P, D, J)</th>
<th>If you contend liability should not be shared, state reason</th>
<th>Monthly Payment</th>
<th>Total Owed</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Real Estate Mortgages</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Other Long Term Debts</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Revolving Charges</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Other Short Term Debts</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Contingent Liabilities</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

TOTAL GROSS LIABILITIES: $__________  
(excluding contingent liabilities)

NET WORTH: $__________  
(subject to equitable distribution)

TOTAL SUBJECT TO EQUITABLE DISTRIBUTION: $__________

TOTAL NOT SUBJECT TO EQUITABLE DISTRIBUTION: $__________
Part F - Statement of Special Problems
Provide a Brief Narrative Statement of Any Special Problems Involving This Case: As example, state if the matter involves complex valuation problems (such as for a closely held business) or special medical problems of any family member, etc.

Part G - Required Attachments
Check If You Have Attached the Following Required Documents

1. A full and complete copy of your last federal and state income tax returns with all schedules and attachments. (Part C-1) □
2. Your last calendar year’s W-2 statements, 1099’s, K-1 statements. □
3. Your three most recent pay stubs. □
4. Bonus information including, but not limited to, percentage overrides, timing of payments, etc.; the last three statements of such bonuses, commissions, etc. (Part C) □
5. Your most recent corporate benefit statement or a summary thereof showing the nature, amount and status of retirement plans, savings plans, income deferral plans, insurance benefits, etc. (Part C) □
6. Affidavit of Insurance Coverage as required by Court Rule 5:4-2(f) (Part B-3) □
7. List of all prior/pending family actions involving support, custody or Domestic Violence, with the Docket Number, County, State and the disposition reached. Attach copies of all existing Orders in effect. (Part B-5) □
8. Attach details of each wage execution (Part C-5) □
9. Schedule of payments made for a spouse or civil union partner and/or children not reflected in Part D. □
10. Any agreements between the parties. □
11. An Appendix IX Child Support Guideline Worksheet, as applicable, based upon available information. □
12. If a request has been made for college or post-secondary school contribution, all relevant information pertaining to that request, including but not limited to documentation of all costs and reimbursements or assistance for which contribution is sought, such as invoices or receipts for tuition, board and books; proof of enrollment; and proof of all financial aid, scholarships, grants and student loans obtained. A list of the information as promulgated by the Administrative Director of the Courts can be found on the Judiciary website. □

I certify that, other than in this form and its attachments, confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

I certify that the foregoing information contained herein is true. I am aware that if any of the foregoing information contained therein is willfully false, I am subject to punishment.

DATED: ___________________________ SIGNED: ___________________________
Rule 5:8-5. Custody and Parenting Time/Visitation Plans, Recital in Judgment or Order

(a) In any family action in which the parties cannot agree to a custody or parenting time/visitation arrangement, the parties must each file a Custody and Parenting Time/Visitation Plan, which the court shall consider in awarding custody and fixing a parenting time or visitation schedule. The Custody and Parenting Time/Visitation Plan shall be filed no later than seventy-five (75) days after the last responsive pleading is filed. If, however, mediation as permitted by R. 1:40-5 (a) is conducted, the Custody and Parenting Time/Visitation Plan shall be filed no later than 14 days following an unsuccessful mediation.

Contents of Plan. The Custody and Parenting Time/Visitation Plan shall include but shall not be limited to the following factors:

(1) Address of the parties.

(2) Employment of the parties.

(3) Type of custody requested with the reasons for selecting the type of custody.

(a) Joint legal custody with one parent having primary residential care.

(b) Joint physical custody.

(c) Sole custody to one parent, parenting time/visitation to the other.

(d) Other custodial arrangement.

(4) Specific schedule as to parenting time/visitation including, but not limited to, weeknights, weekends, vacations, legal holidays, religious holidays, school vacations, birthdays and special occasions (family outings, extracurricular activities and religious services).

(5) Access to medical school records.

(6) Impact if there is to be a contemplated change of residence by a parent.

(7) Participation in making decisions regarding the child(ren).

(8) Any other pertinent information.

(b) The court shall set out in its order or judgment fully and specifically all terms and conditions relating to the award of custody and proper support for the children.

(c) Failure to comply with the provisions of the Custody and Parenting Time/Visitation Plan may result in the dismissal of the non-complying party’s pleadings or the imposition of other sanctions, or both. Dismissed pleadings shall be subject to reinstatement upon such conditions as the court may order.
Source-R. (1969) 4:79-8(e). Adopted December 20, 1983, to be effective December 31, 1983; amended July 14, 1992 to be effective September 1, 1992; new paragraph (c) adopted January 21, 1999 to be effective April 5, 1999; caption and paragraphs (a) and (c) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 28, 2017 to be effective September 1, 2017.
§ 25:1-5. Promises or agreements not binding unless in writing

No action shall be brought upon any of the following agreements or promises, unless the agreement or promise, upon which such action shall be brought or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or by some other person thereunto by him lawfully authorized:

a. (Deleted by amendment, P.L.1995, c.360.)

b. (Deleted by amendment, P.L.1995, c.360.)


d. (Deleted by amendment, P.L.1995, c.360.)

e. (Deleted by amendment, P.L.1995, c.360.)

f. A contract, promise, undertaking or commitment to loan money or to grant, extend or renew credit, in an amount greater than $100,000, not primarily for personal, family or household purposes, made by a person engaged in the business of lending or arranging for the lending of money or extending credit. For the purposes of this subsection, a contract, promise, undertaking or commitment to loan money shall include agreements to lease personal property if the lease is primarily a method of financing the obtaining of the property;

g. An agreement by a creditor to forbear from exercising remedies pursuant to a contract, promise, undertaking or commitment which is subject to the provisions of subsection f. of this section; or

h. A promise by one party to a non-marital personal relationship to provide support or other consideration for the other party, either during the course of such relationship or after its termination. For the purposes of this subsection, no such written promise is binding unless it was made with the independent advice of counsel for both parties.

History

§ 2A:34-23. Alimony, maintenance

Alimony, maintenance.

Pending any matrimonial action or action for dissolution of a civil union brought in this State or elsewhere, or after judgment of divorce or dissolution or maintenance, whether obtained in this State or elsewhere, the court may make such order as to the alimony or maintenance of the parties, and also as to the care, custody, education and maintenance of the children, or any of them, as the circumstances of the parties and the nature of the case shall render fit, reasonable and just, and require reasonable security for the due observance of such orders, including, but not limited to, the creation of trusts or other security devices, to assure payment of reasonably foreseeable medical and educational expenses. Upon neglect or refusal to give such reasonable security, as shall be required, or upon default in complying with any such order, the court may award and issue process for the immediate sequestration of the personal estate, and the rents and profits of the real estate of the party so charged, and appoint a receiver thereof, and cause such personal estate and the rents and profits of such real estate, or so much thereof as shall be necessary, to be applied toward such alimony and maintenance as to the said court shall from time to time seem reasonable and just; or the performance of the said orders may be enforced by other ways according to the practice of the court. Orders so made may be revised and altered by the court from time to time as circumstances may require.

The court may order one party to pay a retainer on behalf of the other for expert and legal services when the respective financial circumstances of the parties make the award reasonable and just. In considering an application, the court shall review the financial capacity of each party to conduct the litigation and the criteria for award of counsel fees that are then pertinent as set forth by court rule. Whenever any other application is made to a court which includes an application for pendente lite or final award of counsel fees, the court shall determine the appropriate award for counsel fees, if any, at the same time that a decision is rendered on the other issue then before the court and shall consider the factors set forth in the court rule on counsel fees, the financial circumstances of the parties, and the good or bad faith of either party. The court may not order a retainer or counsel fee of a party convicted of an attempt or conspiracy to murder the other party to be paid by the party who was the intended victim of the attempt or conspiracy.

a. In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, the court in those cases not governed by court rule shall consider, but not be limited to, the following factors:
(1) Needs of the child;
(2) Standard of living and economic circumstances of each parent;
(3) All sources of income and assets of each parent;
(4) Earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for children including the cost of providing child care and the length of time and cost of each parent to obtain training or experience for appropriate employment;
(5) Need and capacity of the child for education, including higher education;
(6) Age and health of the child and each parent;
(7) Income, assets and earning ability of the child;
(8) Responsibility of the parents for the court-ordered support of others;
(9) Reasonable debts and liabilities of each child and parent; and
(10) Any other factors the court may deem relevant.

The obligation to pay support for a child who has not been emancipated by the court shall not terminate solely on the basis of the child’s age if the child suffers from a severe mental or physical incapacity that causes the child to be financially dependent on a parent. The obligation to pay support for that child shall continue until the court finds that the child is relieved of the incapacity or is no longer financially dependent on the parent. However, in assessing the financial obligation of the parent, the court shall consider, in addition to the factors enumerated in this section, the child’s eligibility for public benefits and services for people with disabilities and may make such orders, including an order involving the creation of a trust, as are necessary to promote the well-being of the child.

As used in this section “severe mental or physical incapacity” shall not include a child’s abuse of, or addiction to, alcohol or controlled substances.

b. In all actions brought for divorce, dissolution of a civil union, divorce from bed and board, legal separation from a partner in a civil union couple or nullity the court may award one or more of the following types of alimony: open duration alimony; rehabilitative alimony; limited duration alimony or reimbursement alimony to either party. In so doing the court shall consider, but not be limited to, the following factors:

(1) The actual need and ability of the parties to pay;
(2) The duration of the marriage or civil union;
(3) The age, physical and emotional health of the parties;
(4) The standard of living established in the marriage or civil union and the likelihood that each party can maintain a reasonably comparable standard of living, with neither party having a greater entitlement to that standard of living than the other;
(5) The earning capacities, educational levels, vocational skills, and employability of the parties;
(6) The length of absence from the job market of the party seeking maintenance;
(7) The parental responsibilities for the children;

(8) The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;

(9) The history of the financial or non-financial contributions to the marriage or civil union by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities;

(10) The equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just and fair;

(11) The income available to either party through investment of any assets held by that party;

(12) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment;

(13) The nature, amount, and length of pendente lite support paid, if any; and

(14) Any other factors which the court may deem relevant.

In each case where the court is asked to make an award of alimony, the court shall consider and assess evidence with respect to all relevant statutory factors. If the court determines that certain factors are more or less relevant than others, the court shall make specific written findings of fact and conclusions of law on the reasons why the court reached that conclusion. No factor shall be elevated in importance over any other factor unless the court finds otherwise, in which case the court shall make specific written findings of fact and conclusions of law in that regard.

When a share of a retirement benefit is treated as an asset for purposes of equitable distribution, the court shall not consider income generated thereafter by that share for purposes of determining alimony.

c. In any case in which there is a request for an award of alimony, the court shall consider and make specific findings on the evidence about all of the statutory factors set forth in subsection b. of this section.

For any marriage or civil union less than 20 years in duration, the total duration of alimony shall not, except in exceptional circumstances, exceed the length of the marriage or civil union. Determination of the length and amount of alimony shall be made by the court pursuant to consideration of all of the statutory factors set forth in subsection b. of this section. In addition to those factors, the court shall also consider the practical impact of the parties’ need for separate residences and the attendant increase in living expenses on the ability of both parties to maintain a standard of living reasonably comparable to the standard of living established in the marriage or civil union, to which both parties are entitled, with neither party having a greater entitlement thereto.
Exceptional circumstances which may require an adjustment to the duration of alimony include:

(1) The ages of the parties at the time of the marriage or civil union and at the time of the alimony award;

(2) The degree and duration of the dependency of one party on the other party during the marriage or civil union;

(3) Whether a spouse or partner has a chronic illness or unusual health circumstance;

(4) Whether a spouse or partner has given up a career or a career opportunity or otherwise supported the career of the other spouse or partner;

(5) Whether a spouse or partner has received a disproportionate share of equitable distribution;

(6) The impact of the marriage or civil union on either party’s ability to become self-supporting, including but not limited to either party’s responsibility as primary caretaker of a child;

(7) Tax considerations of either party;

(8) Any other factors or circumstances that the court deems equitable, relevant and material.

An award of alimony for a limited duration may be modified based either upon changed circumstances, or upon the nonoccurrence of circumstances that the court found would occur at the time of the award. The court may modify the amount of such an award, but shall not modify the length of the term except in unusual circumstances.

In determining the length of the term, the court shall consider the length of time it would reasonably take for the recipient to improve his or her earning capacity to a level where limited duration alimony is no longer appropriate.

d. Rehabilitative alimony shall be awarded based upon a plan in which the payee shows the scope of rehabilitation, the steps to be taken, and the time frame, including a period of employment during which rehabilitation will occur. An award of rehabilitative alimony may be modified based either upon changed circumstances, or upon the nonoccurrence of circumstances that the court found would occur at the time of the rehabilitative award.

This section is not intended to preclude a court from modifying alimony awards based upon the law.

e. Reimbursement alimony may be awarded under circumstances in which one party supported the other through an advanced education, anticipating participation in the fruits of the earning capacity generated by that education. An award of reimbursement alimony shall not be modified for any reason.

f. Except as provided in subsection i., nothing in this section shall be construed to limit the court’s authority to award open durational alimony, limited duration alimony, rehabilitative alimony or reimbursement alimony, separately or in any combination, as warranted by the circumstances of the parties and the nature of the case.
g. In all actions for divorce or dissolution other than those where judgment is granted solely on the ground of separation the court may consider also the proofs made in establishing such ground in determining an amount of alimony or maintenance that is fit, reasonable and just. In all actions for divorce, dissolution of civil union, divorce from bed and board, or legal separation from a partner in a civil union couple where judgment is granted on the ground of institutionalization for mental illness the court may consider the possible burden upon the taxpayers of the State as well as the ability of the party to pay in determining an amount of maintenance to be awarded.

h. Except as provided in this subsection, in all actions where a judgment of divorce, dissolution of civil union, divorce from bed and board or legal separation from a partner in a civil union couple is entered the court may make such award or awards to the parties, in addition to alimony and maintenance, to effectuate an equitable distribution of the property, both real and personal, which was legally and beneficially acquired by them or either of them during the marriage or civil union. However, all such property, real, personal or otherwise, legally or beneficially acquired during the marriage or civil union by either party by way of gift, devise, or intestate succession shall not be subject to equitable distribution, except that interspousal gifts or gifts between partners in a civil union couple shall be subject to equitable distribution. The court may not make an award concerning the equitable distribution of property on behalf of a party convicted of an attempt or conspiracy to murder the other party.

i. No person convicted of Murder, N.J.S.2C:11-3; Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2; Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a substantially similar offense under the laws of another jurisdiction, may receive alimony if: (1) the crime results in death or serious bodily injury, as defined in subsection b. of N.J.S.2C:11-1, to a family member of a divorcing party; and (2) the crime was committed after the marriage or civil union. A person convicted of an attempt or conspiracy to commit murder may not receive alimony from the person who was the intended victim of the attempt or conspiracy. Nothing in this subsection shall be construed to limit the authority of the court to deny alimony for other bad acts.

As used in this subsection:

“Family member” means a spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother, or half sister, whether the individual is related by blood, marriage or civil union, or adoption.

j. Alimony may be modified or terminated upon the prospective or actual retirement of the obligor.

(1) There shall be a rebuttable presumption that alimony shall terminate upon the obligor spouse or partner attaining full retirement age, except that any arrearages that have accrued prior to the termination date shall not be vacated or annulled. The court may set a different alimony termination date for good cause shown based on specific written findings of fact and conclusions of law.
The rebuttable presumption may be overcome if, upon consideration of the following factors and for good cause shown, the court determines that alimony should continue:

(a) The ages of the parties at the time of the application for retirement;

(b) The ages of the parties at the time of the marriage or civil union and their ages at the time of entry of the alimony award;

(c) The degree and duration of the economic dependency of the recipient upon the payor during the marriage or civil union;

(d) Whether the recipient has foregone or relinquished or otherwise sacrificed claims, rights or property in exchange for a more substantial or longer alimony award;

(e) The duration or amount of alimony already paid;

(f) The health of the parties at the time of the retirement application;

(g) Assets of the parties at the time of the retirement application;

(h) Whether the recipient has reached full retirement age as defined in this section;

(i) Sources of income, both earned and unearned, of the parties;

(j) The ability of the recipient to have saved adequately for retirement; and

(k) Any other factors that the court may deem relevant.

If the court determines, for good cause shown based on specific written findings of fact and conclusions of law, that the presumption has been overcome, then the court shall apply the alimony factors as set forth in subsection b. of this section to the parties’ current circumstances in order to determine whether modification or termination of alimony is appropriate. If the obligor intends to retire but has not yet retired, the court shall establish the conditions under which the modification or termination of alimony will be effective.

(2) Where the obligor seeks to retire prior to attaining the full retirement age as defined in this section, the obligor shall have the burden of demonstrating by a preponderance of the evidence that the prospective or actual retirement is reasonable and made in good faith. Both the obligor’s application to the court for modification or termination of alimony and the obligee’s response to the application shall be accompanied by current Case Information Statements or other relevant documents as required by the Rules of Court, as well as the Case Information Statements or other documents from the date of entry of the original alimony award and from the date of any subsequent modification.

In order to determine whether the obligor has met the burden of demonstrating that the obligor’s prospective or actual retirement is reasonable and made in good faith, the court shall consider the following factors:

(a) The age and health of the parties at the time of the application;
(b) The obligor’s field of employment and the generally accepted age of retirement for those in that field;

(c) The age when the obligor becomes eligible for retirement at the obligor’s place of employment, including mandatory retirement dates or the dates upon which continued employment would no longer increase retirement benefits;

(d) The obligor’s motives in retiring, including any pressures to retire applied by the obligor’s employer or incentive plans offered by the obligor’s employer;

(e) The reasonable expectations of the parties regarding retirement during the marriage or civil union and at the time of the divorce or dissolution;

(f) The ability of the obligor to maintain support payments following retirement, including whether the obligor will continue to be employed part-time or work reduced hours;

(g) The obligee’s level of financial independence and the financial impact of the obligor’s retirement upon the obligee; and

(h) Any other relevant factors affecting the obligor’s decision to retire and the parties’ respective financial positions.

If the obligor intends to retire but has not yet retired, the court shall establish the conditions under which the modification or termination of alimony will be effective.

(3) When a retirement application is filed in cases in which there is an existing final alimony order or enforceable written agreement established prior to the effective date of this act, the obligor’s reaching full retirement age as defined in this section shall be deemed a good faith retirement age. Upon application by the obligor to modify or terminate alimony, both the obligor’s application to the court for modification or termination of alimony and the obligee’s response to the application shall be accompanied by current Case Information Statements or other relevant documents as required by the Rules of Court, as well as the Case Information Statements or other documents from the date of entry of the original alimony award and from the date of any subsequent modification. In making its determination, the court shall consider the ability of the obligee to have saved adequately for retirement as well as the following factors in order to determine whether the obligor, by a preponderance of the evidence, has demonstrated that modification or termination of alimony is appropriate:

(a) The age and health of the parties at the time of the application;

(b) The obligor’s field of employment and the generally accepted age of retirement for those in that field;

(c) The age when the obligor becomes eligible for retirement at the obligor’s place of employment, including mandatory retirement dates or the dates upon which continued employment would no longer increase retirement benefits;

(d) The obligor’s motives in retiring, including any pressures to retire applied by the obligor’s employer or incentive plans offered by the obligor’s employer;
(e) The reasonable expectations of the parties regarding retirement during the marriage or civil union and at the time of the divorce or dissolution;

(f) The ability of the obligor to maintain support payments following retirement, including whether the obligor will continue to be employed part-time or work reduced hours;

(g) The obligee’s level of financial independence and the financial impact of the obligor’s retirement upon the obligee; and

(h) Any other relevant factors affecting the parties’ respective financial positions.

(4) The assets distributed between the parties at the time of the entry of a final order of divorce or dissolution of a civil union shall not be considered by the court for purposes of determining the obligor’s ability to pay alimony following retirement.

k. When a non-self-employed party seeks modification of alimony, the court shall consider the following factors:

(1) The reasons for any loss of income;

(2) Under circumstances where there has been a loss of employment, the obligor’s documented efforts to obtain replacement employment or to pursue an alternative occupation;

(3) Under circumstances where there has been a loss of employment, whether the obligor is making a good faith effort to find remunerative employment at any level and in any field;

(4) The income of the obligee; the obligee’s circumstances; and the obligee’s reasonable efforts to obtain employment in view of those circumstances and existing opportunities;

(5) The impact of the parties’ health on their ability to obtain employment;

(6) Any severance compensation or award made in connection with any loss of employment;

(7) Any changes in the respective financial circumstances of the parties that have occurred since the date of the order from which modification is sought;

(8) The reasons for any change in either party’s financial circumstances since the date of the order from which modification is sought, including, but not limited to, assessment of the extent to which either party’s financial circumstances at the time of the application are attributable to enhanced earnings or financial benefits received from any source since the date of the order;

(9) Whether a temporary remedy should be fashioned to provide adjustment of the support award from which modification is sought, and the terms of any such adjustment, pending continuing employment investigations by the unemployed spouse or partner; and

(10) Any other factor the court deems relevant to fairly and equitably decide the application.
Under circumstances where the changed circumstances arise from the loss of employment, the length of time a party has been involuntarily unemployed or has had an involuntary reduction in income shall not be the only factor considered by the court when an application is filed by a non-self-employed party to reduce alimony because of involuntary loss of employment. The court shall determine the application based upon all of the enumerated factors, however, no application shall be filed until a party has been unemployed, or has not been able to return to or attain employment at prior income levels, or both, for a period of 90 days. The court shall have discretion to make any relief granted retroactive to the date of the loss of employment or reduction of income.

I. When a self-employed party seeks modification of alimony because of an involuntary reduction in income since the date of the order from which modification is sought, then that party’s application for relief must include an analysis that sets forth the economic and non-economic benefits the party receives from the business, and which compares these economic and non-economic benefits to those that were in existence at the time of the entry of the order.

m. When assessing a temporary remedy, the court may temporarily suspend support, or reduce support on terms; direct that support be paid in some amount from assets pending further proceedings; direct a periodic review; or enter any other order the court finds appropriate to assure fairness and equity to both parties.

n. Alimony may be suspended or terminated if the payee cohabits with another person. Cohabitation involves a mutually supportive, intimate personal relationship in which a couple has undertaken duties and privileges that are commonly associated with marriage or civil union but does not necessarily maintain a single common household. When assessing whether cohabitation is occurring, the court shall consider the following:

1. Intertwined finances such as joint bank accounts and other joint holdings or liabilities;
2. Sharing or joint responsibility for living expenses;
3. Recognition of the relationship in the couple’s social and family circle;
4. Living together, the frequency of contact, the duration of the relationship, and other indicia of a mutually supportive intimate personal relationship;
5. Sharing household chores;
6. Whether the recipient of alimony has received an enforceable promise of support from another person within the meaning of subsection h. of R.S.25:1-5; and
7. All other relevant evidence.

In evaluating whether cohabitation is occurring and whether alimony should be suspended or terminated, the court shall also consider the length of the relationship. A court may not find an absence of cohabitation solely on grounds that the couple does not live together on a full-time basis.
As used in this section:

“Full retirement age” shall mean the age at which a person is eligible to receive full retirement for full retirement benefits under section 216 of the federal Social Security Act (42 U.S.C. § 416).

History


Annotations

LexisNexis® Notes

Notes

OLS Corrections:

Pursuant to R.S.1:3-1, the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, inserted “or” preceding “legal separation from a partner in a civil union couple” in the second sentence of subsection g. in L. 2006, c. 103, § 78.

Editor’s Note:

Offset of certain lottery prizes for child support indebtedness, see 5:9-13.17.

Effective Dates:

Section 96 of L. 2006, c. 103 provides: “This act shall take effect on the 60th day after the enactment of this act, but the Commissioner of Health and Senior Services and the Director of the Administrative Office of the Courts may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.” Chapter 103, L. 2006, was approved on Dec. 21, 2006.

Section 5 of L. 2009, c. 43 provides: “This act shall take effect on the first day of the third month following enactment.” Chapter 43, L. 2009, was approved on April 15, 2009.

Section 2 of L. 2014, c. 42 provides: “This act shall take effect immediately and shall not be construed either to modify the duration of alimony ordered or agreed upon or other specifically bargained for contractual provisions that have been incorporated into: a. a final judgment of divorce or dissolution; b. a final order that has concluded post-judgment litigation; or c. any
enforceable written agreement between the parties.” Chapter 42, L. 2014, was approved on Sept. 10, 2014.

Amendment Note:

2006 amendment, by Chapter 103 which established civil unions, in the first sentence, inserted “or action for dissolution of a civil union” and “or dissolution”; in the first sentence of b., inserted “dissolution of a civil union” and “legal separation from a partner in a civil union couple”, and inserted “or civil union” in b.(2), b.(4), and b.(9); in g., inserted “or dissolution” in the first sentence, and in the second sentence inserted “dissolution of civil union” and “or legal separation from a partner in a civil union couple” and made related changes; and in the first sentence of h., inserted “dissolution of civil union” and “or legal separation from a partner in a civil union couple”, made related changes, and added “or civil union”, and in the second sentence of h., inserted “or civil union” and “or gifts between partners in a civil union couple.”

2009 amendment, by Chapter 43, in the second paragraph, added the final sentence; in f., added “Except as provided in subsection i.”; in h., added the final sentence, and added “Except as provided in this subsection” to the first sentence; and added i.

2014 amendment, by Chapter 42, substituted “open durational alimony” for “permanent alimony” in the first sentence of the introductory language of b. and in f.; added “with neither party having a greater entitlement to that standard of living than the other” in b.(4); inserted b.(13); redesignated former b.(13) as b.(14); inserted the second paragraph of b.; in c., rewrote the first paragraph and inserted the second and third paragraphs; deleted “permanent” preceding “alimony” in the second paragraph of d.; added the second sentence of e.; inserted “or civil union” in the second paragraph of i.; and added j. through n.

Case Notes

Bankruptcy Law: Case Administration: Administrative Powers: Stays: General Overview

Bankruptcy Law: Case Administration: Administrative Powers: Stays: Remedies: Invalidity of Improper Actions

Bankruptcy Law: Case Administration: Examiners, Officers & Trustees: Voidable Transfers: General Overview

Bankruptcy Law: Discharge & Dischargeability: Effects of Discharge: Protection

Bankruptcy Law: Discharge & Dischargeability: Liquidations: Eligible Debts


Bankruptcy Law: Estate Property: Abandonment: General Overview

Bankruptcy Law: Estate Property: Content
§ 2A:34-23.1. Equitable distribution criteria

In making an equitable distribution of property, the court shall consider, but not be limited to, the following factors:

a. The duration of the marriage or civil union;

b. The age and physical and emotional health of the parties;

c. The income or property brought to the marriage or civil union by each party;

d. The standard of living established during the marriage or civil union;

e. Any written agreement made by the parties before or during the marriage or civil union concerning an arrangement of property distribution;

f. The economic circumstances of each party at the time the division of property becomes effective;

g. The income and earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage or civil union;

h. The contribution by each party to the education, training or earning power of the other;

i. The contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property, or the property acquired during the civil union as well as the contribution of a party as a homemaker;

j. The tax consequences of the proposed distribution to each party;

k. The present value of the property;

l. The need of a parent who has physical custody of a child to own or occupy the marital residence or residence shared by the partners in a civil union couple and to use or own the household effects;

m. The debts and liabilities of the parties;

n. The need for creation, now or in the future, of a trust fund to secure reasonably foreseeable medical or educational costs for a spouse, partner in a civil union couple or children;

o. The extent to which a party deferred achieving their career goals; and

p. Any other factors which the court may deem relevant.

In every case, except cases where the court does not make an award concerning the equitable distribution of property pursuant to subsection h. of N.J.S.2A:34-23, the court shall make specific findings of fact on the
evidence relevant to all issues pertaining to asset eligibility or ineligibility, asset valuation, and equitable distribution, including specifically, but not limited to, the factors set forth in this section.

It shall be a rebuttable presumption that each party made a substantial financial or nonfinancial contribution to the acquisition of income and property while the party was married.

History

How to File a Non-Divorce Application for Custody, Child/Spousal Support or Parenting Time (Visitation) - Non-dissolution “FD” Case

Superior Court of New Jersey - Chancery Division - Family Part

Who Should Use This Packet?

This packet should only be used the first time you file for custody, parenting time, paternity, child support, medical coverage, spousal support or visitation with a minor (grandparent/adult sibling).

Use this packet if you are:

- a parent who is not married, or who is married but has not filed for divorce, and you want to establish paternity, custody, parenting time (visitation), child support, and/or medical support.
- married and requesting spousal and/or medical coverage.
- a grandparent or adult sibling and you want to file for custody, visitation, child support and/or medical support.
- filing a counterclaim or a response to a complaint filed by the other party.

Do NOT use this packet if:

- you have filed for divorce or are divorced from the other party.
- you have an active domestic violence restraining order with the other party.
- you already have a Family court case with the other party that you want to modify.
- you want to file an appeal of a court order that was already issued. To file an appeal use 10837 - How to Appeal a Trial Court, Tax Court or State Agency Decision found on our website at njcourts.gov.
- Your case is an emergency. You must file for an emergent hearing at the courthouse. You cannot file for an emergent hearing through the mail. Only a judge can determine if your case will qualify as an emergency. If you are denied an emergency hearing, your case will continue under the normal case process.

Note: These materials have been prepared by the New Jersey Administrative Office of the Courts for use by self-represented litigants. The guides, instructions, and forms will be periodically updated as necessary to reflect current New Jersey statutes and court rules. The most recent version of the forms will be available at the county courthouse or on the Judiciary’s Internet site njcourts.gov. However, you are ultimately responsible for the content of your court papers.

Completed forms are to be submitted to the Family Division where the case is filed. A list of Family Division Offices can be found on njcourts.gov
Things to Think About Before You Represent Yourself in Court

Try to Get a Lawyer
The law, the proofs necessary to present your case, and the procedural rules governing cases in the Family Division are complex. It is recommended that you make every effort to obtain the assistance of a lawyer. If you cannot afford a lawyer, you may contact the legal services program in your county to see if you qualify for free legal services. Their telephone number can be found online under “Legal Aid” or “Legal Services.”

If you do not qualify for free legal services and need help in locating an attorney, you can contact the bar association in your county. Most county bar associations have a Lawyer Referral Service.

The County Bar Lawyer Referral Service can supply you with the names of attorneys in your area willing to handle your particular type of case and will sometimes consult with you at a reduced fee.

There are a variety of organizations of minority lawyers throughout New Jersey, as well as organizations of lawyers who handle specialized types of cases. Ask the Family court staff in your county for a list of lawyer referral services that include these organizations.

What You Should Expect If You Represent Yourself
While you have the right to represent yourself in court, you should not expect special treatment, help or attention from the court. The following is a list of some things court staff can and cannot do for you. Please read it carefully before asking court staff for help.

- We can explain and answer questions about how the court works.
- We can tell you what the requirements are to have your case considered by the court.
- We can give you some information from your case file.
- We can provide you with samples of court forms that are available.
- We can provide you with guidance on how to fill out forms.
- We can usually answer questions about court deadlines.
- We cannot give you legal advice. Only your lawyer can give you legal advice.
- We cannot tell you whether or not you should bring your case to court.
- We cannot give you an opinion about what will happen if you bring your case to court.
- We cannot recommend a lawyer, but we can provide you with the telephone number of a local lawyer referral service.
- We cannot not talk to the judge for you about what will happen in your case.
- We cannot let you talk to the judge outside of court.
- We cannot change an order issued by a judge.

Keep Copies of All Papers
Make and keep copies for yourself, written agreements, Case Information Statements, and other important papers that relate to your case.
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Arrears</strong></td>
<td>Arrears are unpaid or overdue child support, alimony, or spousal support payments.</td>
</tr>
<tr>
<td><strong>Application</strong></td>
<td>An application is a written request in which you ask the court to issue an order or to change an order that has already been issued.</td>
</tr>
<tr>
<td><strong>Bench Warrant</strong></td>
<td>A bench warrant is an order from the court giving legal authority to law enforcement to arrest a person for failure to appear for a court hearing or failure to comply with a court order.</td>
</tr>
<tr>
<td><strong>Certification</strong></td>
<td>A certification is a written statement made to the court when you file papers with the court, swearing that the information contained in the filed papers is true.</td>
</tr>
<tr>
<td><strong>Child Support Number</strong></td>
<td>The Child Support Number is the identifying number assigned to your child, spousal, or alimony support case.</td>
</tr>
<tr>
<td><strong>Complaint</strong></td>
<td>A complaint is a formal document filed in court that starts a case. It typically includes the names of the parties and the issues you are asking the court to decide.</td>
</tr>
<tr>
<td><strong>Custodial Parent</strong></td>
<td>The custodial parent is the person with whom the child(ren) live with and has the primary day-to-day responsibility.</td>
</tr>
<tr>
<td><strong>Counterclaim</strong></td>
<td>A counterclaim is a document in which the Defendant states their opposition to the original claim and may additionally relay to the court why you think you are entitled to relief in the case.</td>
</tr>
<tr>
<td><strong>Court Order</strong></td>
<td>A court order is the written decision issued by a court of law. For example, a child support court order sets forth how often, how much, and what kind of support is to be paid.</td>
</tr>
<tr>
<td><strong>Custody</strong></td>
<td>Refers to the right to make decisions for the child. Joint, sole, physical custody, refers to where and by whom the child’s needs are met. Sole custody refers to one person and joint custody refers to sharing by the parties in the case.</td>
</tr>
<tr>
<td><strong>Diligent Search</strong></td>
<td>A diligent search means you made a serious effort to find information about the location of the other party named in your case, and that you have followed up on any information you have received about their whereabouts.</td>
</tr>
<tr>
<td><strong>Docket Number</strong></td>
<td>The docket number is the identifying number assigned to every case filed in the court.</td>
</tr>
<tr>
<td><strong>Exhibits</strong></td>
<td>Exhibits are documents or objects you provide to the court to support what you want the court to decide.</td>
</tr>
<tr>
<td><strong>FD</strong></td>
<td>The letters the court uses to identify a non-dissolution case that involves parents who are not legally married or other adults filing for court relief on behalf of minor children. FD cases can also include married people who are separated but need financial support.</td>
</tr>
<tr>
<td><strong>File</strong></td>
<td>To file means to give the appropriate forms to the court to begin the court’s consideration of your request.</td>
</tr>
<tr>
<td><strong>Income Withholding/Wage Garnishment</strong></td>
<td>Income Withholding/Wage Garnishment is a process where automatic deductions are made from wages or other income, to pay your support obligation. Income withholding has been mandatory since the enactment of the Family Support Act of 1988.</td>
</tr>
</tbody>
</table>
Definitions of Court Terms Used in FD Cases (continued)

New Jersey Child Support Guidelines - Both parents are responsible for the financial and emotional support of their children. New Jersey has developed a standard method for calculating child support based on the income of both parents and other factors. The full set of NJ Child Support Guidelines is contained in Rule 5:6A of the New Jersey Court Rules.

NJKiDS (New Jersey Kids Deserve Support) - NJKiDS is the New Jersey Child Support automated computer system that tracks child support accounts.

Non-Custodial Parent - the non-custodial parent is the parent with whom the child(ren) do not live the majority of the time with.

Obligor/Payor - An obligor/payor is the person ordered by the court to pay support, also known as the non-custodial parent (NCP).

Obligee/Payee - An obligee/payee is the person, agency, or institution who receives support, also known as the custodial parent (CP).

Party - A party is a person, business, or governmental agency involved in a court action.

Petitioner - Petitioner is another name for the person starting the court action by filing the appropriate papers the court will consider.

Respondent - Respondent is the person who is named as the other party in the court action filed by the petitioner. This person can respond to the complaint or application filed by the petitioner by filing a cross application or written response with the court.

Relief - To ask for relief is to ask the court to grant something such as custody, parenting time, or support.

Support Obligation - Support Obligation is the amount of support that the court orders the obligor to pay. The court order includes how much and how often support has to be paid (i.e., per week, per month, bi-weekly, etc.).

Child Support Enforcement - The Child Support Enforcement Division is required to enforce court orders that call for the payment of child support, health care coverage, and/or spousal support/alimony. If support is not being paid timely, the Child Support Enforcement has many state and federal tools available to enforce child support orders. These can include, but are not limited to:

- Income withholding
- Court hearing
- Bench warrant
- Tax offset - federal and state
- Judgment (liens attached to property & assets)
- Credit bureau notification
- Financial Institution Data Match (FIDM) - seizure of bank accounts
- Child Support Lien Network (CSLN) - seizure of proceeds from law suits
- Passport denial
- License suspension
- Lottery interception
The numbered steps listed below tell you what forms you will need to fill out and what to do with them. Each form should be typed or printed clearly on 8 ½ “x 11” white paper only. Forms cannot be filed on a different size or color paper. Use only the forms included in this packet. Be sure to keep a copy for your records.

Steps for Filing a Complaint

**STEP 1:** Fill out the *Verified Complaint* or *Counterclaim* (Form A)
The *Verified Complaint* or *Counterclaim* is a written request in which you ask the court to establish a court order on your behalf concerning a minor child or spouse. The court will establish an order based on testimony of the parties and written documentation submitted.

**STEP 2:** Provide the court with the most recent address of the other party(ies)
The court will send a Notice to Appear to the plaintiff, defendant, all listed parties, and attorney(s) connected to your case when the case is scheduled for court. Your appearance is mandatory.

*Note:* The other party will receive copies of all of the papers you attach to your complaint with the Notice to Appear, unless court rules prohibit this information from being shared.

You must provide the court with the most current address (that you know of) for the other party and the name of their attorney (if you know it) when you file your complaint. Failure to do so may result in your case being dismissed by the court or delayed because the other party could not be served with a Notice to Appear.

**STEP 3:** Fill out the *Certification of Diligent Search* (if necessary)
Every person named in a court action must be given the opportunity to respond. They must be provided notice so that they can exercise their right to answer the complaint. If you are filing for custody or parenting time/visitation with a minor child, the court requires that you provide the address of the other legal parent/guardian, so they can be served with the complaint and have the opportunity to respond.

If you do not know the current address of the other party, you must complete the *Certification of Diligent Search* (CN 11490). This packet provides proof to the court of your efforts to find the other party. The packet must be completed in its entirety and mailed or delivered to the court. If you are unable to send a letter as directed, you must tell the court why by putting your reason on the letter and including it in the completed packet you mail or deliver to the court. Once you have mailed or delivered your packet to the court, your case will be filed and scheduled for a hearing. The judge will decide if your search was sufficient at the hearing. **This process must be completed before your case can proceed in court.** You can find this kit on njcourts.gov.

**Important Note:** If you are filing to establish paternity or child support, a diligent search might not be required. You can go to your local County Welfare Office (CWA) and request locate services. Federal locate services are used only for the purpose of establishing paternity or child support.

**STEP 4:** Fill out the *Confidential Litigant Information Sheet*
The *Confidential Litigant Information Sheet* (CN 10486) is to ensure accuracy of court records and must be completed by the person filing this initial application. You must complete the entire form and submit it with your papers to the court. Do NOT leave any blank spaces. If something does not apply to you, enter “N/A”. **This form is confidential and will not be shared with the other party.** Each party is required to complete their own Confidential Litigant Information Sheet and file it with the court. You can find this form on njcourts.gov.

*Note:* Failure to complete the Confidential Litigant Information Sheet will result in your papers being returned to you marked “deficient” and will cause a delay in your case being scheduled for court.
STEP 5: Fill out the Financial Statement for Summary Support Actions (if applicable)
The Financial Statement for Summary Support Actions (CN 11223) must be completed if you are requesting a child support order in an FD case. You must complete the entire form. Do NOT leave any blank spaces. If something does not apply to you, enter “N/A”. This completed form must be included in your packet submitted to the court. This form will be shared with the other party pursuant to Court Rule 5:5-3. The other party must complete this same form and file it with the court. The court will share this information with the filing party at the court hearing. You can find this form on njcourts.gov.

STEP 6: Fill out the Family Case Information Statement (CIS) (if applicable)
The Family Case Information Statement (CN 10482) must be completed only if you are married but separated and want to establish spousal support. Spousal support can only be established under FD when there is no active divorce case.

Pursuant to Court Rule 5:5-2, a spousal support determination requires the parties to submit a Case Information Statement to the court. You must complete the entire form. Do NOT leave any blank spaces. If something does not apply to you, enter “N/A”. This completed form must be included in your packet submitted to the court. This form will be shared with the other party. The other party must complete this same form, file it with the court and send a copy to you. The court will provide instructions to the other party about sharing this information with the filing party prior to the court hearing. This document is confidential pursuant to Court Rule 1:38-3 and is not available for review by any other people besides the two parties involved in the case, their attorneys, and the court. You can find this form on njcourts.gov.

STEP 7: Fill out the Additional Information Sheet (if needed)
Use this form if you need additional space to explain to the court what you want the court to consider or your position on a particular issue stated in the complaint. Type or write legibly and be as specific as possible.

STEP 8: Check your completed forms and make copies
Check your forms and make sure they are complete. Remove all instruction sheets. Make sure you have signed all the forms wherever necessary.

In Step 9 you will be directed to mail or deliver your documents to the court. The following checklist will help insure your package is complete:

Checklist
Make sure you have all the following items:

— Verified Complaint or Counterclaim (Form A)
— Confidential Litigant Information Sheet

Additional forms if applicable:

— Certification of Diligent Search (CN 11490)
— Financial Statement for Summary Support Actions (CN 11223)
— Family Case Information Statement (CIS) (CN 10482)
— Federal Child Support Services Application (IV-D Child Support Program)
— Certification in Support of Establishing Paternity
— Certificate of Parentage (COP)
— Additional Information Sheet

STEP 9: Mail or deliver your completed paperwork
Mail or deliver your completed packet to the courthouse in the county where the child of the custodial parent resides. When mailing, make sure you specify the “Family Division” and “Non-dissolution Intake” in your address to insure your papers arrive at the correct department in the court.

Sample Address:
(Name of County) Courthouse Family Division
Non-Dissolution Intake 1234 Street
PO Box #
City, State, Zip code

All courthouse addresses can be found on njcourts.gov.
Additional Information on Child Support and Paternity

Note that if your case involves paternity, child support or spousal support, you might need to provide additional information to the court. Read the next section carefully and include any documents that apply to your case. Failure to complete certain required documents will result in your application being returned as “deficient” which will delay you getting your day in court.

Federal Child Support Services Application (IV-D Child Support Program)
You should complete this application if you are applying to establish paternity or child support. Applying for support services under the federal child support program insures your case will be enforced through the court’s Probation Division. Go to NJchildsupport.org, fill out the application, print, sign and mail or deliver with your court papers. The Federal Child Support Program costs $6.00. Include a money order or check for that amount along with the application with the papers you are filing with the court. This application is in addition to the other court papers you must file to establish your child support order.

Child support services include: locating the parent who has a duty to support your child(ren), legally determining if a person is the biological parent of your child, obtaining an order for child support and medical support services (if available at a reasonable cost), collecting support payments, keeping accurate records of payments and enforcing the support order.

Certification in Support of Establishing Paternity
This form must be completed if you are the unmarried biological mother of a child seeking paternity or child support and legal paternity of the father that has not been established by a Certificate of Parentage (COP) or a previous court order. This form must also be completed by the biological father filing for legal paternity or the legal caretaker of the child who wants child support, but where the legal father has not been identified by the court. Only answer the questions about which you have personal knowledge. Put “n/a” if the questions do not apply to you. This form will be shared with the alleged biological father/mother when they receive the notice to appear.

Certificate of Parentage (COP)
This is only required if you are filing to establish paternity for one or more of the children listed in the complaint. Include a copy of the “Certificate of Parentage”, if available, with the papers you file with the court. Check the box only if the form is attached. Make sure you keep a copy for your own records.
Instructions for Completing a Verified Complaint or Counterclaim

Important Notice: This form can be used to request multiple reliefs from the court. Make sure to check the boxes for all the reliefs you are requesting, as only the ones you check will be considered on the day of your hearing.

A. If you are filing a Verified Complaint enter your name on the line marked “ Plaintiff”. If you are filing a Counterclaim enter your name on the line marked “ Defendant”.

B. Enter the name of the other party in your case on the remaining line.

C. On the right side of the form, enter the County where you are filing the application.

D. Leave the Docket Number and CS Number lines blank. The court will provide these numbers for you.

E. Select whether you are filing a Verified Complaint or Counterclaim.

F. Enter your name on the line between the words “I …..by way of verified complaint”.

G. In item #1, select whether you are the Plaintiff, Defendant or the Attorney (for either the Plaintiff or Defendant) in the case. Enter your birth name (if different than what you entered for item A).

H. In item #2, enter the address for the plaintiff. Make sure to include the apartment number or floor, if applicable. Enter the plaintiff’s relationship to the child(ren) in this matter.

I. In item #3, enter the address for the make sure to include the apartment number or floor, if applicable. Enter the defendant’s relationship to the child(ren) in this matter.

J. In item #4, enter the attorney’s name, firm name, attorney ID number and firm address that is representing a party in this matter.

K. In item #5, list the children that are part of your case. Enter each child’s date of birth, gender and the relationship of the person with whom the child currently resides.

L. In item #6, list any other interested parties and their address that should be noticed to appear in court regarding the children.

M. For item #7, select whether you have had previous Family Court activity related to any of the parties listed in this complaint. If you select “Yes”, enter the title of the case, the docket number and the state or country that has jurisdiction of that case.

N. For item #8, select whether (to your knowledge) a child protection agency (i.e., DCPP or similar agency in another state) has been involved with the child(ren) or listed parties. Select whether (to your knowledge) the children are recipients of public assistance.

O. For item #9, select the boxes for all the reliefs you want the court to consider in your case (you can select more than one). Note that only those that are selected will be considered during your court hearing.
Q. Only fill out item #10 if the relief you are seeking is not contained in any of the numbered items in the form. Write in your own words the relief you are seeking for the court in the space provided. Be as specific as possible. Attach additional pages if needed.

R. In the Required Attachments section, select the appropriate box(es) for those forms that you have attached to your packet.

S. In the Additional Attachments section, select the box if you are attaching any additional information to your packet.

T. Select whether you will need Interpreting services or ADA accommodations, and list the language and/or accommodation.

U. The form must have the signature of the party filing the complaint along with the signature of the attorney that is filing the complaint on behalf of the party.
Superior Court of New Jersey  
Chancery Division - Family Part  
County  
Docket Number: FD -  
CS Number:  

Plaintiff

vs.

Defendant

CIVIL ACTION

☐ Verified Complaint  
☐ Counterclaim

I, __________________________ by way of verified complaint/counterclaim, certify the following:

1. I am the ☐ Plaintiff ☐ Defendant ☐ Attorney for _______________________________ in the above-captioned matter.
   Birth Name (if applicable) _______________________________.

2. Plaintiff resides OR is incarcerated at:
   Address __________________________ City/Town __________________________
   County __________________________ State ______ Zip Code __________________________
   Relationship to the child(ren) _______________________________.

   Plaintiff resides OR is incarcerated at:
   Address __________________________ City/Town __________________________
   County __________________________ State ______ Zip Code __________________________
   Relationship to the child(ren) _______________________________.

3. Defendant resides OR is incarcerated at:
   Address __________________________ City/Town __________________________
   County __________________________ State ______ Zip Code __________________________
   Relationship to the child(ren) _______________________________.

   Defendant resides OR is incarcerated at:
   Address __________________________ City/Town __________________________
   County __________________________ State ______ Zip Code __________________________
   Relationship to the child(ren) _______________________________.

4. Attorney Name _______________________________ 
   Firm Name _______________________________ 
   ID Number _______________________________ 
   Address _______________________________ 
   City/Town __________________________ State ______ Zip Code __________________________
5. The child(ren) involved in this complaint are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Birth</th>
<th>M/F</th>
<th>Residing with (relationship)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6. Other interested parties’ name(s) and address(es):

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

7. I have previously been involved in the following New Jersey family court actions or other State/Country litigation involving at least one of the parties or children listed above. (If yes, give the title of case and docket number.)

<table>
<thead>
<tr>
<th>Title of Case</th>
<th>Docket Number</th>
<th>State/Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

8. A Child Protection Agency (i.e. the Division of Child Protection and Permanency or a similar agency in another State) has been involved or is currently involved with the with the child(ren) or listed parties.

<table>
<thead>
<tr>
<th>Is any party in this case currently receiving public assistance? (Governed by 41 U.S.C.A. 602 (A)(26), N.J.S.A. 44:10-1.1, et seq.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
</tr>
</tbody>
</table>

9. I request the following:

- Establish Paternity (Certification in Support of Establishing Paternity is required when requesting Paternity)
  - Were parents of the child married at the time of birth? [ ] Yes [ ] No

- Disestablish Paternity
  - Were parents of the child married at the time of birth? [ ] Yes [ ] No

- Establish Maternity

- Child Support (A Certificate of Parentage is required if available)
  - (Pursuant to Court Rule 5:5-3, you are required to complete a Financial Statement for Summary Support Actions to serve on the other party. At the hearing you must have your most recent federal income tax return or your three most recent pay stubs.)

- Spousal Support
  - (Pursuant to Court Rule 5:5-2, you are required to complete a Case Information Statement to serve on the other party. At the hearing you must have your most recent federal income tax return or your three most recent pay stubs)

- College Expenses

- Custody
☐ Establish visitation/parenting time arrangements
  ☐ Parenting Time  ☐ Grandparent Visitation  ☐ Sibling Visitation
  ☐ Other

☐ Medical Support Requested
  ☐ Health benefits for myself
  ☐ Health benefits for the child(ren) named in this complaint

Reasons for your request: (explain in detail)


10. The relief I am requesting is not listed above. I am requesting the following from the court. (Use additional information sheet if necessary)


**Required Attachments** (Check all appropriate boxes)

- [ ] Confidential Litigant Information Statement.
- [ ] Certificate of Parentage (if available). (Please note that this is **not** the Birth Certificate.)
- [ ] Certification in Support of Establish Paternity (when requesting establishment of paternity).
- [ ] Financial Statement for Summary Support Actions (when requesting child support only).
- [ ] Case Information Statement (when requesting spousal support only).

**Additional Attachments**

- [ ] Check this box if you are attaching any additional information (a certification, exhibits)

At the hearing:

Will you require an interpreter?  
- [ ] Yes  
- [ ] No

If yes, indicate language:

Will you require an accommodation for a disability?  
- [ ] Yes  
- [ ] No

If yes, indicate requested accommodation:

I/we certify that the foregoing statements made by me/us are true. I am/We are aware that if any of the foregoing statements made by me/us are willfully false, I am/We are subject to punishment.

---

Date  
Signature  
- [ ] Plaintiff  
- [ ] Defendant

Date  
Signature  
- [ ] Plaintiff  
- [ ] Defendant

Date  
Signature  
- [ ] Plaintiff Attorney  
- [ ] Defendant Attorney

**Note that the signature of the party filing the complaint is required along with the signature of the attorney that is filing the complaint on behalf of the party.**

**COURT APPEARANCE INFORMATION FOR THE PERSON FILING THIS APPLICATION:**

Your appearance is mandatory. You should bring to court any other documentation or proof that supports your case. If you are filing for child or spousal support, bring any information about your finances with you to your court appearance such as your last three pay stubs and your most recent W-2 statement. You may bring an attorney, although an attorney is not required. If you require assistance in selecting an attorney, you may contact your County Bar Association. If you cannot afford an attorney, you may contact Legal Services of New Jersey at www.lsnj.org.

**COURT APPEARANCE INFORMATION FOR THE PERSON RECEIVING THIS APPLICATION:**

Your appearance is mandatory. If you fail to appear at the hearing an order granting the relief requested by the filing party may be granted. If the filing party’s request is for child or spousal support, bring any information about your finances with you to your court appearance such as your last three pay stubs and your most recent W-2 statement. You may bring an attorney, although an attorney is not required. If you require assistance in selecting an attorney, you may contact your County Bar Association. If you cannot afford an attorney, you may contact Legal Services of New Jersey at www.lsnj.org.
## Additional Information Sheet

<table>
<thead>
<tr>
<th>Full Name</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Docket Number</td>
<td>CS Number</td>
</tr>
</tbody>
</table>

---

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date _______________  
Signature of Plaintiff/Counterclaimant

---

Revised Form Promulgated by Directive #20-19 (09/03/2019), CN 11492
How to File a Request to Modify a Non-Dissolution “FD” Court Order Previously Issued by the Court

Superior Court of New Jersey - Chancery Division - Family Part

Who Should Use This Packet?

You can use this packet if your docket number starts with the letters FD, and you have an order from the court that you want to change. You can also use this packet if you want to respond to the modification request filed by the other party. You must include a $25.00 filing fee with the completed packet. Some types of modifications you can request with this packet are:

- Establish or Change an existing Child/Spousal Support Order
- Enforce the Current Support Order
- Change an existing Custody/Parenting Time Court Order
- Request to Relocate the Child(ren)/Oppose-to Relocation
- Request to have a Bench Warrant/Detainer lifted (Incarcerated Defendants Only)

ONLY use this packet if your case begins with letters FD. Do NOT use this packet if:

- You want to file an appeal of a court order that was already issued. To file an appeal use 10837- How to Appeal a Trial Court, Tax Court or State Agency Decision found on our website at njcourts.gov.
- Your case is an emergency (Emergent Application Order to Show Cause). An emergent hearing in family court is designed to protect children from substantial and irreparable harm if someone is not restrained for doing something right now. You must file for an emergent hearing at the courthouse. You cannot file for an emergent hearing through the mail. Only a judge can determine if your case will qualify as an emergency. If you are denied an emergency hearing, your case will continue under the normal case process.
- Your case begins with letters other than “FD”.

Note: These materials have been prepared by the New Jersey Administrative Office of the Courts for use by self-represented litigants. The guides, instructions, and forms will be periodically updated as necessary to reflect current New Jersey statutes and court rules. The most recent version of the forms will be available at the county courthouse or on the Judiciary’s Internet site njcourts.gov. However, you are ultimately responsible for the content of your court papers.

Completed forms are to be submitted to the Family Division where the case is filed. A list of Family Division Offices can be found on njcourts.gov
Things to Think About Before You Represent Yourself in Court

Try to Get a Lawyer
The law, the proofs necessary to present your case, and the procedural rules governing cases in the Family Division are complex. It is recommended that you make every effort to obtain the assistance of a lawyer. If you cannot afford a lawyer, you may contact the legal services program in your county to see if you qualify for free legal services. Their telephone number can be found online under “Legal Aid” or “Legal Services.”

If you do not qualify for free legal services and need help in locating an attorney, you can contact the bar association in your county. The telephone number can also be found in your local yellow pages. Most county bar associations have a Lawyer Referral Service.

The County Bar Lawyer Referral Service can supply you with the names of attorneys in your area willing to handle your particular type of case and sometimes consult with you for a reduced fee.

There are a variety of organizations of minority lawyers throughout New Jersey, as well as organizations of lawyers who handle specialized types of cases. Ask the Family court staff in your county for a list of lawyer referral services that include these organizations.

What You Should Expect If You Represent Yourself
While you have the right to represent yourself in court, you should not expect special treatment, help or attention from the court. The following is a list of some things court staff can and cannot do for you. Please read it carefully before asking court staff for help.

- We can explain and answer questions about how the court works.
- We can tell you what the requirements are to have your case considered by the court.
- We can give you some information from your case file.
- We can provide you with samples of court forms that are available.
- We can provide you with guidance on how to fill out forms.
- We can usually answer questions about court deadlines.
- We cannot give you legal advice. Only your lawyer can give you legal advice.
- We cannot tell you whether or not you should bring your case to court.
- We cannot give you an opinion about what will happen if you bring your case to court.
- We cannot recommend a lawyer, but we can provide you with the telephone number of a local lawyer referral service.
- We can not talk to the judge for you about what will happen in your case.
- We cannot let you talk to the judge outside of court.
- We cannot change an order issued by a judge.

Keep Copies of All Papers
Make and keep copies for yourself, written agreements, Case Information Statements, and other important papers that relate to your case.
## Definitions of Court Terms Used in FD Cases

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Arrears</strong></td>
<td>Unpaid or overdue child support, alimony, or spousal support payments.</td>
</tr>
<tr>
<td><strong>Application</strong></td>
<td>A written request in which you ask the court to issue an order or to change an order that has already been issued.</td>
</tr>
<tr>
<td><strong>Bench Warrant</strong></td>
<td>An order from the court giving legal authority to law enforcement to arrest a person for failure to appear for a court hearing or failure to comply with a court order.</td>
</tr>
<tr>
<td><strong>Certification</strong></td>
<td>A written statement made to the court when you file papers with the court, swearing that the information contained in the filed papers is true.</td>
</tr>
<tr>
<td><strong>Child Support Number</strong></td>
<td>The identifying number assigned to your child, spousal, or alimony support case.</td>
</tr>
<tr>
<td><strong>Complaint</strong></td>
<td>A formal document filed in court that starts a case. It typically includes the names of the parties and the issues you are asking the court to decide.</td>
</tr>
<tr>
<td><strong>Custodial Parent</strong></td>
<td>The person with whom the child(ren) live with and has the primary day-to-day responsibility.</td>
</tr>
<tr>
<td><strong>Counterclaim</strong></td>
<td>A document in which the Defendant states their opposition to the original claim and may additionally relay to the court why you think you are entitled to relief in the case.</td>
</tr>
<tr>
<td><strong>Court Order</strong></td>
<td>The written decision issued by a court of law. For example, a child support court order sets forth how often, how much, and what kind of support is to be paid.</td>
</tr>
<tr>
<td><strong>Custody</strong></td>
<td>Refers to the right to make decisions for the child. Joint, sole, physical custody, refers to where and by whom the child’s needs are met. Sole custody refers to one person and joint custody refers to sharing by the parties in the case.</td>
</tr>
<tr>
<td><strong>Diligent Search</strong></td>
<td>A means you made a serious effort to find information about the location of the other party named in your case, and that you have followed up on any information you have received about their whereabouts.</td>
</tr>
<tr>
<td><strong>Docket Number</strong></td>
<td>The identifying number assigned to every case filed in the court.</td>
</tr>
<tr>
<td><strong>Exhibits</strong></td>
<td>Documents or objects you provide to the court to support what you want the court to decide.</td>
</tr>
<tr>
<td><strong>FD</strong></td>
<td>The letters the court uses to identify a non-dissolution case that involves parents who are not legally married or other adults filing for court relief on behalf of minor children. FD cases can also include married people who are separated but need financial support.</td>
</tr>
<tr>
<td><strong>File</strong></td>
<td>To give the appropriate forms to the court to begin the court’s consideration of your request.</td>
</tr>
<tr>
<td><strong>Income Withholding/Wage Garnishment</strong></td>
<td>A process where automatic deductions are made from wages or other income, to pay your support obligation. Income withholding has been mandatory since the enactment of the Family Support Act of 1988.</td>
</tr>
</tbody>
</table>
Definitions of Court Terms Used in FD Cases (continued)

**New Jersey Child Support Guidelines** - Both parents are responsible for the financial and emotional support of their children. New Jersey has developed a standard method for calculating child support based on the income of both parents and other factors. The full set of *NJ Child Support Guidelines* is contained in Rule 5:6A of the New Jersey Court Rules.

**NJKiDS** (New Jersey Kids Deserve Support) - *NJKiDS* is the New Jersey Child Support automated computer system that tracks child support accounts.

**Non-Custodial Parent** - the *non-custodial parent* is the parent with whom the child(ren) do not live the majority of the time with.

**Obligor/Payor** - An *obligor/payor* is the person ordered by the court to pay support, also known as the non-custodial parent (NCP).

**Obligee/Payee** - An *obligee/payee* is the person, agency, or institution who receives support, also known as the custodial parent (CP).

**Party** - A *party* is a person, business, or governmental agency involved in a court action.

**Petitioner** - *Petitioner* is another name for the person starting the court action by filing the appropriate papers the court will consider.

**Respondent** - *Respondent* is the person who is named as the other party in the court action filed by the petitioner. This person can respond to the complaint or application filed by the petitioner by filing a cross application or written response with the court.

**Relief** - To ask for *relief* is to ask the court to grant something such as custody, parenting time, or support.

**Support Obligation** - *Support Obligation* is the amount of support that the court orders the obligor to pay. The court order includes how much and how often support has to be paid (i.e., per week, per month, bi-weekly, etc.).

**Child Support Enforcement** - The *Child Support Enforcement* Division is required to enforce court orders that call for the payment of child support, health care coverage, and/or spousal support/alimony. If support is not being paid timely, the Child Support Enforcement has many state and federal tools available to enforce child support orders. These can include, but are not limited to:

- Income withholding
- Court hearing
- Bench warrant
- Tax offset - federal and state
- Judgment (liens attached to property & assets)
- Credit bureau notification
- Financial Institution Data Match (FIDM) - seizure of bank accounts
- Child Support Lien Network (CSLN) - seizure of proceeds from law suits
- Passport denial
- License suspension
- Lottery interception
How to File a Request to Modify a Non-Dissolution “FD” Court Order Previously Issued By the Court

The numbered steps listed below tell you what forms you will need to fill out and what to do with them. Each form should be typed or printed clearly on 8 ½ “x 11” white paper only. Forms cannot be filed on a different size or color paper. Use only the forms included in this packet. Be sure to keep a copy for your records.

Steps for Filing a Complaint

STEP 1: Fill out the Application/Cross Application to Modify a Court Order (Form A)
The Application/Cross Application to Modify a Court Order is a written request in which you ask the court to change or enforce an existing court order. The court will change an order only if important facts or circumstances have changed from the time the order was issued.

STEP 2: Provide the court with the most recent address of the other party(ies)
The court will send a Notice to Appear to the plaintiff, defendant, all listed parties, and attorney(s) connected to your case when the case is scheduled for court. Your appearance is mandatory.

Note: The other party will receive copies of all of the papers you attach to your modification application with the Notice to Appear, unless court rules prohibit this information from being shared.

You must provide the court with the most current address (that you know of) for the other party and the name of their attorney (if you know it) when you file your modification application. Failure to do so may result in your case being dismissed by the court or delayed because the other party could not be served with a Notice to Appear.

STEP 3: Fill out the Certification of Diligent Search (if necessary)
Every person named in a court action must be given the opportunity to respond. They must be provided notice so that they can exercise their right to answer the complaint. If you are filing this application to modify an order the court requires that you provide the address of the other legal parent/guardian, so they can be served with the modification application and have the opportunity to respond.

If you do not know the current address of the other party, you must complete the Certification of Diligent Search (CN 11490). This packet provides proof to the court of your efforts to find the other party. The packet must be completed in its entirety and mailed or delivered to the court. Once you have mailed or delivered your packet to the court, your case will be filed and scheduled for a hearing. The judge will decide if your search was sufficient at the hearing. This process must be completed before your case can proceed in court. You can find this kit on njcourts.gov.

Important Note: If you are filing to establish paternity or child support, a diligent search might not be required. You can go to your local County Welfare Office (CWA) and request locate services. Federal locate services are used only for the purpose of establishing paternity or child support.

STEP 4: Fill out the Confidential Litigant Information Sheet
The Confidential Litigant Information Sheet (CN 10486) is to ensure accuracy of court records and must be completed by the person filing this application to modify a court order. You must complete the entire form and submit it with your papers to the court. Do NOT leave any blank spaces. If something does not apply to you, enter “N/A”. This form is confidential and will not be shared with the other party. Each party is required to complete their own Confidential Litigant Information Sheet and file it with the court. You can find this form on njcourts.gov.

Note: Failure to complete the Confidential Litigant Information Sheet will result in your papers being returned to you marked “deficient” and will cause a delay in your case being scheduled for court.

STEP 5: Fill out the Financial Statement for Summary Support Actions (if applicable)
The Financial Statement for Summary Support Actions (CN 11223) must be completed if you are requesting to establish or modify a child support order in an FD case. You must complete the entire form. Do NOT leave any blank spaces. If something does not apply to you, enter “N/A”. This completed form must be included in your packet submitted to the court. This form will be shared with the other party pursuant to Court Rule 5:5-3. The other party must complete this same form and file it with the court. The court will share this
information with the filing party at the court hearing. You can find this form on njcourts.gov.

STEP 6: Fill out the Family Case Information Statement (CIS) (if applicable)
The Family Case Information Statement (CN 10482) must be completed only if you are married but separated and want to establish or modify spousal support. Spousal support can only be established or modified under FD when there is no active divorce case.

Pursuant to Court Rule 5:5-2, a spousal support determination and/or modification requires the parties to submit a Case Information Statement to the court. You must complete the entire form. Do NOT leave any blank spaces. If something does not apply to you, enter “N/A”. This completed form must be included in your packet submitted to the court. This form will be shared with the other party. The other party must complete this same form, file it with the court and send a copy to you. The court will provide instructions to the other party about sharing this information with the filing party prior to the court hearing. This document is confidential pursuant to Court Rule 1:38-3 and is not available for review by any other people besides the two parties involved in the case, their attorneys, and the court. You can find this form on njcourts.gov.

STEP 7: Fill out the Additional Information Sheet (if needed)
Use this form if you need additional space to explain to the court what you want the court to consider or your position on a particular issue stated in the complaint. Type or write legibly and be as specific as possible.

STEP 8: Check your completed forms
Check your forms and make sure they are complete. Remove all instruction sheets. Make sure you have signed all the forms wherever necessary.

In Step 9 you will be directed to mail or deliver your documents to the court. The following checklist will help insure your package is complete:

Checklist
Make sure you have all the following items:

— Verified Complaint or Counterclaim (Form A)
— Confidential Litigant Information Sheet
Additional forms if applicable:
   — Certification of Diligent Search (CN 11490)
   — Financial Statement for Summary Support Actions (CN 11223)
   — Family Case Information Statement (CIS) (CN 10482)
   — Federal Child Support Services Application (IV-D Child Support Program)
   — Certification in Support of Establishing Paternity
   — Certificate of Parentage (COP)
— Additional Information Sheet
— Filing fee of $25.00 in the form of a check or money order made payable to the Treasurer, State of New Jersey. Do not mail cash. You may use cash if you pay in person, but you should keep the receipt you get from the court staff for your records.

STEP 9: Mail or deliver your completed paperwork
Mail or deliver your completed packet to the courthouse in the county where the child of the custodial parent resides. You must include a $25.00 filing fee with the completed packet.

When mailing, make sure you specify the “Family Division” and “Non-dissolution Intake” in your address to insure your papers arrive at the correct department in the court.

Sample Address:
(Name of County) Courthouse Family Division Non-Dissolution Intake 1234 Street PO Box #
City, State, Zip code

All courthouse addresses can be found on njcourts.gov.
Instructions for Completing the Application/Cross Application to Modify a Court Order

Important Notice: This form can be used to request multiple reliefs from the court. Make sure to check the boxes for all the reliefs you are requesting, as only the ones you check will be considered on the day of your hearing.

A. Enter the names of the parties in the correct order on the “Plaintiff” and “Defendant” lines. You can find the correct case title at the top of the order you want to modify. Copy the information exactly as it appears on that order.

B. On the right side of the form, enter the County where you are filing the application.

C. Enter the Docket Number that has been issued in your case. You can find that number on the court order you want to modify.

D. Type or print the CS Number that has been issued in your case. You can find that number on the court order you want to modify.

E. Select whether you are filing an Application for Modification or Cross-Application for Modification.

F. Enter your name on the line between the words “I ... of full age,” On the second line (at the end of the sentence) fill in the date of the original order (if known).

G. In item #1, select whether you are the Plaintiff, Defendant or the Attorney (for either the Plaintiff or Defendant) filing this application. Enter your maiden name, if applicable.

H. In item #2, enter the Plaintiff’s address on the lines provided. Make sure to include the apartment number or floor, if applicable. Enter the plaintiff’s relationship to the child(ren) in this matter.

I. In item #3, enter the Defendant’s address on the lines provided. Make sure to include the apartment number if applicable. Enter the defendant’s relationship to the child(ren) in this matter.

J. In item #4, enter the attorney’s name, attorney ID number and firm address that is representing a party in this matter.

K. In item #5, enter each child’s name, date of birth, gender and the relationship of the person with whom the child currently resides, for all those listed on the support order that you want to modify. Do not list children who do not appear on the original order.

L. In item #6, list other interested parties that should be noticed to appear in court if it applies to your case.

M. For item #7, select whether you have had previous Family Court activity related to any of the parties listed in this modification. Check only one box. If you select “Yes”, enter the title of the case, the docket number and the state or country that has jurisdiction of that case.

Select whether (to your knowledge) a child protection agency (i.e., DCP&P or similar agency in another state) has been involved with the child(ren) or listed parties.

Select whether (to your knowledge) the children are recipients of public assistance.

N. For item #8, select the appropriate checkboxes for all the reliefs you want the court to consider in your case. Select all that apply. Note that only those that are selected will be considered during your court hearing.

O. For item #9, if you are requesting to terminate your child support order, enter the name(s) and date(s) of birth of the child(ren) on the lines provided.

Select the reason(s) why the child support should be terminated. Select all that apply.
P. For item #10, if you are requesting NOT to terminate your child support order, enter the name(s) and date(s) of birth of the child(ren) on the lines provided.

Select the reason(s) why the child support should be not terminated. Select all that apply and give explanations where indicated.

Q. For item #11, select whether you are requesting enforcement of a current support order (because someone is not paying as they have been ordered) or if you have already requested enforcement of your child support order through Probation

Note: If your child support order is payable through the Child Support Enforcement Division, you should contact them first for enforcement services.

R. For item #12, select all responses that apply to your modification of Existing Custody/Parenting Time Court Order, and give explanations where indicated.

S. For item #13, select the checkbox if you are applying to relocate the children out-of-state. Make sure to enter where you want to move and the reason you want to move.

Select the checkbox if you are opposed to the children moving out-of-state and explain why you are opposed in the space provided. Use Additional Information form if necessary.

T. For item #14, if you are requesting to change from the county with current jurisdiction to another county in New Jersey, enter the county where the court originally heard the case on the first line, and the county where you are requesting the court to take jurisdiction of the case on the second line. Enter the reason why you are requesting the change.

U. For item #15, check this box only if you are incarcerated and you want a detainer or bench warrant lifted so that you may apply for a work release or half way house program. You must provide the name of the facility where you are now and your inmate number.

V. Only fill out item #16 if the relief you are seeking is not contained in any of the numbered items in the form. Write in your own words the relief you are seeking for the court in the space provided. Be as specific as possible. Use Additional Information form if necessary.

W. For item #17, write whatever you feel the court should know to support your request. Write the date of the court order you want changed; if you have the order, make a copy and attach it to the application.

X. In the Required Attachments section, select the appropriate box(es) for those forms that you have attached to your packet.

Select the box if you are attaching any additional information to your packet.

Select the box if you are presently incarcerated.

Y. Select whether you will need Interpreting services or ADA accommodations, and list the language and/or accommodation.

Z. The form must have the signature of the party filing the application to modify along with the signature of the attorney that is filing the application to modify on behalf of the party.

Note: Both the person filing this modification and the attorney (if any) must sign above.

Mail or deliver the completed application with a $25.00 filing fee to the correct court house.
Superior Court of New Jersey
Chancery Division - Family Part
County: ______________________
Docket Number: FD - ______________________
CS Number: CS-_____________________

CIVIL ACTION

☐ Application for Modification of Court Order
☐ Cross-Application for Modification of Court Order

I, ______________________, of full age, hereby certify the following in support of this Application/Cross-application to modify the court order of (date if known) __________.

1. I am the ☐ Plaintiff ☐ Defendant ☐ Attorney for ______________________.
   Maiden Name (if applicable) ______________________.

2. Plaintiff resides OR is incarcerated at:
   Address ______________________ City/Town ______________________
   County ______________________ State ______ Zip Code __________
   Relationship to the child(ren) ______________________
   Plaintiff resides OR is incarcerated at:
   Address ______________________ City/Town ______________________
   County ______________________ State ______ Zip Code __________
   Relationship to the child(ren) ______________________

3. Defendant resides OR is incarcerated at:
   Address ______________________ City/Town ______________________
   County ______________________ State ______ Zip Code __________
   Relationship to the child(ren) ______________________
   Defendant resides OR is incarcerated at:
   Address ______________________ City/Town ______________________
   County ______________________ State ______ Zip Code __________
   Relationship to the child(ren) ______________________

4. Attorney Name ______________________
   Firm Name ______________________
   ID Number ______________________
   Address ______________________
   City/Town ______________________ State ______ Zip Code __________
5. The child(ren) involved in this order are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Birth</th>
<th>M/F</th>
<th>Residing with (relationship)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6. Other interested parties’ name(s) and address(es):

________________________________________________________________________

________________________________________________________________________

7. I have been previously been involved in the following New Jersey family court actions or other State/Country litigation with regard to any of the parties or children listed above. (If yes, give the title of case and docket number.)

<table>
<thead>
<tr>
<th>Title of Case</th>
<th>Docket Number</th>
<th>State/Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A Child Protection Agency (i.e. the Division of Child Protection and Permanency or a similar agency in another State) has been involved or is currently involved with the child(ren) or listed parties.

□ Yes  □ No

Is any party in this case currently receiving public assistance? (Governed by 41 U.S.C.A. 602 (A)(26), N.J.S.A. 44:10-1.1, et seq.)

□ Yes  □ No

8. I request the following:

□ Paternity (Certification in Support of Establishing Paternity required when requesting Paternity)

Were parents of the child married at the time of birth?  □ Yes  □ No

□ Disestablishment of Paternity

Were parents of the child married at the time of birth?  □ Yes  □ No

□ Maternity

□ Establish/Modify Child Support (A Certificate of Parentage is required if available when filing for Child Support)

I am requesting (check one) an □ increase  □ decrease in child support payments.

(Pursuant to Court Rule 5:5-3, you are required to complete a Financial Statement for Summary Support Actions to serve upon the other party. At the hearing you must have your most recent federal income tax return or your three most recent pay stubs.)

□ Establish/Modify Spousal Support

I am requesting (check one) an □ increase  □ decrease in spousal support payments.

(Pursuant to Court Rule 5:5-2, you are required to complete a Case Information Statement to serve upon the other party. At the hearing you must have your most recent federal income tax return or your three most recent pay stubs)

□ Establish/Modify Financial Maintenance order
Medical Support Requested

- Health benefits for myself
- Health benefits for the child (ren) named in this complaint

Reasons for your request: (explain in detail)

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Birth</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

9. I am requesting the Court to **terminate** the child support for the following child(ren)

Please check all the following that apply:

- I have physical custody of the child(ren) specified above.
- My child turned 18 years of age on ________.
- To the best of my knowledge my child is not physically or mentally disabled.
- My child is not attending high school or any other special education programs.
- My child is married. Date of the marriage: ________.
- My child is not attending college or a post-secondary education program.
- My child is in the military. Date enrolled: ________. Branch: ____________
- I am requesting that child/spousal support be paid directly to me without court involvement.

10. I am requesting the Court **NOT terminate** the child support for the following child(ren)

Please check all the following that apply:

- I have physical custody of the child(ren) specified above.
- My child is disabled. Describe disability:

- My child is attending high school or special education program. Provide the name of the school and most recent date(s) attended:

- My child is not married.
☐ My child is attending college or a post-secondary education program. Provide the name of the school and the most recent date(s) attended.

☐ My child is not in the military.

☐ I am requesting that child/spousal support be made payable through the Probation Division.

11. **Enforcement of the Current Support Order**
☐ I am requesting enforcement of the current support order of (date if known)_________. Attach a copy of the order you want enforced.

☐ I have already requested enforcement through Probation.

12. **Establish or Change of Existing Custody/Parenting Time Court Order** (check all that apply)
☐ Establish custody

☐ Establish visitation/parenting time arrangements
  ☐ Parenting Time ☐ Grandparent Visitation ☐ Sibling Visitation

☐ I am requesting to **change** the custody/parenting time terms of the current order.

Reasons for your request: (explain in detail)

13. **Request to Relocate the Child(ren)/Opposition to Relocation**
☐ I am applying to relocate the child(ren) listed above to another state or country. I want to relocate the child(ren) by (date)_____________.

New location:

Reason for relocation:

☐ Attached is the additional information form.

☐ I am opposed to the relocation of the children listed above. I believe this move is not in the best interest of the child(ren). Explain:

☐ Attached is the additional information form.
14. **Change of Venue** (Request to change from the county with current jurisdiction to another county in New Jersey)

   □ I am requesting that venue of my case in ________________ county be changed to ________________ county.

   Explain:

   __________________________________________________________

   __________________________________________________________

15. **Request to have a Bench Warrant/Detainer lifted** (Incarcerated Defendants Only)

   □ I am currently incarcerated and am filing an application to have a child support bench warrant/detainer lifted so that I may participate in a rehabilitation program. I understand that I must report to the court 30 days after my release.

   Facility: _______________________________ Inmate Number: ___________________________

16. The relief I am requesting is not listed above. I am requesting the following from the court. (Use additional information sheet if necessary.)

   __________________________________________________________

   __________________________________________________________

   __________________________________________________________

   __________________________________________________________

   __________________________________________________________

   __________________________________________________________

17. Explain anything else the court should know about this Application or Cross Application to modify the court order of (date if known)________.

   __________________________________________________________

   __________________________________________________________

   __________________________________________________________

   __________________________________________________________

   __________________________________________________________

   __________________________________________________________
Required Attachments (Check all applicable boxes)

☐ Confidential Litigant Information Statement.
☐ Certificate of Parentage (if available). (Please note that this is not the Birth Certificate.)
☐ Certification to Establish Paternity (when requesting establishment of paternity).
☐ Financial Statement for Summary Support Actions (when requesting child support).
☐ Case Information Statement (when requesting spousal support).

☐ Check this box if you are attaching any additional information (a certification, exhibits)

☐ I am presently incarcerated and would like to appear; however, I understand that unless a judge orders my appearance through a court order to the facility of my incarceration, my request will be decided on the papers that I filed.

At the hearing:

Will you require an interpreter? ☐ Yes ☐ No
If yes, indicate language: ________________________________

Will you require an accommodation for a disability? ☐ Yes ☐ No
If yes, indicate requested accommodation: ________________________________

I/we certify that the foregoing statements made by me/us are true. I am/We are aware that if any of the foregoing statements made by me/us are willfully false, I am/We are subject to punishment.

Date ____________________________ Signature ____________________________ ☐ Plaintiff ☐ Defendant

Date ____________________________ Signature ____________________________ ☐ Plaintiff ☐ Defendant

Date ____________________________ Signature ____________________________ ☐ Plaintiff Attorney ☐ Defendant Attorney

Note: Both the person filing this modification and the attorney (if any) must sign above.

Your appearance is mandatory. You should bring to court any other documentation or proof that supports your case. If you are filing for child or spousal support, bring any information about your finances with you such as your last three pay stubs and your most recent W-2 statement. You may bring an attorney, although an attorney is not required. If you require assistance in selecting an attorney, you may contact your County Bar Association. If you cannot afford an attorney, you may contact Legal Services of New Jersey at www.lsnj.org.

COURT APPEARANCE INFORMATION FOR THE PERSON RECEIVING THIS APPLICATION:
Your appearance is mandatory. If you fail to appear at the hearing an order granting the relief requested by the filing party may be granted. If the filing party’s request is for child or spousal support, bring any information about your finances with you such as your last three pay stubs and your most recent W-2 statement. You may bring an attorney, although an attorney is not required. If you require assistance in selecting an attorney, you may contact your County Bar Association. If you cannot afford an attorney, you may contact Legal Services of New Jersey at www.lsnj.org.
Additional Information Sheet

Use this sheet (if necessary) to tell the court anything else you want the court to know about why you filed your application.

Full Name ________________________________  Date ____________

Docket Number ________________________________  CS Number ____________

_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date ____________  Signature of Applicant/Cross-applicant __________________________
Child Support Guidelines - Sole Parenting Worksheet

<table>
<thead>
<tr>
<th>Case Name:</th>
<th>v.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Plaintiff</strong></td>
<td><strong>Defendant</strong></td>
</tr>
<tr>
<td>Custodial Parent is the: □ Plaintiff □ Defendant</td>
<td></td>
</tr>
<tr>
<td>County:</td>
<td></td>
</tr>
<tr>
<td>Docket Number:</td>
<td></td>
</tr>
<tr>
<td>Number of Children:</td>
<td></td>
</tr>
</tbody>
</table>

All amounts must be weekly

<table>
<thead>
<tr>
<th>All amounts must be weekly</th>
<th>Custodial</th>
<th>Non-Custodial</th>
<th>Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Gross Taxable Income</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>1a. Mandatory Retirement Contributions (non-taxable)</td>
<td>-$</td>
<td>-$</td>
<td></td>
</tr>
<tr>
<td>1b. Tax-Deductible Alimony Paid (Current and/or Past Relationships)</td>
<td>-$</td>
<td>-$</td>
<td></td>
</tr>
<tr>
<td>1c. Taxable Alimony Received (Current and/or Past Relationships)</td>
<td>+$</td>
<td>+$</td>
<td></td>
</tr>
<tr>
<td>2. Adjusted Gross Taxable Income ((L1 - L1a - L1b) + L1c)</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>2a. Federal, State and Local Income Tax Withholding</td>
<td>-$</td>
<td>-$</td>
<td></td>
</tr>
<tr>
<td>2b. Mandatory Union Dues</td>
<td>-$</td>
<td>-$</td>
<td></td>
</tr>
<tr>
<td>2c. Child Support Orders for Other Dependents</td>
<td>-$</td>
<td>-$</td>
<td></td>
</tr>
<tr>
<td>2d. Other Dependent Deduction (from L14 of a separate worksheet)</td>
<td>-$</td>
<td>-$</td>
<td></td>
</tr>
<tr>
<td>3. Net Taxable Income (L2 - L2a - L2b - L2c - L2d)</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>4. Non-Taxable Income (source: )</td>
<td>+$</td>
<td>+$</td>
<td></td>
</tr>
<tr>
<td>4a. Non-Tax-Deductible Alimony Paid (Current and/or Past Relationships)</td>
<td>-$</td>
<td>-$</td>
<td></td>
</tr>
<tr>
<td>4b. Non-Taxable Alimony Received (Current and/or Past Relationships)</td>
<td>+$</td>
<td>+$</td>
<td></td>
</tr>
<tr>
<td>5. Government (Non-Means Tested) Benefits for the Child</td>
<td>+$</td>
<td>+$</td>
<td></td>
</tr>
<tr>
<td>6. Net Income (L3 + L4 - L4a + L4b + L5)</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>7. Each Parent’s Share of Income (L6 Each Parent + L6 Combined)</td>
<td>0.____</td>
<td>0.____</td>
<td>1.00</td>
</tr>
<tr>
<td>8. Basic Child Support Amount (from Appendix IX-F Schedules)</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Net Work-Related Child Care (from Appendix IX-E Worksheet)</td>
<td>+$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Child's Share of Health Insurance Premium</td>
<td>+$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Unreimbursed Health Care Expenses over $250 per child per year</td>
<td>+$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12. Court-Approved Extraordinary Expenses</td>
<td>+$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. Total Child Support Amount (L8 + L9 + L10 + L11 + L12)</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14. Each Parent’s Share of Support Obligation (L7 x L13)</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>15. Government Benefits for the Child Based on Contribution of NCP</td>
<td>-$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16. Net Work-Related Child Care Paid</td>
<td>-$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17. Health Insurance Premium for the Child Paid</td>
<td>-$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18. Unreimbursed Health Care Expenses Paid (&gt; $250/child/year)</td>
<td>-$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19. Court-Approved Extraordinary Expenses Paid</td>
<td>-$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20. Adjustment for Parenting Time Expenses (L8 x L20b for Non-Custodial Parent x 0.37)</td>
<td>-$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Note: Not presumptive in some low-income situations (see App IX-A., ¶13)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20a. Number of Annual Overnights with Each Parent</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20b. Each Parent’s Share of Overnights with the Child (L20a for Parent ÷ L20a Combined)</td>
<td>0.____</td>
<td>0.____</td>
<td>1.00</td>
</tr>
</tbody>
</table>

**Continued on Page 2**
### Child Support Guidelines – Sole Parenting Worksheet – Page 2

**If there is no adjustment for other dependents, go to line 25**

<table>
<thead>
<tr>
<th>Line</th>
</tr>
</thead>
<tbody>
<tr>
<td>22. Child Support Order WITH Other Dependent Deduction (L2d) and Child Support Orders for Other Dependents (L2c)</td>
</tr>
<tr>
<td>$</td>
</tr>
<tr>
<td>23. Child Support Order WITHOUT Other Dependent Deduction and Child Support Orders for Other Dependents</td>
</tr>
<tr>
<td>$</td>
</tr>
<tr>
<td>$</td>
</tr>
<tr>
<td>25. Self-Support Reserve Test: (L6 - L21 or L24 for NCP; L6 - L14 for CP). L25 for NCP is greater than 105% of the federal poverty guideline for one person (pg) L25 for CP is less than pg, enter L21 or L24 amount on L27. If NCP L25 is less than the pg, and CP L25 is greater than the pg, go to L26.</td>
</tr>
<tr>
<td>$</td>
</tr>
<tr>
<td>$</td>
</tr>
<tr>
<td>27. Child Support Order</td>
</tr>
<tr>
<td>$</td>
</tr>
</tbody>
</table>

### Comments, Rebuttals, and Justification for Deviations

1. This child support order for this case □ was □ was not based on the child support guidelines award.
2. If different from the child support guidelines award (Line 27), enter amount ordered:
3. The child support guidelines were not used or the guidelines award was adjusted because:
4. The following court-approved extraordinary expenses were added to the basic support obligation:

<table>
<thead>
<tr>
<th>Custodial Taxes:</th>
<th>□ App IX-H</th>
<th>□ Circ E</th>
<th>□ Other</th>
<th>#Allowances:</th>
<th>Marital:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Custodial Taxes:</td>
<td>□ App IX-H</td>
<td>□ Circ E</td>
<td>□ Other</td>
<td>#Allowances:</td>
<td>Marital:</td>
</tr>
</tbody>
</table>

Prepared By: Title: Date:
## Appendix IX-D

### Child Support Guidelines - Shared Parenting Worksheet

**Case Name:**
**v.**

**County:**
**Docket Number:**
**Number of Children:**

PPR is the: □ Plaintiff □ Defendant

<table>
<thead>
<tr>
<th>All amounts must be weekly</th>
<th>Parent of Primary Residence (PPR)</th>
<th>Parent of Alternate Residence (PAR)</th>
<th>Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Gross Taxable Income</strong></td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>1a. Mandatory Retirement Contributions (non-taxable)</td>
<td>-$</td>
<td>-$</td>
<td></td>
</tr>
<tr>
<td>1b. Tax-Deductible Alimony Paid (Current and/or Past Relationships)</td>
<td>-$</td>
<td>-$</td>
<td></td>
</tr>
<tr>
<td>1c. Taxable Alimony Received (Current and/or Past Relationships)</td>
<td>+$</td>
<td>+$</td>
<td></td>
</tr>
<tr>
<td><strong>2. Adjusted Gross Taxable Income</strong></td>
<td>((L1 - L1a - L1b) + L1c)</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>2a. Federal, State and Local Income Tax Withholding</td>
<td>-$</td>
<td>-$</td>
<td></td>
</tr>
<tr>
<td>2b. Mandatory Union Dues</td>
<td>-$</td>
<td>-$</td>
<td></td>
</tr>
<tr>
<td>2c. Child Support Orders for Other Dependents</td>
<td>-$</td>
<td>-$</td>
<td></td>
</tr>
<tr>
<td>2d. Other Dependent Deduction (from L14 of a separate worksheet)</td>
<td>-$</td>
<td>-$</td>
<td></td>
</tr>
<tr>
<td><strong>3. Net Taxable Income</strong></td>
<td>(L2 - L2a - L2b - L2c - L2d)</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td><strong>4. Non-Taxable Income</strong></td>
<td>(source: )</td>
<td>+$</td>
<td>+$</td>
</tr>
<tr>
<td>4a. Non-Tax-Deductible Alimony Paid (Current and/or Past Relationships)</td>
<td>-$</td>
<td>-$</td>
<td></td>
</tr>
<tr>
<td>4b. Non-Taxable Alimony Received (Current and/or Past Relationships)</td>
<td>+$</td>
<td>+$</td>
<td></td>
</tr>
<tr>
<td><strong>5. Government (Non-Means Tested) Benefits for the Child</strong></td>
<td>+$</td>
<td>+$</td>
<td></td>
</tr>
<tr>
<td><strong>6. Net Income</strong></td>
<td>(L3 + L4 - L4a + L4b + L5)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td><strong>7. Each Parent's Share of Income</strong></td>
<td>(L6 Each Parent ÷ L6 Combined)</td>
<td>0.____</td>
<td>0.____</td>
</tr>
<tr>
<td><strong>8. Basic Child Support Amount</strong></td>
<td>(from Appendix IX-F Schedules)</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td><strong>9. Number of Overnights with Each Parent</strong></td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td><strong>10. Each Parent’s Share of Overnights with the Child</strong></td>
<td>(L9 for Parent ÷ L9 Combined)</td>
<td>0.____</td>
<td>0.____</td>
</tr>
</tbody>
</table>

*If PAR time sharing is less than the equivalent of two overnights per week (28%), use Sole Parenting Worksheet.*

| **11. PAR Shared Parenting Fixed Expenses** | (L8 x PAR L10 x 0.38 x 2) | +$                                |
| **12. Shared Parenting Basic Child Support Amount** | (L8 + L11) | $                                 |
| **13. Each Parent’s Share of SP Basic Child Support Amount** | (L7 x L12) | $                                 |
| **14. PAR Shared Parenting Variable Expenses** | (PAR L10 x L8 x 0.37) | -$                                |
| **15. PAR Adjusted SP Basic Child Support Amount** | (PAR L13 – L11 – L14) | $                                 |
| **16. Net Work-Related Child Care** | (from Appendix IX-E Worksheet) | +$                                |
| **17. Child's Share of Health Insurance Premium** | +$                                |
| **18. Unreimbursed Health Care Expenses over $250 per child per year** | +$                                |
| **19. Court-Approved Extraordinary Expenses** | +$                                |
| **20. Total Supplemental Expenses** | (L16 + L17 + L18 + L19) | $                                 |
| **21. PAR’s Share of Total Supplemental Expenses** | (PAR L7 x L20) | $                                 |
| **22. Government Benefits for the Child Based on Contribution of PAR** | $                                 |
| **23. PAR Net Work-Related Child Care PAID** | $                                 |

Continued on Page 2
### Child Support Guidelines - Shared Parenting Worksheet – Page 2

**All amounts must be weekly**

<table>
<thead>
<tr>
<th></th>
<th>PPR</th>
<th>PAR</th>
<th>Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>24. PAR Health Insurance Premium for the Child PAID</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25. PAR Unreimbursed Health Care Expenses &gt;$250/child/year) PAID</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26. PAR Court-Approved Extraordinary Expenses PAID</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>27. PAR Total Supplemental Expenses PAID (L23 + L24 + L25 + L26)</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28. PAR Net Supplemental Expenses (L21 - L27)</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>29. PAR Net Child Support Obligation (L15 + L28)</td>
<td>$</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**If there is no adjustment for other dependents, go to line 33.**

<table>
<thead>
<tr>
<th></th>
<th>PPR</th>
<th>PAR</th>
<th>Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>30. Line 29 PAR CS Obligation WITH Other Dependent Deduction L2d and Child Support Orders for Other Dependents L2c</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>31. Line 29 PAR CS Obligation WITHOUT Other Dependent Deduction and Child Support Orders for Other Dependents</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>32. Adjusted PAR Child Support Obligation ((L30 + L31) ÷ 2)</td>
<td>$</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**33. Self-Support Reserve Test: (L6 - L29 or L32 for PAR; L6 – L13 for PPR)**

If L33 for PAR is greater than 105% of the federal poverty guideline for one person (pg) or L33 for the PPR is less than the pg, enter the L29 or L32 amount on the PA L35. If PAR L33 is less than the pg and PPR’s L33 is greater than the pg, go to L34. If L29 or L32 is negative, see App. IX-B for instructions.

<table>
<thead>
<tr>
<th></th>
<th>PPR</th>
<th>PAR</th>
<th>Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>34. Maximum CS Obligation (Obligor Parent’s L6 net income – 105% of the poverty guideline for one person). Enter result here and on Line 35.</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>35. Child Support Order (negative L29 or L32 denotes PPR Obligation)</td>
<td>$</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**If the PAR is the Obligor, continue on Line 36**

<table>
<thead>
<tr>
<th></th>
<th>PPR</th>
<th>PAR</th>
<th>Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>36. PPR Household Income Test (L6 PPR net income from all sources + net income of other household members + L35 order). If less than the PPR household income threshold (see App. IX-A, ¶14(c)), the SOLE PARENTING WORKSHEET should be used.</td>
<td>$</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Comments, Rebuttals, and Justification for Deviations**

1. This child support order for this case ☐ was ☐ was not based on the child support guidelines award.

2. If different from the child support guidelines award (Line 35), enter amount ordered:

3. The child support guidelines were not used or the guidelines award was adjusted because:

4. The following extraordinary expenses were added to the basic support obligation on Line 19:

5. PPR Taxes: ☐ App IX-H ☐ Circ E ☐ Other #Allowances: Marital:

   PAR Taxes: ☐ App IX-H ☐ Circ E ☐ Other #Allowances: Marital:

Prepared By: Title: Date:
§ 9:2-7.1. Visitation rights for grandparents, siblings

a. A grandparent or any sibling of a child residing in this State may make application before the Superior Court, in accordance with the Rules of Court, for an order for visitation. It shall be the burden of the applicant to prove by a preponderance of the evidence that the granting of visitation is in the best interests of the child.

b. In making a determination on an application filed pursuant to this section, the court shall consider the following factors:

(1) The relationship between the child and the applicant;
(2) The relationship between each of the child’s parents or the person with whom the child is residing and the applicant;
(3) The time which has elapsed since the child last had contact with the applicant;
(4) The effect that such visitation will have on the relationship between the child and the child’s parents or the person with whom the child is residing;
(5) If the parents are divorced or separated, the time sharing arrangement which exists between the parents with regard to the child;
(6) The good faith of the applicant in filing the application;
(7) Any history of physical, emotional or sexual abuse or neglect by the applicant; and
(8) Any other factor relevant to the best interests of the child.

c. With regard to any application made pursuant to this section, it shall be prima facie evidence that visitation is in the child’s best interest if the applicant had, in the past, been a full-time caretaker for the child.

History

L. 1971, c. 420, § 1; Amended 1973, c. 100; 1987, c. 363, § 2; 1993, c. 161, § 1.
The undersigned complains that said defendant endangered plaintiff's life, health or well being (give specific facts regarding acts or threats, house and the date(s) and time(s) they occurred; specify any weapons):

ON (Date) AT (Time) BY (Details; specify any weapons) 04/03/2019 04:00 PM

which constitute(s) the following criminal offense(s): (Check all applicable boxes. Law Enforcement Officer: Attach N.J.S.P. UCR DV1 offense report(s)):

☐ Homicide ☞ Terrorism Threats ☞ Criminal Restraint ☞ Sexual Assault ☞ Lewdness ☞ Burglary ☞ Harassment
☐ Assault ☞ Kidnapping ☞ False ☞ Criminal Sexual ☞ Criminal ☞ ☞ 0 Stalking ☞ ☞ ☞ ☞ 0 Cyber Harassment

1. Any prior history of domestic violence reported or unreported? If Yes, explain: ☐ Yes ☞ No

2. Does Defendant have a criminal history? (If Yes, submit any available criminal history report) ☞ Yes ☐ No

3. Has a criminal complaint been filed in this matter? (If Yes, enter date, docket number, court, county, state) ☞ Yes ☐ No

4. If Law Enforcement Officers responded to a domestic violence call: Were weapons seized? If Yes, describe: ☞ Yes ☐ No Was Defendant arrested? If Yes, describe: ☞ Yes ☐ No

5. (A) The Plaintiff and Defendant are 18 years old or older or emancipated and are: (select one)
☐ Married/ Civil Union ☞ Divorced ☞ Present Household Member ☞ Was at Any Time a Household Member OR
☐ Unmarried ☞ Co-Parents ☞ Expectant Parents ☞ ☞ Plaintiff and Defendant have had a dating relationship

6. (B) The Defendant is 18 years old or older or emancipated and Plaintiff and Defendant are: (select one)

7. Where appropriate list children you have with the Defendant, if any! include name, sex, date of birth, person with whom child resides)

8. The Plaintiff and Defendant:
☐ Presently;
☐ Previously; ☞ Never Resided together
☐ Family Relationship: What is your relationship to the defendant? (Specify)

Certification

I certify that the foregoing responses made by me are true. I am aware that if any of the foregoing responses made by me are willfully false, I am subject to punishment.

Date ___________________________ Signature of Plaintiff ___________________________
DEFENDANT:

TRO FRO TRO Granted

1. [ ] N/A [ ] You are prohibited from returning to the scene of violence.
2. [ ] 0 [ ] You are prohibited from future acts of domestic violence.
3. [ ] 0 [ ] You are barred from the following locations:
   - Residence(s) of Plaintiff
   - Place(s) of employment of Plaintiff
   - Other (Only list addresses known to Defendant):

4. [ ] 0 [ ] You are prohibited from having any oral, written, or other form of contact or communication with Plaintiff.
5. [ ] 0 [ ] You are prohibited from making or causing anyone else to make harassing communications to: Plaintiff
6. [ ] 0 [ ] You are prohibited from stalking, following or threatening to harm, stalk or follow: Plaintiff
7. [ ] [ ] You must pay emergent monetary relief to (describe amount and method):
   - Plaintiff:
   - Defendant(s):
8. [ ] [ ] You must be subject to intake monitoring of conditions and restraint:
   - Other (evaluations or treatment• describe):
9. [ ] [ ] Psychiatric evaluation:
10. [ ] [ ] Prohibition Against Possession of Weapons: You are prohibited from possessing any and all firearms or other weapons and must immediately surrender these firearms and firearms purchaser ID card to the law enforcement officer. Failure to do so may result in your arrest, prosecution, and possible incarceration, as well as an imposition of a fine or jail sentence.

PLAINTIFF:

11. [ ] [ ] You are granted exclusive possession of (list residence or alternate housing only if specifically known to defendant):

12. [ ] [ ] You are granted temporary custody of:

13. [ ] [ ] Other relief for: Plaintiff:

[ ] [ ] Other relief for: Children:

LAW ENFORCEMENT OFFICER:

You are to accompany to scene, residence, shared place of business, other (indicate address, time, duration and purpose):

[ ] [ ] Plaintiff:

[ ] [ ] Defendant:

NOTICE TO DEFENDANT: A violation of any of the provisions listed in this order may constitute either civil or criminal contempt pursuant to N.J.S.A. 2:C:25-30 and may result in your arrest, prosecution, and possible incarceration, as well as an imposition of a fine or jail sentence. Only a court can modify any of the terms or conditions of this court order.
Warrant to Search for and to Seize Weapons for Safekeeping

☐ To any law enforcement officer having Jurisdiction - this Order shall serve as a warrant to search for and to seize any issued permit to carry a firearm, application to purchase a firearm and firearms purchaser identification card issued to the defendant and the following firearm(s) or other weapon(s). Describe the weapons to be seized:

1. You are hereby commanded to search for the above described weapons and/or permits to carry a firearm, application to purchase a firearm and firearms purchaser identification card and to serve a copy of this Order upon the person at the premises or location described as:

2. You are hereby ordered in the event you seize any of the above described weapons, to give a receipt for the property so seized to the person from whom they were taken or in whose possession they were found, or in the absence of such person to have a copy of this Order together with such receipt in or upon the said structure from which the property was taken.

3. You are authorized to execute this Order immediately or as soon thereafter as is practicable:

   ☐ D Anytime ☐ Other:

4. You are further ordered, after the execution of this Order, to promptly provide the Court with a written inventory of the property seized per this Order.

Part 2 - RELIEF - DEFENDANT:

TR0 FRO TR0 Granted

1. ☐ No parenting time/ visitation until further ordered;

2. ☐ Parenting time/ visitation permitted as follows: suspended until further order.

3. You must provide compensation as follows:

   ☐ Emergent support for Plaintiff:

   ☐ Emergent support for Dependent(s):

   ☐ Ongoing support for Plaintiff:

   ☐ Ongoing support for Dependent(s):

   ☐ Compensatory damages to Plaintiff:

   ☐ Compensatory damages to Dependent(s):

   ☐ Punitive damages to Plaintiff:

   ☐ Punitive damages to Dependent(s):

   ☐ Medical coverage for Plaintiff:

   ☐ Medical coverage for Dependent(s):

   ☐ Rent ☐ Mortgage payments (specify amount(s) and recipient(s)):

   ☐ You must participate in a batterers intervention program:

   ☐ You are granted temporary possession of the following personal property (describe):

Part 2 - RELIEF - PLAINTIFF:

☐ You are granted temporary possession of the following personal property (describe):

Comments:

NOTICE TO DEFENDANT: A violation or any of the provisions listed in this order may constitute either civil or criminal contempt pursuant to N.J. SA. 2:25-30 and may result in your arrest, prosecution, and possible incarceration, as well as an imposition of a fine or jail sentence. Only a court can modify any of the terms or conditions of this court order.
TRO denied. Complaint dismissed by Family Part.

TRO granted. The Court has established jurisdiction over the subject matter and the parties pursuant to N.J.S.A. 2C:25-17 et seq. and has found good cause that a prima facie act of domestic violence has been established; that an immediate danger or domestic violence exists and that plaintiff's life, health and well being are endangered; that an emergency restraining order is necessary pursuant to R. 5:7A(b) and N.J.S.A. 2C:25-28 to prevent the occurrence or recurrence of domestic violence and to search for and seize firearms and other weapons as indicated in this order.

Dale/n,e Via Telecommunication Hearing Officer
Date/Time @ Via Telecommunications Honorable Court/County

This ex parte Domestic Violence Complaint and Temporary Restraining Order meets the criteria of the federal Violence Against Women Act for enforcement outside of the State of New Jersey upon verification of service of defendant. 18 U.S.C.A. 2265 & 2266

This Order Shall Remain in Effect Until Further Order of the Court and Service of Said Order on the Defendant.

Notice to Appear to Plaintiff and Defendant

1. [ ] Both the plaintiff and defendant are ordered to appear for a final hearing on (date) at (time) at the Superior Court, Chancery Division, Family Part, County, located at (address)

2. [ ] The final hearing in this matter shall not be scheduled until:

3. [ ] Interpreter needed. Language:

IMPORTANT: The parties cannot themselves change the terms of this Order on their own. This Order may only be changed or dismissed by the Superior Court. The named defendant cannot have any contact with the plaintiff without permission of the Court.

Notice to Defendant

A violation of any of the provisions listed in this Order or a failure to comply with the directive to surrender all weapons, firearm permits, applications or identification cards may constitute criminal contempt pursuant to N.J.S.A. 2C:29-9(b), and may also constitute violations of other state and federal laws which may result in your arrest and/or criminal prosecution. This may result in a jail sentence.

You have the right to immediately file an appeal of this temporary Order before the Superior Court, Chancery Division, Family Part, as indicated above and a hearing may be scheduled.

Return of Service

[ ] Plaintiff was given a copy of the Complaint/TRO by:

Print Name ___________________________ Time and Date ___________________________

[ ] I hereby certify that I served the within Complaint/TRO by delivering a copy to the Defendant personally:

Print Name ___________________________ Time and Date ___________________________

Signature/ Badge Number/ Department ___________________________

[ ] Defender could not be served (explain):

Print Name ___________________________ Time and Date ___________________________

Signature/ Badge Number/ Department ___________________________

The Courthouse is accessible to those with disabilities. Please notify the Court if you require assistance.
Addendum:

D TR0 denied. Complaint dismissed by Family Part.

[Z] TR0 granted. The Court has established jurisdiction over the subject matter and the parties pursuant to N.J.S.A. 1 C:25-17 et seq., and has found good cause that a prima facie act of domestic violence has been established: that an immediate danger of domestic violence exists and that plaintiff's life, health and well being are endangered; that an emergency restraining Order is necessary pursuant to R. 5:7A(a) and N.J.S.A. 2C:25-28 to prevent the occurrence or recurrence of domestic violence and to search for and seize firearms and other weapons as indicated in this order.

DMcm

TR0 granted. The Court has established jurisdiction over the subject matter and the parties pursuant to N.J.S.A. 1 C:25-17 et seq., and has found good cause that a prima facie act of domestic violence has been established: that an immediate danger of domestic violence exists and that plaintiff's life, health and well being are endangered; that an emergency restraining Order is necessary pursuant to R. 5:7A(a) and N.J.S.A. 2C:25-28 to prevent the occurrence or recurrence of domestic violence and to search for and seize firearms and other weapons as indicated in this order.

Hearing Officer

sf

Hearing Officer

sf

Honorble

Court/County

All Law Enforcement Officers Will Serve and Fully Enforce This Order

This ex parte Domestic Violence Complaint and Temporary Restraining Order meets the criteria of the federal Violence Against Women Act for enforcement outside of the State of New Jersey upon verification of service of defendant. 18 U.S.C.A. §2265 & §2266

This Order Shall Remain in Effect Until Further Order of the Court and Service of Said Order on the Defendant. Notice to Appear to Plaintiff and Defendant

1. [Z] Both the plaintiff and defendant are ordered to appear for a final hearing on (date) at (time) at the Superior Court, Chancery Division, Family Part, BERGEN County, located at (address)

10 MAIN STREET, HACKENSACK, NJ 07601, 201-527-2350

Note: You must bring financial information including pay stubs, insurance information, bills and mortgage receipts with you to Court.

2. □ The final hearing in this matter shall not be scheduled until:

3. D Interpreter needed. Language:

Upon satisfaction of the above-noted conditions notify the Court immediately so that a final hearing date may be set.

IMPORTANT: The parties cannot themselves change the terms of this Order on their own. This Order may only be changed or dismissed by the Superior Court. The named defendant cannot have any contact with the plaintiff without permission of the Court.

Notice to Defendant

A violation of any of the provisions listed in this Order or a failure to comply with the directive to surrender all weapons, firearm permits, applications or identification cards may constitute criminal contempt pursuant to N.J.S.A. 2C:29-9(b), and may also constitute violations of other state and federal laws which may result in your arrest and/or criminal prosecution. This may result in a jail sentence.

You have the right to immediately file an appeal of this temporary Order before the Superior Court, Chancery Division, Family Part, as indicated above and a hearing may be scheduled.

Return of Service

0 Plaintiff was given a copy of the Complaint/TRO by:

________ Name and Date Signature / Badge Number/ Department

[ ] I hereby certify that I served the within Complaint/TRO by delivering a copy to the defendant personally:

________ Name and Date Signature / Badge Number/ Department

D I hereby certify that I served the within Complaint/TRO by use of substituted service as follows:

________ Name and Date Signature / Badge Number/ Department

Defendant could not be served (explain):

________ Name and Date Signature / Badge Number/ Department

The Courthouse is accessible to those with disabilities. Please notify the Court if you require assistance.

Distribution: Family Part, Plaintiff, Defendant, Sheriff, Other
N.J. Stat. § 2C:25-18

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 268, and J.R. 22


§ 2C:25-18. Findings, declarations

The Legislature finds and declares that domestic violence is a serious crime against society; that there are thousands of persons in this State who are regularly beaten, tortured and in some cases even killed by their spouses or cohabitants; that a significant number of women who are assaulted are pregnant; that victims of domestic violence come from all social and economic backgrounds and ethnic groups; that there is a positive correlation between spousal abuse and child abuse; and that children, even when they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence. It is therefore, the intent of the Legislature to assure the victims of domestic violence the maximum protection from abuse the law can provide.

The Legislature further finds and declares that the health and welfare of some of its most vulnerable citizens, the elderly and disabled, are at risk because of incidents of reported and unreported domestic violence, abuse and neglect which are known to include acts which victimize the elderly and disabled emotionally, psychologically, physically and financially; because of age, disabilities or infirmities, this group of citizens frequently must rely on the aid and support of others; while the institutionalized elderly are protected under P.L.1977, c.239 (C.52:27G-1 et seq.), elderly and disabled adults in noninstitutionalized or community settings may find themselves victimized by family members or others upon whom they feel compelled to depend.

The Legislature further finds and declares that violence against the elderly and disabled, including criminal neglect of the elderly and disabled under section 1 of P.L.1989, c.23 (C.2C:24-8), must be recognized and addressed on an equal basis as violence against spouses and children in order to fulfill our responsibility as a society to protect those who are less able to protect themselves.

The Legislature further finds and declares that even though many of the existing criminal statutes are applicable to acts of domestic violence, previous societal attitudes concerning domestic violence have affected the response of our law enforcement and judicial systems, resulting in these acts receiving different treatment from similar crimes when they occur in a domestic context. The Legislature finds that battered adults presently experience substantial difficulty in gaining access to protection from the judicial system, particularly due to that system’s inability to generate a prompt response in an emergency situation.

It is the intent of the Legislature to stress that the primary duty of a law enforcement officer when responding to a domestic violence call is to enforce the laws allegedly violated and to protect the victim. Further, it is the responsibility of the courts to protect victims of violence that occurs in a family or family-like setting by providing access to both emergent and long-term civil and criminal remedies and sanctions, and by ordering those remedies and sanctions that are available to assure the safety of the victims and the public. To that end, the Legislature encourages the training of all police and judicial personnel in the procedures and enforcement of this act, and about the social and psychological context in which domestic violence occurs; and it further encourages the broad application of the remedies available under this act in the civil and criminal courts of this State. It is further intended that the official response to domestic violence shall communicate the attitude that violent behavior will not be excused or tolerated, and shall make clear
the fact that the existing criminal laws and civil remedies created under this act will be enforced without regard to the fact that the violence grows out of a domestic situation.

History


As used in this act:

a. "Domestic violence" means the occurrence of one or more of the following acts inflicted upon a person protected under this act by an adult or an emancipated minor:

   (1) Homicide N.J.S. 2C:11-1 et seq.
   (2) Assault N.J.S. 2C:12-1
   (3) Terroristic threats N.J.S. 2C:12-3
   (4) Kidnapping N.J.S. 2C:13-1
   (6) False imprisonment N.J.S. 2C:13-3
   (7) Sexual assault N.J.S. 2C:14-2
   (8) Criminal sexual contact N.J.S. 2C:14-3
   (9) Lewdness N.J.S. 2C:14-4
   (10) Criminal mischief N.J.S. 2C:17-3
   (11) Burglary N.J.S. 2C:18-2
   (12) Criminal trespass N.J.S. 2C:18-3
   (13) Harassment N.J.S. 2C:33-4
   (14) Stalking P.L. 1992, c. 209 (C.2C:12-10)
   (16) Robbery N.J.S. 2C:15-1
   (17) Contempt of a domestic violence order pursuant to subsection b. of N.J.S. 2C:29-9 that constitutes a crime or disorderly persons offense
   (19) Cyber-harassment P.L. 2013, c. 272 (C.2C:33-4.1)
When one or more of these acts is inflicted by an unemancipated minor upon a person protected under this act, the occurrence shall not constitute "domestic violence," but may be the basis for the filing of a petition or complaint pursuant to the provisions of section 11 of P.L.1982, c.77 (C.2A:4A-30).

b. "Law enforcement agency" means a department, division, bureau, commission, board or other authority of the State or of any political subdivision thereof which employs law enforcement officers.

c. "Law enforcement officer" means a person whose public duties include the power to act as an officer for the detection, apprehension, arrest and conviction of offenders against the laws of this State.

d. "Victim of domestic violence" means a person protected under this act and shall include any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present household member or was at any time a household member. "Victim of domestic violence" also includes any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, if one of the parties is pregnant. "Victim of domestic violence" also includes any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

e. "Emancipated minor" means a person who is under 18 years of age but who has been married, has entered military service, has a child or is pregnant or has been previously declared by a court or an administrative agency to be emancipated.

History

§ 2C:25-21. Arrest of alleged attacker; seizure of weapons, etc.

a. When a person claims to be a victim of domestic violence, and where a law enforcement officer responding to the incident finds probable cause to believe that domestic violence has occurred, the law enforcement officer shall arrest the person who is alleged to be the person who subjected the victim to domestic violence and shall sign a criminal complaint if:

1. The victim exhibits signs of injury caused by an act of domestic violence;
2. A warrant is in effect;
3. There is probable cause to believe that the person has violated N.J.S. 2C:29-9, and there is probable cause to believe that the person has been served with the order alleged to have been violated. If the victim does not have a copy of a purported order, the officer may verify the existence of an order with the appropriate law enforcement agency; or
4. There is probable cause to believe that a weapon as defined in N.J.S. 2C:39-1 has been involved in the commission of an act of domestic violence.

b. A law enforcement officer may arrest a person; or may sign a criminal complaint against that person, or may do both, where there is probable cause to believe that an act of domestic violence has been committed, but where none of the conditions in subsection a. of this section applies.

c.

1. As used in this section, the word “exhibits” is to be liberally construed to mean any indication that a victim has suffered bodily injury, which shall include physical pain or any impairment of physical condition. Where the victim exhibits no visible sign of injury, but states that an injury has occurred, the officer should consider other relevant factors in determining whether there is probable cause to make an arrest.
2. In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider the comparative extent of the injuries, the history of domestic violence between the parties, if any, and any other relevant factors.
3. No victim shall be denied relief or arrested or charged under this act with an offense because the victim used reasonable force in self defense against domestic violence by an attacker.

d.

1. In addition to a law enforcement officer’s authority to seize any weapon that is contraband, evidence or an instrumentality of crime, a law enforcement officer who has probable cause to believe that an act of domestic violence has been committed shall:
   a. question persons present to determine whether there are weapons on the premises; and
   b. upon observing or learning that a weapon is present on the premises, seize any weapon that the officer reasonably believes would expose the victim to a risk of serious bodily injury. If a law
enforcement officer seizes any firearm pursuant to this paragraph, the officer shall also seize any firearm purchaser identification card or permit to purchase a handgun issued to the person accused of the act of domestic violence.

(2) A law enforcement officer shall deliver all weapons, firearms purchaser identification cards and permits to purchase a handgun seized pursuant to this section to the county prosecutor and shall append an inventory of all seized items to the domestic violence report.

(3) Weapons seized in accordance with the “Prevention of Domestic Violence Act of 1991”, P.L. 1991, c. 261 (C. 2C:25-17 et seq.) shall be returned to the owner except upon order of the Superior Court. The prosecutor who has possession of the seized weapons may, upon notice to the owner, petition a judge of the Family Part of the Superior Court, Chancery Division, within 45 days of seizure, to obtain title to the seized weapons, or to revoke any and all permits, licenses and other authorizations for the use, possession, or ownership of such weapons pursuant to the law governing such use, possession, or ownership, or may object to the return of the weapons on such grounds as are provided for the initial rejection or later revocation of the authorizations, or on the grounds that the owner is unfit or that the owner poses a threat to the public in general or a person or persons in particular.

A hearing shall be held and a record made thereof within 45 days of the notice provided above. No formal pleading and no filing fee shall be required as a preliminary to such hearing. The hearing shall be summary in nature. Appeals from the results of the hearing shall be to the Superior Court, Appellate Division, in accordance with the law.

If the prosecutor does not institute an action within 45 days of seizure, the seized weapons shall be returned to the owner.

After the hearing the court shall order the return of the firearms, weapons and any authorization papers relating to the seized weapons to the owner if the court determines the owner is not subject to any of the disabilities set forth in N.J.S. 2C:58-3 c. and finds that the complaint has been dismissed at the request of the complainant and the prosecutor determines that there is insufficient probable cause to indict; or if the defendant is found not guilty of the charges; or if the court determines that the domestic violence situation no longer exists. Nothing in this act shall impair the right of the State to retain evidence pending a criminal prosecution. Nor shall any provision of this act be construed to limit the authority of the State or a law enforcement officer to seize, retain or forfeit property pursuant to chapter 64 of Title 2C of the New Jersey Statutes.

If, after the hearing, the court determines that the weapons are not to be returned to the owner, the court may:

(a). With respect to weapons other than firearms, order the prosecutor to dispose of the weapons if the owner does not arrange for the transfer or sale of the weapons to an appropriate person within 60 days; or

(b). Order the revocation of the owner’s firearms purchaser identification card or any permit, license or authorization, in which case the court shall order the owner to surrender any firearm seized and all other firearms possessed to the prosecutor and shall order the prosecutor to dispose of the firearms if the owner does not arrange for the sale of the firearms to a registered dealer of the firearms within 60 days; or

(c). Order such other relief as it may deem appropriate. When the court orders the weapons forfeited to the State or the prosecutor is required to dispose of the weapons, the prosecutor shall dispose of the property as provided in N.J.S. 2C:64-6.

(4) A civil suit may be brought to enjoin a wrongful failure to return a seized firearm where the prosecutor refuses to return the weapon after receiving a written request to do so and notice of the owner’s intent to bring a civil action pursuant to this section. Failure of the prosecutor to comply with the provisions of this act shall entitle the prevailing party in the civil suit to reasonable costs, including...
attorney’s fees, provided that the court finds that the prosecutor failed to act in good faith in retaining the seized weapon.

(5) No law enforcement officer or agency shall be held liable in any civil action brought by any person for failing to learn of, locate or seize a weapon pursuant to this act, or for returning a seized weapon to its owner.

History


a. A victim may file a complaint alleging the commission of an act of domestic violence with the Family Part of the Chancery Division of the Superior Court in conformity with the Rules of Court. The court shall not dismiss any complaint or delay disposition of a case because the victim has left the residence to avoid further incidents of domestic violence. Filing a complaint pursuant to this section shall not prevent the filing of a criminal complaint for the same act.

On weekends, holidays and other times when the court is closed, a victim may file a complaint before a judge of the Family Part of the Chancery Division of the Superior Court or a municipal court judge who shall be assigned to accept complaints and issue emergency, ex parte relief in the form of temporary restraining orders pursuant to this act.

A plaintiff may apply for relief under this section in a court having jurisdiction over the place where the alleged act of domestic violence occurred, where the defendant resides, or where the plaintiff resides or is sheltered, and the court shall follow the same procedures applicable to other emergency applications. Criminal complaints filed pursuant to this act shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred. Contempt complaints filed pursuant to N.J.S.2C:29-9 shall be prosecuted in the county where the contempt is alleged to have been committed and a copy of the contempt complaint shall be forwarded to the court that issued the order alleged to have been violated.

b. The court shall waive any requirement that the petitioner’s place of residence appear on the complaint.

c.

(1) The clerk of the court, or other person designated by the court, shall assist the parties in completing any forms necessary for the filing of a summons, complaint, answer or other pleading.

(2) The plaintiff may provide information concerning firearms to which the defendant has access, including the location of these firearms, if known, on a form to be prescribed by the Administrative Director of the Courts.

(3) Information provided by the plaintiff concerning firearms to which the defendant has access shall be kept confidential and shall not be disseminated or disclosed, provided that nothing in this subsection shall prohibit dissemination or disclosure of this information in a manner consistent with and in furtherance of the purpose for which the information was provided.

d. Summons and complaint forms shall be readily available at the clerk’s office, at the municipal courts and at municipal and State police stations.

e. As soon as the domestic violence complaint is filed, both the victim and the abuser shall be advised of any programs or services available for advice and counseling.
f. A plaintiff may seek emergency, ex parte relief in the nature of a temporary restraining order. A municipal court judge or a judge of the Family Part of the Chancery Division of the Superior Court may enter an ex parte order when necessary to protect the life, health or well-being of a victim on whose behalf the relief is sought.

g. If it appears that the plaintiff is in danger of domestic violence, the judge shall, upon consideration of the plaintiff's domestic violence complaint, order emergency ex parte relief, in the nature of a temporary restraining order. A decision shall be made by the judge regarding the emergency relief forthwith.

h. A judge may issue a temporary restraining order upon sworn testimony or complaint of an applicant who is not physically present, pursuant to court rules, or by a person who represents a person who is physically or mentally incapable of filing personally. A temporary restraining order may be issued if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown.

i. An order for emergency, ex parte relief shall be granted upon good cause shown and shall remain in effect until a judge of the Family Part issues a further order. Any temporary order hereunder is immediately appealable for a plenary hearing de novo not on the record before any judge of the Family Part of the county in which the plaintiff resides or is sheltered if that judge issued the temporary order or has access to the reasons for the issuance of the temporary order and sets forth in the record the reasons for the modification or dissolution. The denial of a temporary restraining order by a municipal court judge and subsequent administrative dismissal of the complaint shall not bar the victim from refiling a complaint in the Family Part based on the same incident and receiving an emergency, ex parte hearing de novo not on the record before a Family Part judge, and every denial of relief by a municipal court judge shall so state.

j. Emergency relief may include forbidding the defendant from returning to the scene of the domestic violence, forbidding the defendant from possessing any firearm or other weapon enumerated in subsection r. of N.J.S. 2C:39-1, ordering the search for and seizure of any firearm or other weapon at any location where the judge has reasonable cause to believe the weapon is located and the seizure of any firearms purchaser identification card or permit to purchase a handgun issued to the defendant and any other appropriate relief.

If the order requires the surrender of any firearm or other weapon, a law enforcement officer shall accompany the defendant, or may proceed without the defendant if necessary, to the scene of the domestic violence or any other location where the judge has reasonable cause to believe any firearm or other weapon belonging to the defendant is located, to ensure that the defendant does not gain access to any firearm or other weapon, and that the firearm or other weapon is appropriately surrendered in accordance with the order. If the order prohibits the defendant from returning to the scene of domestic violence or any other location where the judge has reasonable cause to believe any firearm or other weapon belonging to the defendant is located, any firearm or other weapon located there shall be seized by a law enforcement officer. The order shall include notice to the defendant of the penalties for a violation of any provision of the order, including but not limited to the penalties for contempt of court and unlawful possession of a firearm or other weapon pursuant to N.J.S. 2C:39-5. Other appropriate relief may include but is not limited to an order directing the possession of any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household and providing that the animal shall not be disposed of prior to entry of a final order pursuant to section 13 of P.L. 1991, c. 261 (C.2C:25-29).

The judge shall state with specificity the reasons for and scope of any search and seizure authorized by the order. The provisions of this subsection prohibiting a defendant from possessing a firearm or other weapon shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty.

k. The judge may permit the defendant to return to the scene of the domestic violence to pick up personal belongings and effects but shall, in the order granting relief, restrict the time and duration of such permission and provide for police supervision of such visit.

I. An order granting emergency relief, together with the complaint or complaints, shall immediately be forwarded to the appropriate law enforcement agency for service on the defendant, and to the police of the municipality in
which the plaintiff resides or is sheltered, and shall immediately be served upon the defendant by the police, except that an order issued during regular court hours may be forwarded to the sheriff for immediate service upon the defendant in accordance with the Rules of Court. If personal service cannot be effected upon the defendant, the court may order other appropriate substituted service. At no time shall the plaintiff be asked or required to serve any order on the defendant.

m. (Deleted by amendment, P.L.1994, c.94.)

n. Notice of temporary restraining orders issued pursuant to this section shall be sent by the clerk of the court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency or court.

o. (Deleted by amendment, P.L.1994, c.94.)

p. Any temporary or final restraining order issued pursuant to this act shall be in effect throughout the State, and shall be enforced by all law enforcement officers.

q. Prior to the issuance of any temporary or final restraining order issued pursuant to this section, the court shall order that a search be made of the domestic violence central registry with regard to the defendant’s record.

History

**N.J. Stat. § 2C:25-29**

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 268, and J.R. 22


§ 2C:25-29. Hearing procedure; relief

a.A hearing shall be held in the Family Part of the Chancery Division of the Superior Court within 10 days of the filing of a complaint pursuant to section 12 of P.L.1991, c.261 (C.2C:25-28) in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere. A copy of the complaint shall be served on the defendant in conformity with the Rules of Court. If a criminal complaint arising out of the same incident which is the subject matter of a complaint brought under P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261 (C.2C:25-17 et seq.) has been filed, testimony given by the plaintiff or defendant in the domestic violence matter shall not be used in the simultaneous or subsequent criminal proceeding against the defendant, other than domestic violence contempt matters and where it would otherwise be admissible hearsay under the rules of evidence that govern where a party is unavailable. At the hearing the standard for proving the allegations in the complaint shall be by a preponderance of the evidence. The court shall consider but not be limited to the following factors:

1. The previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse;

2. The existence of immediate danger to person or property;

3. The financial circumstances of the plaintiff and defendant;

4. The best interests of the victim and any child;

5. In determining custody and parenting time the protection of the victim's safety; and

6. The existence of a verifiable order of protection from another jurisdiction.

An order issued under this act shall only restrain or provide damages payable from a person against whom a complaint has been filed under this act and only after a finding or an admission is made that an act of domestic violence was committed by that person. The issue of whether or not a violation of this act occurred, including an act of contempt under this act, shall not be subject to mediation or negotiation in any form. In addition, where a temporary or final order has been issued pursuant to this act, no party shall be ordered to participate in mediation on the issue of custody or parenting time.

b. In proceedings in which complaints for restraining orders have been filed, the court shall grant any relief necessary to prevent further abuse. In addition to any other provisions, any restraining order issued by the court shall bar the defendant from purchasing, owning, possessing or controlling a firearm and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun pursuant to N.J.S.2C:58-3 during the period in which the restraining order is in effect or two years, whichever is greater. The order shall require the immediate surrender of any firearm or other weapon belonging to the defendant. The order shall include notice to the defendant of the penalties for a violation of any provision of the order, including but not limited to the penalties for contempt of court and unlawful possession of a firearm or other weapon pursuant to N.J.S.2C:39-5.

A law enforcement officer shall accompany the defendant, or may proceed without the defendant if necessary, to any place where any firearm or other weapon belonging to the defendant is located to ensure
that the defendant does not gain access to any firearm or other weapon, and a law enforcement officer shall take custody of any firearm or other weapon belonging to the defendant. If the order prohibits the defendant from returning to the scene of domestic violence or other place where firearms or other weapons belonging to the defendant are located, any firearm or other weapon located there shall be seized by a law enforcement officer. The provisions of this subsection requiring the surrender or removal of a firearm, card, or permit shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty. At the hearing the judge of the Family Part of the Chancery Division of the Superior Court may issue an order granting any or all of the following relief:

1. An order restraining the defendant from subjecting the victim to domestic violence, as defined in this act.

2. An order granting exclusive possession to the plaintiff of the residence or household regardless of whether the residence or household is jointly or solely owned by the parties or jointly or solely leased by the parties. This order shall not in any manner affect title or interest to any real property held by either party or both jointly. If it is not possible for the victim to remain in the residence, the court may order the defendant to pay the victim’s rent at a residence other than the one previously shared by the parties if the defendant is found to have a duty to support the victim and the victim requires alternative housing.

3. An order providing for parenting time. The order shall protect the safety and well-being of the plaintiff and minor children and shall specify the place and frequency of parenting time. Parenting time arrangements shall not compromise any other remedy provided by the court by requiring or encouraging contact between the plaintiff and defendant. Orders for parenting time may include a designation of a place of parenting time away from the plaintiff, the participation of a third party, or supervised parenting time.

   a. The court shall consider a request by a custodial parent who has been subjected to domestic violence by a person with parenting time rights to a child in the parent’s custody for an investigation or evaluation by the appropriate agency to assess the risk of harm to the child prior to the entry of a parenting time order. Any denial of such a request must be on the record and shall only be made if the judge finds the request to be arbitrary or capricious.

   b. The court shall consider suspension of the parenting time order and hold an emergency hearing upon an application made by the plaintiff certifying under oath that the defendant’s access to the child pursuant to the parenting time order has threatened the safety and well-being of the child.

4. An order requiring the defendant to pay to the victim monetary compensation for losses suffered as a direct result of the act of domestic violence. The order may require the defendant to pay the victim directly, to reimburse the Victims of Crime Compensation Office for any and all compensation paid by the Victims of Crime Compensation Office directly to or on behalf of the victim, and may require that the defendant reimburse any parties that may have compensated the victim, as the court may determine. Compensatory losses shall include, but not be limited to, loss of earnings or other support, including child or spousal support, out-of-pocket losses for injuries sustained, cost of repair or replacement of real or personal property damaged or destroyed or taken by the defendant, cost of counseling for the victim, moving or other travel expenses, reasonable attorney’s fees, court costs, and compensation for pain and suffering. Where appropriate, punitive damages may be awarded in addition to compensatory damages.

5. An order requiring the defendant to receive professional domestic violence counseling from either a private source or a source appointed by the court and, in that event, requiring the defendant to provide the court at specified intervals with documentation of attendance at the professional counseling. The court may order the defendant to pay for the professional counseling. No application by the defendant to dissolve a final order which contains a requirement for attendance at professional counseling pursuant to this paragraph shall be granted by the court unless, in addition to any other provisions
required by law or conditions ordered by the court, the defendant has completed all required 
attendance at such counseling.

(6) An order restraining the defendant from entering the residence, property, school, or place of 
employment of the victim or of other family or household members of the victim and requiring the 
defendant to stay away from any specified place that is named in the order and is frequented regularly 
by the victim or other family or household members.

(7) An order restraining the defendant from making contact with the plaintiff or others, including an order 
forbidding the defendant from personally or through an agent initiating any communication likely to 
cause annoyance or alarm including, but not limited to, personal, written, or telephone contact with the 
victim or other family members, or their employers, employees, or fellow workers, or others with whom 
communication would be likely to cause annoyance or alarm to the victim.

(8) An order requiring that the defendant make or continue to make rent or mortgage payments on the 
residence occupied by the victim if the defendant is found to have a duty to support the victim or other 
dependent household members; provided that this issue has not been resolved or is not being litigated 
between the parties in another action.

(9) An order granting either party temporary possession of specified personal property, such as an 
avtomobile, checkbook, documentation of health insurance, an identification document, a key, and 
other personal effects.

(10) An order awarding emergency monetary relief, including emergency support for minor children, to 
the victim and other dependents, if any. An ongoing obligation of support shall be determined at a later 
date pursuant to applicable law.

(11) An order awarding temporary custody of a minor child. The court shall presume that the best 
interests of the child are served by an award of custody to the non-abusive parent.

(12) An order requiring that a law enforcement officer accompany either party to the residence or any 
shared business premises to supervise the removal of personal belongings in order to ensure the 
personal safety of the plaintiff when a restraining order has been issued. This order shall be restricted 
in duration.


(14) An order granting any other appropriate relief for the plaintiff and dependent children, provided that 
the plaintiff consents to such relief, including relief requested by the plaintiff at the final hearing, 
whether or not the plaintiff requested such relief at the time of the granting of the initial emergency 
order.

(15) An order that requires that the defendant report to the intake unit of the Family Part of the Chancery 
Division of the Superior Court for monitoring of any other provision of the order.

(16) In addition to the order required by this subsection prohibiting the defendant from possessing any 
firearm, the court may also issue an order prohibiting the defendant from possessing any other weapon 
enumerated in subsection r. of N.J.S.2C:39-1 and ordering the search for and seizure of any firearm or 
other weapon at any location where the judge has reasonable cause to believe the weapon is located. 
The judge shall state with specificity the reasons for and scope of the search and seizure authorized by 
the order.

(17) An order prohibiting the defendant from stalking or following, or threatening to harm, to stalk or to 
follow, the complainant or any other person named in the order in a manner that, taken in the context of 
past actions of the defendant, would put the complainant in reasonable fear that the defendant would 
cause the death or injury of the complainant or any other person. Behavior prohibited under this act 
includes, but is not limited to, behavior prohibited under the provisions of P.L.1992, c.209 (C.2C:12-10).

(18) An order requiring the defendant to undergo a psychiatric evaluation.
An order directing the possession of any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household. Where a person has abused or threatened to abuse such animal, there shall be a presumption that possession of the animal shall be awarded to the non-abusive party.

c. Notice of orders issued pursuant to this section shall be sent by the clerk of the Family Part of the Chancery Division of the Superior Court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency.

d. Upon good cause shown, any final order may be dissolved or modified upon application to the Family Part of the Chancery Division of the Superior Court, but only if the judge who dissolves or modifies the order is the same judge who entered the order, or has available a complete record of the hearing or hearings on which the order was based.

e. Prior to the issuance of any order pursuant to this section, the court shall order that a search be made of the domestic violence central registry.

History


a. (1) Any person alleging to be a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, and who is not eligible for a restraining order as a “victim of domestic violence” as defined by the provisions of subsection d. of section 3 of P.L. 1991, c. 261 (C.2C:25-19), may, except as provided in subsection b. of this section, file an application with the Superior Court pursuant to the Rules of Court alleging the commission of such conduct or attempted conduct and seeking a temporary protective order.

As used in this section and in sections 3, 4, and 8 of P.L. 2015, c. 147 (C.2C:14-15, C.2C:14-16, and C.2C:14-20):

“Sexual contact” means an intentional touching by the victim or actor, either directly or through clothing, of the victim’s or actor’s intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor.

“Sexual penetration” means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor’s instruction.

“Lewdness” means the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.

“Intimate parts” means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.

(2) Except as provided in subsection b. of this section, an application for relief under P.L. 2015, c. 147 (C.2C:14-13 et al.) may be filed by the alleged victim’s parent or guardian on behalf of the alleged victim in any case in which the alleged victim:

(a) is less than 18 years of age; or

(b) has a developmental disability as defined in section 3 of P.L. 1977, c. 200 (C.5:5-44.4) or a mental disease or defect that renders the alleged victim temporarily or permanently incapable of understanding the nature of the alleged victim’s conduct, including, but not limited to, being incapable of providing consent.

b. (1) When it is alleged that nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, has been committed by an unemancipated minor, an applicant seeking a protective order shall not proceed under the provisions of P.L. 2015, c. 147 (C.2C:14-13 et al.), but may seek a protective order and other relief under the New Jersey Code of Juvenile Justice, P.L. 1982, c.77 (C.2A:4A-20 et seq.) by filing a complaint pursuant to the provisions of section 11 of P.L. 1982, c.77 (C.2A:4A-30).
(2) When it is alleged that nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, has been committed against an unemancipated minor by a parent, guardian, or other person having care, custody and control of that child as defined in N.J.S.9:6-2, an applicant seeking a protective order shall not proceed under the provisions of P.L.2015, c.147 (C.2C:14-13 et al.), but shall report the incident to the Division of Child Protection and Permanency in the Department of Children and Families for investigation and possible legal action by the division pursuant to R.S.9:6-1 et seq. or other applicable law, including, when appropriate, petitioning the Superior Court pursuant to P.L.1974, c.119 (C.9:6-8.21 et seq.) for a protective order and other relief on behalf of the applicant and the unemancipated minor.

c.

(1) An applicant may seek a protective order pursuant to P.L.2015, c.147 (C.2C:14-13 et al.) and the court may issue such an order regardless of whether criminal charges based on the incident were filed and regardless of the disposition of any such charges.

(2) The filing of an application pursuant to this section shall not prevent the filing of a criminal complaint, or the institution or maintenance of a criminal prosecution based on the same act.

d. The court shall waive any requirement that the applicant's or alleged victim's place of residence appear on the application.

e. An applicant may seek a protective order pursuant to P.L.2015, c.147 (C.2C:14-13 et al.) in a court having jurisdiction over the place where the alleged conduct or attempted conduct occurred, where the respondent resides, or where the alleged victim resides or is sheltered.

f. No fees or other costs shall be assessed against an applicant for seeking a protective order pursuant to P.L.2015, c.147 (C.2C:14-13 et al.).

**History**

L. 2015, c. 147, § 2, eff. May 7, 2016; amended 2016, c. 93, § 1, eff. Jan. 9, 2017.
§ 2C:14-15. Temporary protective order

a. An applicant may seek emergency, ex parte relief in the nature of a temporary protective order. A judge of the Superior Court may enter an emergency ex parte order when necessary to protect the safety and well-being of an alleged victim on whose behalf the relief is sought. The court may grant any relief necessary to protect the safety and well-being of an alleged victim.

b. The court shall, upon consideration of the application, order emergency ex parte relief in the nature of a temporary protective order if the court determines that the applicant is a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, and qualifies for such relief pursuant to section 2 of P.L.2015, c.147 (C.2C:14-14). The court shall render a decision on the application and issue a temporary protective order, where appropriate, in an expedited manner.

c. The court may issue a temporary protective order, pursuant to court rules, upon sworn testimony or an application of an alleged victim who is not physically present, pursuant to court rules, or by a person who represents an alleged victim who is physically or mentally incapable of filing personally. A temporary restraining order may be issued if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown.

d. An order for emergency, ex parte relief shall be granted upon good cause shown and shall remain in effect until a judge of the Superior Court issues a further order. Any temporary protective order issued pursuant to this section is immediately appealable for a plenary hearing de novo not on the record before any judge of the Superior Court of the county in which the alleged victim resides or is sheltered if that judge issued the temporary protective order or has access to the reasons for the issuance of the temporary protective order and sets forth in the record the reasons for the modification or dismissal.

e. A temporary protective order issued pursuant to this section may include, but is not limited to, the following emergency relief:

(1) an order prohibiting the respondent from committing or attempting to commit any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim;

(2) an order prohibiting the respondent from entering the residence, property, school, or place of employment of the victim or the victim's family or household members, and requiring the respondent to stay away from any specified place that is named in the order and is frequented regularly by the alleged victim or the alleged victim's family or household members;

(3) an order prohibiting the respondent from having any contact with the alleged victim or others, including an order forbidding the respondent from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact, or contact via electronic device, with the alleged victim or the alleged victim's family members, or their employers, employees, or fellow workers, an employee or volunteer of a
sexual assault response entity that is providing services to an alleged victim, or others with whom communication would be likely to cause annoyance or alarm to the alleged victim;

(4) an order prohibiting the respondent from stalking or following, or threatening to harm, stalk, or follow, the alleged victim;

(5) an order prohibiting the respondent from committing or attempting to commit an act of harassment, including an act of cyber-harassment, against the alleged victim; and

(6) any other relief that the court deems appropriate.

f. A copy of the temporary protective order issued pursuant to this section shall be immediately forwarded to the police of the municipality in which the alleged victim resides or is sheltered. A copy of the temporary protective order shall also be forwarded to the sheriff of the county in which the respondent resides for immediate service upon the respondent in accordance with the Rules of Court. The court or the sheriff may coordinate service of the temporary protective order upon the respondent through the police in appropriate circumstances. If personal service cannot be effected upon the respondent, the court may order other appropriate substituted service. At no time shall the alleged victim be asked or required to serve any order on the respondent.

g. Notice of temporary protective orders issued pursuant to this section shall be sent by the clerk of the court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency or court.

History

L. 2015, c. 147, § 3, eff. May 7, 2016.
§ 2C:14-16. Final protective order

a. A hearing shall be held in the Superior Court within 10 days of the filing of an application pursuant to section 3 of P.L. 2015, c. 147 (C.2C:14-15) in the county where the temporary protective order was ordered, unless good cause is shown for the hearing to be held elsewhere. A copy of the application shall be served on the respondent in conformity with the Rules of Court. If a criminal complaint arising out of the same incident which is the subject matter of an application for a protective order has been filed, testimony given by the applicant, the alleged victim, or the respondent in accordance with an application filed pursuant to this section shall not be used in the criminal proceeding against the respondent, other than contempt matters, and where it would otherwise be admissible hearsay under the rules of evidence that govern when a party is unavailable. At the hearing, the standard for proving the allegations made in the application for a protective order shall be a preponderance of the evidence. The court shall consider but not be limited to the following factors:

(1) the occurrence of one or more acts of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim; and

(2) the possibility of future risk to the safety or well-being of the alleged victim.

b. The court shall not deny relief under this section due to: the applicant’s or alleged victim’s failure to report the incident to law enforcement; the alleged victim’s or the respondent’s alleged intoxication; whether the alleged victim did or did not leave the premises to avoid nonconsensual sexual contact, sexual penetration, or lewdness, or an attempt at such conduct; or the absence of signs of physical injury to the alleged victim.

c. In any proceeding involving an application for a protective order pursuant to P.L. 2015, c. 147 (C.2C:14-13 et al.), evidence of the alleged victim’s previous sexual conduct or manner of dress at the time of the incident shall not be admitted nor shall any reference made to such conduct or manner or dress, except as provided in N.J.S.2C:14-7.

d. The issue of whether an act alleged in the application for a protective order occurred, or whether an act of contempt under paragraph (2) of subsection b. of N.J.S.2C:29-9 occurred, shall not be subject to mediation or negotiation in any form.

e. A final protective order issued pursuant to this section shall be issued only after a finding or an admission is made that the respondent committed an act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim. A final protective order shall:

(1) prohibit the respondent from having contact with the victim; and

(2) prohibit the respondent from committing any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim.

f. In addition to any relief provided to the victim under subsection e. of this section, a final protective order issued pursuant to this section may include, but is not limited to, the following relief:
(1) an order prohibiting the respondent from entering the residence, property, school, or place of employment of the victim or the victim’s family or household members, and requiring the respondent to stay away from any specified place that is named in the order and is frequented regularly by the victim or the victim’s family or household members;

(2) an order prohibiting the respondent from having any contact with the victim or others, including an order forbidding the respondent from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact, or contact via electronic device, with the victim or the victim’s family members or their employers, employees, or fellow workers; an employee or volunteer of a sexual assault response entity that is providing services to a victim; or others with whom communication would be likely to cause annoyance or alarm to the victim;

(3) an order prohibiting the respondent from stalking or following, or threatening to harm, stalk or follow, the victim;

(4) an order prohibiting the respondent from committing or attempting to commit an act of harassment, including an act of cyber-harassment, against the victim; and

(5) any other relief that the court deems appropriate.

g. A copy of the final protective order issued pursuant to this section shall be immediately forwarded to the police of the municipality in which the victim resides or is sheltered. A copy of the final protective order shall be forwarded to the sheriff of the county in which the respondent resides for immediate service upon the respondent in accordance with the Rules of Court. The court or the sheriff may coordinate service of the final protective order upon the respondent through the police in appropriate circumstances. If personal service cannot be effected upon the respondent, the court may order other appropriate substituted service. At no time shall the victim be asked or required to serve any order on the respondent.

h. Notice of a final protective order issued pursuant to this section shall be sent by the clerk of the Superior Court or other person designated by the court to the appropriate county prosecutor, the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency. Notice of the issuance of a final protective order shall also be provided to the Division of Child Protection and Permanency in the Department of Children and Families where the victim is less than 18 years of age.

i. A final protective order issued pursuant to this section shall remain in effect until further order of a judge of the Superior Court. Either party may file a petition with the court to dissolve or modify a final protective order. When considering a petition for dissolution or modification of a final protective order, the court shall conduct a hearing to consider whether a material change in circumstances has occurred since the issuance of the protective order which would make its continued enforcement inequitable, oppressive or unjust taking into account the current status of the parties, including the desire of the victim for the continuation of the protective order, the potential for contact between the parties, the history of the respondent’s violations of the protective order or criminal convictions, and any other factors that the court may find relevant to protecting the safety and well-being of the victim.

History

L. 2015, c. 147, § 4, eff. May 7, 2016.
§ 2C:14-17. Protective order, enforcement

a. Any temporary or final protective order issued pursuant to P.L.2015, c.147 (C.2C:14-13 et al.) shall be in effect throughout the State, and shall be enforced by all law enforcement officers.

b. When a law enforcement officer finds probable cause that a respondent has committed contempt of an order entered pursuant to P.L.2015, c.147 (C.2C:14-13 et al.), the respondent shall be arrested and taken into custody. The court shall determine whether the respondent shall be released pending trial or detained pending a pretrial detention hearing pursuant to sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) and applicable court rules.

History

L. 2015, c. 147, § 5, eff. May 7, 2016.

a. A respondent’s violation of any protective order issued pursuant to P.L.2015, c.147 (C.2C:14-13 et al.) shall constitute an offense under subsection d. of N.J.S.2C:29-9 and each order shall so state. All contempt proceedings brought pursuant to subsection d. of N.J.S.2C:29-9 shall be subject to any rules or guidelines established by the Supreme Court to promote the prompt disposition of criminal matters.

b. Where a victim alleges that a respondent has committed contempt of a protective order entered pursuant to the provisions of P.L.2015, c.147 (C.2C:14-13 et al.), but a law enforcement officer has found that the facts are insufficient to establish probable cause to arrest the respondent, the law enforcement officer shall advise the victim of the procedure for completing and signing a criminal complaint alleging a violation of subsection d. of N.J.S.2C:29-9 through the municipal court. Nothing in this section shall be construed to prevent the court from granting any other emergency relief it deems necessary.

c. If a respondent is charged with a non-indictable offense pursuant to paragraph (2) of subsection d. of N.J.S.2C:29-9 as a result of a violation of a protective order entered pursuant to P.L.2015, c.147 (C.2C:14-13 et al.), the contempt proceedings for the non-indictable offense shall be heard in the Superior Court.

History

L. 2015, c. 147, § 6, eff. May 7, 2016; amended 2016, c. 93, § 2, eff. Jan. 9, 2017.
Rule 5:7B. Sexual Assault Survivor Protection Act: Protective Orders

(a) **Temporary Protective Order.**—In court proceedings instituted under the Sexual Assault Survivor Protection Act of 2015, the judge shall issue a temporary protective order when the victim has been subject to nonconsensual sexual contact, sexual penetration, or lewdness, or an attempt at such conduct. The order may be issued ex parte when necessary to protect the safety and wellbeing of the victim on whose behalf the relief is sought.

(b) **Venue in Sexual Assault Survivor Protection Act Proceedings.**—Venue in these actions shall be laid in the county where either of the parties resides, where the offense took place, or where the victim is sheltered. The final hearing is to be held in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere.

(c) **Application for Temporary Protective Order.**—Except as provided in paragraph (b) of this rule, an applicant for a temporary protective order shall appear before a judge or a domestic violence hearing officer to personally testify on the record or by sworn complaint submitted pursuant to N.J.S.A. 2C:14-14 and N.J.S.A. 2C:14-15. If it appears that the order is necessary to protect the safety and wellbeing of the victim, the judge shall, upon consideration of the applicant's affidavit, complaint or testimony, order emergency relief, including ex parte relief, in the nature of a temporary protective order as authorized by N.J.S.A. 2C:14-13 et seq. Any person alleging to be a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, and who is not eligible for a restraining order as a "victim of domestic violence" as defined by N.J.S.A. 2C:25-19d may apply for a temporary protective order.

(d) **Issuance of Temporary Protective Order by Electronic Communication.**—A judge may issue a temporary protective order upon sworn oral testimony of an applicant who is not physically present. Such sworn oral testimony may be communicated to the judge by telephone, radio or other means of electronic communication. The judge assisting the applicant shall contemporaneously record such sworn oral testimony by means of a sound-recording device or stenographic machine if such are available; otherwise, adequate longhand notes summarizing what is said shall be made by the judge. Subsequent to taking the oath, the applicant must identify himself or herself, specify the purpose of the request, and disclose the basis of the application. This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of a temporary protective order. A temporary protective order may issue if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown. Upon issuance of the temporary protective order, the judge shall memorialize the specific terms of the order. This order shall be deemed a temporary protective order for the purpose of N.J.S.A. 2C:14-14 and N.J.S.A. 2C:14-15.

(e) **Final Protective Order.**—A hearing for a final protective order shall be held in the Superior Court within 10 days of the filing of an application. A final order restraining a defendant shall be issued only on a specific finding of nonconsensual sexual contact, sexual penetration, or lewdness, or an attempt at such conduct, or on a stipulation by a defendant to the commission of an act or acts of sexual contact as defined by the statute.
Adopted July 28, 2017 to be effective September 1, 2017; paragraph (a) amended and redesignated as paragraph (c), paragraph (b) redesignated as paragraph (d), paragraph (c) redesignated as paragraph (a), paragraph (d) amended and redesignated as paragraph (e), paragraph (e) redesignated as paragraph (b) July 29, 2019 to be effective September 1, 2019.
Silver v. Silver

Superior Court of New Jersey, Appellate Division

February 16, 2006, Argued ; August 2, 2006, Decided

DOCKET NO. A-2907-04T1

Report
387 N.J. Super. 112 *; 903 A.2d 446 **; 2006 N.J. Super. LEXIS 224 ***

MARK I. SILVER, PLAINTIFF-APPELLANT, v. DALE C. SILVER, DEFENDANT-RESPONDENT.


Prior History: On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Camden County, Docket Number FV-04-806-05.

Core Terms
domestic violence, parties, restraining order, assault, violence, predicate act, trespass, domestic, criminal trespass, previous history, matrimonial, complaints, supervised, immediate danger, preponderance, harassment, trial judge, visitation, boardwalk, scratched, choked, phone, the Act, custody, wait

Case Summary

Procedural Posture
Plaintiff husband sought review of the judgment of the Superior Court of New Jersey, Chancery Division, Family Part, Camden County, which dismissed his domestic violence complaint that he had filed against defendant wife pursuant to the Prevention of Domestic Violence Act, N.J. Stat. Ann. § 2C:25-17 to -35.

Overview
The husband alleged that the wife got into his car, refused to leave, and hit and scratched him. On the other hand, the wife alleged that the husband choked her during the incident. The trial court dismissed the husband's subsequent domestic violence complaint. On appeal, the court held that, in a domestic violence action brought under the Act, where the jurisdictional requirements had otherwise been met, the task of the trial court was two-fold. First, the judge must determine whether the plaintiff has proven that one or more of the predicate acts set forth in N.J. Stat. Ann. § 2C:25-19(a) has occurred. The second inquiry was whether the trial court should enter a final restraining order against the defendant. The guiding standard was whether a restraining order was necessary, upon an evaluation of the factors set forth in § 2C:25-29(a)(1)-(6), to protect the victim from an immediate danger or to prevent further abuse. Since the trial court found that the wife had committed an act of assault and trespass, yet dismissed the domestic violence complaint, the court remanded the matter for a further hearing that focused on the second step in the analysis.

Outcome
The court reversed the order of dismissal, reinstated the temporary restraining order, and remanded the matter for a further hearing focusing on whether a domestic violence restraining order was necessary to protect the husband from immediate danger or further acts of domestic violence.

LexisNexis® Headnotes

Family Law > Family Protection & Welfare > Cohabitants & Spouses > Abuse, Endangerment & Neglect

HN1[ ] Cohabitants & Spouses, Abuse, Endangerment & Neglect


Family Law > Family Protection & Welfare > Cohabitants & Spouses > Abuse, Endangerment & Neglect

HN2[ ] Cohabitants & Spouses, Abuse, Endangerment & Neglect

The New Jersey Legislature did not intend that the commission of any one of the acts contained in N.J. Stat. Ann. § 2C:25-19(a) automatically mandates the issuance of a domestic violence order. Domestic violence is ordinarily more than an isolated aberrant non-violent act. Indeed, the Prevention of Domestic Violence Act, N.J. Stat. Ann. § 2C:25-17 to -35, mandates that the court, in determining whether an act of domestic violence has occurred, consider the previous history of domestic violence between the parties including threats, harassment and physical abuse, N.J. Stat. Ann. § 2C:25-29(a)(1), and the existence of immediate danger to person or property, N.J. Stat. Ann. § 2C:25-29(a)(2). While a single sufficiently egregious action may constitute domestic violence even if there is no history of abuse between the parties, a court may also determine that an ambiguous incident qualifies as domestic violence based on finding previous acts of violence.
HN3 | Cohabitants & Spouses, Abuse, Endangerment & Neglect

The Prevention of Domestic Violence Act, **N.J. Stat. Ann. § 2C:25-17** to -35, is intended to assist those who are truly the victims of domestic violence. It should not be trivialized by its misuse in situations which do not involve violence or threats of violence. In addition, there is a concern that the Act may be misused in order to gain advantage in a companion matrimonial action or custody or visitation issue.

HN4 | Cohabitants & Spouses, Abuse, Endangerment & Neglect

Acts claimed by a plaintiff to be domestic violence must be evaluated in light of the previous history of domestic violence between the plaintiff and defendant including previous threats, harassment and physical abuse and in light of whether immediate danger to the person or property is present. **N.J. Stat. Ann. § 2C:25-29(a)(1)** and (2). This requirement reflects the reality that domestic violence is ordinarily more than an isolated aberrant act and incorporates the legislative intent to provide a vehicle to protect victims whose safety is threatened.

HN5 | Cohabitants & Spouses, Abuse, Endangerment & Neglect

The task of a judge considering a domestic violence complaint, where the jurisdictional requirements have otherwise been met, is two-fold. First, the judge must determine whether the plaintiff has proven, by a preponderance of the credible evidence, that one or more of the predicate acts set forth in **N.J. Stat. Ann. § 2C:25-19(a)** has occurred. **N.J. Stat. Ann. § 2C:25-29(a)** states that the standard for proving the allegations in the complaint shall be by a preponderance of the evidence. In performing that function, the Prevention of Domestic Violence Act, **N.J. Stat. Ann. § 2C:25-17** to -35, does require that acts claimed by a plaintiff to be domestic violence be evaluated in light of the previous history of violence between the parties. Stated differently, when determining whether a restraining order should be issued based on an act of assault or, for that matter, any of the predicate acts, the court must consider the evidence in light of whether there is a previous history of domestic violence, and whether there exists immediate danger to person or property. **N.J. Stat. Ann. § 2C:25-29(a)(1)** and (2).

HN6 | Cohabitants & Spouses, Abuse, Endangerment & Neglect

The second inquiry undertaken during a consideration of a domestic violence complaint begins after the plaintiff has established, by a preponderance of the evidence, the commission of one of the enumerated predicate acts upon a
person protected under the Prevention of Domestic Violence Act, *N.J. Stat. Ann. § 2C:25-17* to -35, by an adult or an emancipated minor. *N.J. Stat. Ann. § 2C:25-19(a).* Although this second determination—whether a domestic violence restraining order should be issued—is most often perfunctory and self-evident, the guiding standard is whether a restraining order is necessary, upon an evaluation of the factors set forth in *N.J. Stat. Ann. § 2C:25-29(a)(1)* to -29(a)(6), to protect the victim from an immediate danger or to prevent further abuse.

**HN8**  
Cohabitants & Spouses, Abuse, Endangerment & Neglect


**HN9**  
Cohabitants & Spouses, Abuse, Endangerment & Neglect

Although it is clear that a pattern of abusive and controlling behavior is a classic characteristic of domestic violence, the need for an order of protection upon the commission of a predicate act of "domestic violence," as specifically defined in *N.J. Stat. Ann. § 2C:25-19(a)*, may arise even in the absence of such a pattern where there is one sufficiently egregious action.

**Counsel:** Lee M. Hymerling argued the cause for appellant (*Archer & Greiner*, attorneys; Mr. Hymerling and Timothy P. Haggerty, on the brief).

Amy R. Weintrob argued the cause for respondent (*Jacobs & Barbone*, attorneys; Ms. Weintrob, on the brief).

**Judges:** Before Judges FALL, GRALL and KING. ¹ The opinion of the court was delivered by FALL, J.A.D.

**Opinion by:** FALL

**Opinion**

[**447**] [**114**] The opinion of the court was delivered by

FALL, J.A.D.

¹ Judge King did not participate in argument on this appeal. However, with consent of counsel, he has joined in this opinion.
Plaintiff Mark I. Silver appeals from an order entered in the Family Part on January 5, 2005, dismissing his domestic violence complaint that he had filed against defendant Dale C. Silver pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. The following factual and procedural [*2] history is relevant to our consideration of the issues presented on appeal.

The parties were married on September 12, 1987. Two children were born of their marriage: Jonathan, on August 27, 1989; and Jordan, on March 5, 1997. The parties separated in or about September 2003.

On March 9, 2004, plaintiff filed a complaint for divorce against defendant in the Family Part, Camden County, seeking, inter alia, a judgment dissolving their marriage, and awarding him sole custody of the children. At that point, Jordan was primarily residing with plaintiff, and Jonathan was primarily residing with defendant.

[*115] On July 27, 2004, a consent order was entered in the matrimonial action, restraining defendant from plaintiff's residences; providing defendant specified parenting time with Jordan, as supervised by her parents; requiring pick-up and drop-off of Jordan at the Warwick Condominiums in Atlantic City during those specified times; and restraining defendant from other contact with Jordan, pending further order. The order also provided:

6. This Order is entered by both parties without prejudice to any positions that he/she may take in connection with [**448] the applications scheduled to be [***3] heard on August 6, 2004 and this litigation in general. Both parties are entering into this Order to avoid the filing of cross Orders to Show Cause to allow the issues to be more fully explored by the Court at the time of the August 6, 2004 hearing. This Order does not constitute a finding by the Court nor an admission by either party.

On that same date, July 27, 2004, plaintiff and defendant filed complaints against each other under the PDVA in the Atlantic City Municipal Court, alleging acts of assault and seeking the issuance of restraining orders. Each complaint provided the same narrative of the incident:

On 7-27-04 the victim and defendant got into an argument over a custody order. Both parties have visible injuries after a physical confrontation.

Both complaints stated there was no prior history of domestic violence, and that criminal complaints had been filed against both parties charging them with simple assault, N.J.S.A. 2C:12-1a(1).

The municipal court judge issued a temporary restraining order (TRO) on each complaint, and scheduled a final hearing in the Family Part, Atlantic County, for August 5, 2004. Both parties gave written statements to the [***4] police that contained conflicting versions of the incident. However, the parties agreed that the dispute between them centered over the supervised-visitaton portions of the July 27 consent order that had been issued in the matrimonial action.

On August 5, 2004, the Family Part, Atlantic County, issued a consent order in the domestic violence actions, continuing the restraints contained in the July 27, 2004 TROs, without prejudice; incorporating additional restraints, essentially as contained in the [*116] July 27, 2004 matrimonial order; and setting forth additional specific supervised parenting time for defendant with Jordan.

On August 27, 2004, an order was entered in the matrimonial action, transferring the domestic violence complaints to the Family Part in Camden County, and scheduling a final hearing. That order also dealt with the issues of supervised parenting time, discovery, and non-dissipation of marital assets.

A final hearing on both domestic violence complaints was conducted in the Family Part on January 5, 2005. Defendant testified that on the evening of July 27, 2004, she drove, with her girlfriend Nancy Forrester, to the Warwick Condominiums in Atlantic City to pick up [***5] Jordan for the parenting-time session scheduled to commence at 4:15 p.m. She stated that her parents, who were to serve as supervisors, were on their way to Margate to pick up Jonathan from camp, and they were all to rendezvous later on the Atlantic City boardwalk.

Defendant testified she was waiting in her parked car in front of the Warwick Condominiums, when plaintiff drove up with Jordan. She stated that Jordan exited plaintiff's vehicle, and plaintiff inquired as to Jonathan's whereabouts,
stating that he wanted to have dinner with Jonathan that night; defendant explained that Jonathan had declined the dinner invitation.

Plaintiff then entered his vehicle and left, leaving Jordan with defendant and Forrester. Defendant and Forrester then brought Jordan up onto the boardwalk where they sat on a bench to wait for defendant's parents and Jonathan.

Defendant stated that approximately seven or eight minutes later plaintiff returned in his vehicle, which he pulled close to the boardwalk area, and yelled to plaintiff, stating that because her parents were not there to supervise the parenting time, as required by the court order, he wanted Jordan to come back with him. Defendant testified she left Jordan with Forrester on the boardwalk, and walked down to plaintiff's car to "try to reason with him."

[*117] Defendant claimed that when she got to his car, plaintiff moved over to the passenger's side of his vehicle, and she entered the driver's side, then proceeded to explain that Forrester was there and that her parents would be coming soon. Plaintiff would not accept that explanation, and ordered her out of his car, stating "if you don't get out of my car, I'm going to hit you." He then began dialing a number on his cell phone. Defendant claimed that the following then occurred:

He started dialing, then when he finished dialing he looked at me, he was very angry and he raised his hand and I thought he was going to hit me, coming at me. I put my hands up to block him and he put his hand on my neck and started choking me.

Defendant stated that during the altercation "he also bit me on my finger and on my arm, but that was later." Defendant admitted she slapped and scratched plaintiff during the altercation, but asserted she did so to defend herself. She also stated that she had not entered plaintiff's vehicle with the intent to assault him.

A tape of the [*117] [*118] 9-1-1 calls by the manager of Warwick Condominiums and by plaintiff to the 9-1-1 operator was played in court, and we have been provided a copy of the 9-1-1 tape of the calls and a transcript thereof.

During her testimony, defendant also described an incident purportedly occurring on June 9, 2004, in Cherry Hill, during which she asserted that plaintiff had threatened to kill her. Upon inquiry by the court, defendant acknowledged that her domestic violence complaint stated there was no previous history of domestic violence. She explained the omission, as follows:

Honestly, Your Honor, the whole thing was extraordinarily upsetting. You know it all had gone way beyond [where] I thought it would ever go. It's extremely—it's still extremely upsetting to me at the moment and I was in a courthouse, you know, hauled off by the police in front of my children who were crying, who had witnessed this whole thing and I was--I don't know that I even read it. I think they put it in front of me and I signed it.[*]

In his testimony, plaintiff provided a markedly different version of the incident. He stated that after he had dropped off Jordan, he telephoned his friend, Barbara Frank, [*118] who reminded him that defendant's parents were required to supervise defendant's parenting-time [*118] sessions. At that point, he turned his car around and went back. He stated that on his way back, he called defendant and told her he "was coming back and that [he] would wait for her parents to show up[,]" but that defendant responded, "I can't hear you, I can't hear you and she hung up." Plaintiff drove up near the boardwalk and waited in the car.

Shortly thereafter, defendant walked up to his car, "opened the door and jumped in the car and her back was to the passenger's side and she started--she started beating the heck out of me." He explained that as defendant was walking toward the vehicle, he had been talking on the cell phone with Barbara Frank. Plaintiff stated that defendant kept scratching him and trying to put her hands over his mouth to prevent him from talking on the phone. He testified that at that point he dialed 9-1-1, and, when he was able to get out of the car, ran into the Warwick Condominiums and asked the manager to call the police. Plaintiff denied choking or hitting defendant.

[**450] Plaintiff also testified concerning prior alleged incidents of domestic violence. [*119] He stated that in March 2003 in Cherry Hill, during a discussion concerning his older children visiting them, defendant was drunk and pulled a knife and threatened him. Plaintiff further asserted that in April 2002, in Longport, defendant was drunk and during
an argument she again pulled a knife and threatened him. Plaintiff denied that any incident had occurred on June 9, 2004. Upon questioning by the court, plaintiff acknowledged that his domestic violence complaint also stated there was no previous history of domestic violence. He explained that

I was going to check and put down about the prior incidents. As I was filling out those forms I had paramedics all over me and I was going to the hospital.

* * * *

The next day after contacting [my attorney] I was told that I could amend that and based upon that I believe [my attorney] moved to amend that statement of "no" and that was done right after I signed that. It was a mistake and I can tell [*119] you my blood pressure was significantly high and I was advised to go to the hospital.

Barbara Frank testified that she had a telephone conversation with plaintiff shortly after 4:10 p.m. on July 17, 2004, after plaintiff had [***10] dropped off Jordan, during which she reminded him that defendant's parents were required to be present during her parenting time. Plaintiff then told Frank he was going back to wait for defendant's parents, and the conversation terminated. Frank stated that plaintiff then called her back and explained that he had tried to call defendant, but she was unable to hear him on the cell phone.

Frank testified that as they were talking, plaintiff said, "[w]ait a minute, she's coming down off the boardwalk now." Frank stated that the next thing she heard was plaintiff saying, "$[g]et out of my car. Ow, you're hurting me. Dale get out of my car, leave me alone."

Following summations by counsel for the parties, the trial judge made the following findings, in pertinent part:

[What's clear is that there is a substantial amount of acrimony between the parties. Their relationship isn't working out, they're in the process of seeking a divorce, they have retained on the civil side counsel in substantial firms who are working to resolve issues between them and specifically with regard to the incident that precipitated this occurrence the notion of the visitation and supervised visitation. [***11]

The--the impetus for this event which occurred on July 27 had to do with a mother's desire to visit with the child, a father's concern for the well being of the child, and the existence of a prior court order which determined the boundaries and parameters of those visitations.

* * * *

[E]ach party checked the boxes that said there had been no prior acts of domestic violence. And today at trial they each testified that the other had either threatened them or pulled a knife on them or done improper things.

. . . I both believe and disbelieve each party as to those allegations to the same extent, but find that if there's something there, that it is a continuing disagreement between them perhaps because where they found themselves in their relationships was not where they had expected to be. One child is with the father, one child is with the mother. Both children need a relationship with each parent.

[Defendant] knew there was a supervision order and supervision by her parents. She testified, I believe not credibly, that she wasn't sure that it was in place yet. . . .

The 9-1-1 tapes are interesting because [defendant] in a very clear-speaking voice says, "He's choking [***12] me." But it was a very clear-speaking voice, she wasn't being choked. . . .

* * * *

I believe [defendant] got in the car without being invited. She's a bright woman, she suffered a memory lapse at the question of how'd she get in the car. I don't think she was invited into the car. But I think there's so much volatility and rage between these people that the emotional filters they utilize to listen to the language betrays the true meaning of the words that they speak to one another.

[Defendant] assaulted [plaintiff], she scratched him, she punched him, that's clear. She also, in the court's opinion, forced herself into the car, or committed an act of defiant trespass by not leaving the car when she was told to leave the car, and if in fact she was being choked she would have called 9-1-1.

Likewise, there's a question about at what point he got scratched and assaulted, because he didn't say, "She scratched me, she hit me," he said, "She won't get out of the car." They both were very emotional.
I can't find, even by a preponderance of the evidence—a preponderance of the credible evidence, that [plaintiff] choked or assaulted [defendant]. I can find by a preponderance of the evidence that [defendant] did assault and did refuse to leave [plaintiff's] presence. The difficulty is that [plaintiff]'s description . . . of the events surrounding why it happened just doesn't jive with what happened, with what the testimony shows.

However, I don't believe that either party intended for the outcome to have been the outcome. I don't believe that [defendant] walked over to the car intending to beat up [plaintiff]. And I don't believe that [plaintiff], had [defendant] not gotten into the car, would have done anything to her. I believe he was genuinely making sure that his child was okay, and I think that whatever triggered the difficulty between the parties was situational and not intentional.

I'm guided by Corrente[v. Corrente, 281 N.J. Super. 243, 657 A.2d 440 (App.Div.1995)] because the entry of a final restraining order in a domestic violence case has tremendous consequences for the parties against whom it's entered. And domestic violence is a term of art as Corrente says which describes a pattern of abuse and a pattern of controlling behavior, and we don't have that here.

I don't think we have domestic contretemps, I think we have domestic stupidity, I think we have domestic distress, domestic unhappiness, domestic frustration, domestic panic. I believe [plaintiff] genuinely is concerned about the well being of his children. And I believe [defendant] clearly is working on healing those things that are frustrating her and too was concerned about the well being of her children. [*121] But the question here is whether this is a pattern of a relationship, are these people controlling each other, manipulating each other through the use of threats, through the use of physical force, through the use of--of other forms of abuse. And on the basis of the testimony presented to me I don't find that that is the case.

I do find there was a defiant trespass, 2 I do find there was an assault, I do find that there was . . . an unwelcome touching, but . . . there were not contrapuntal acts of domestic violence on the basis of Corrente and Cesare[v. Cesare, 154 N.J. 394, 713 A.2d 390 (1998)] which tells me to look at the pattern even more carefully and even if this particular event was--was minimal, if the minimal events have accumulated over many [*15] years then I should find an act of domestic violence; I don't find there was an act of domestic violence here.

[Emphasis added.]

The judge dismissed both domestic violence complaints, stating the parties must "create very clear boundaries for themselves and not put themselves in this situation." The judge warned defendant to "keep your hands off him."

On appeal, plaintiff presents the following arguments for our consideration:

**POINT I**

THE FAMILY PART COMMITTED ERROR BY CONCLUDING THAT CORRENTE AND CESARE MANDATED DISMISSAL OF MR. SILVER'S COMPLAINT NOTWITHSTANDING THE FAMILY PART'S FINDING THAT MRS. SILVER HAD COMMITTED ASSAULT AND TRESPASS. THE FAMILY PART'S CONCLUSION WAS AGAINST THE WEIGHT OF THE EVIDENCE AND MISAPPLIED APPLICABLE LAW.

**POINT II**

MRS. SILVER'S CONDUCT WAS NOT AMBIGUOUS AND CONSTITUTED AN EGREGIOUS ACT OF DOMESTIC VIOLENCE MADE EVEN THAT MUCH WORSE BECAUSE AT A TIME AT OR SURROUNDING PARENTING TIME WHEN THE PARTIES' SON JORDAN WAS NEARBY.

---

2 We note that plaintiff's complaint did not allege acts of domestic violence based on the cause of action of "trespass." However, there has been no cross-appeal from that finding.
POINT III
THE PENDENCY OF SIMULTANEOUS DIVORCE PROCEEDINGS DOES NOT NEGATE THE IMPORTANCE OF AFFORDING DOMESTIC VIOLENCE PROTECTIONS WHEN JUSTIFIED BY THE RECORD.

POINT IV

POINT V
THE TRIAL COURT ERRED BY FAILING TO GRANT WEIGHT TO THE COURSE OF PRIOR CONDUCT.

This case initially presents the issue of whether the commission of acts of simple assault, N.J.S.A. 2C:12-1a(1), and trespass, N.J.S.A. 2C:18-3, against a person protected under the PDVA, constitutes "domestic violence." Here, although the trial judge found that defendant had committed acts of both assault and criminal trespass against plaintiff, the judge ruled that there was not "an act of domestic violence here."

[***17] N.J.S.A. 2C:25-19 provides, in pertinent part:

[**453] a. HN1[ ☞] "Domestic violence" means the occurrence of one or more of the following acts inflicted upon a person protected under this act by an adult or an emancipated minor:
* * * *

(2) Assault........ N.J.S. 2C:12-1
* * * *


In Kamen v. Egan, 322 N.J. Super. 222, 224-25, 730 A.2d 873 (App.Div.1999), the plaintiff had filed a complaint against the defendant, his daughter, under the PDVA seeking a restraining order based on a single act of trespass, unaccompanied by a violent act or threat thereof. The daughter had supervised visitation with her children in the home of plaintiff, who was the legal custodian of his grandchildren. Id. at 225, 730 A.2d 873. Defendant had appeared at plaintiff's house for visitation with her children on an unscheduled date, and at a time when the plaintiff was not at home. Ibid. When asked to leave three times by her stepmother defendant refused, stating she wanted to see her children. Ibid. When her stepmother threatened to call the police, [***18] defendant left. Ibid. The plaintiff then filed a domestic violence [*123] complaint against his daughter, founded on the predicate act of criminal trespass. Ibid.

Applying our standard of review to judicial factfinding, see Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484, 323 A.2d 495 (1974), we found that "the judge correctly concluded that defendant had committed an act of criminal trespass by entering plaintiff's home knowing that she was not licensed or privileged to do so on that occasion." Id. at 226, 730 A.2d 873. However, we noted that the finding of the predicate act of criminal trespass did not end the inquiry, stating:

It is clear that HN2[ ☞] the Legislature did not intend that the commission of any one of these acts [contained in N.J.S.A. 2C:25-19a] automatically mandates the issuance of a domestic violence order. Corrente, supra, 281 N.J. Super. at 248, 657 A.2d 440; Peranio[.v. Peranio, 280 N.J. Super. 47, 54, 654 A.2d 495 (App.Div.1995)]. Domestic violence is ordinarily more than an isolated aberrant non-violent act. Indeed, the Act mandates that the court, in determining whether an act of domestic violence has occurred, [***19] consider the previous history of domestic violence between the parties including threats, harassment and physical abuse, N.J.S.A. 2C:25-29(a)(1), and the existence of immediate danger to person or property, N.J.S.A. 2C:25-29(a)(2). See
Cesare v. Cesare, 154 N.J. 394, 402, 713 A.2d 390 (1998). While a single sufficiently egregious action may constitute domestic violence even if there is no history of abuse between the parties, a court may also determine that an ambiguous incident qualifies as domestic violence based on finding previous acts of violence. Ibid.

Id. at 227-28, 730 A.2d 873.

Accepting the factual findings of the trial judge, we concluded "that the judge erred in his legal conclusion that this single act of trespass, unaccompanied by violence or a threat of violence was sufficient to justify issuance of a restraining order under the Act." Id. at 228, 730 A.2d 873. We specifically noted that although the defendant's acts technically constituted a trespass, they "did not involve violence or a threat of violence." Ibid. Citing to our holdings in Corrente, supra, 281 N.J. Super. at 250, 657 A.2d 440 and Peranio, supra, 280 N.J. Super. at 56, 654 A.2d 495, we determined that "[u]nder these circumstances we conclude that the acts complained of were nothing more than an ordinary domestic contretemps which the Act was never intended to address." Id. at 228-29, 730 A.2d 873. In so ruling, we stated:

"[124] HN3 [ ] The Act is intended to assist those who are truly the victims of domestic violence. It should not be trivialized by its misuse in situations which do not involve violence or threats of violence. In addition, we have previously expressed our concern that the Act may be misused in order to gain advantage in a companion matrimonial action or custody or visitation issue. See N.B. v. T.B., 297 N.J. Super. 35, 42, 687 A.2d 766 (App.Div.1997); Murray v. Murray, 267 N.J. Super. 406, 410, 631 A.2d 984 (App.Div.1993). We note that while the complaints that are the subject of this appeal were pending, there was also a custody and/or visitation proceeding pending.

Id. at 229, 730 A.2d 873.

Here, of course, at the time the subject domestic violence complaint was filed, the parties were engaged in matrimonial litigation involving, inter alia, hotly contested issues of custody and supervised parenting time.

In Corrente, supra, the plaintiff had filed a domestic violence complaint against her estranged husband, alleging an act of harassment, and contending that he had called her at work and threatened "drastic measures if plaintiff did not supply defendant with money to pay bills." 281 N.J. Super. at 244-45, 657 A.2d 440. He subsequently had the phone turned off. No previous history of domestic violence had been alleged. Ibid.

In first noting that the commission of any one of the predicate acts enumerated in N.J.S.A. 2C:25-19a does not automatically warrant issuance of a domestic violence restraining order, we emphasized that HN4 [ ] acts claimed by a plaintiff to be domestic violence must be evaluated in light of the previous history of domestic violence between the plaintiff and defendant including previous threats, harassment and physical abuse and in light of whether immediate danger to the person or property is present. N.J.S.A. 2C:25-29a(1) and (2). This requirement reflects the reality that domestic violence is ordinarily more than an isolated aberrant act and incorporates the legislative intent to provide a vehicle to protect victims whose safety is threatened.

Id. at 248, 657 A.2d 440.

We reversed the entry of a restraining order, finding that proof of the requisite elements "of the purpose to harass," a "course of alarming conduct" or "repeated acts intended to alarm or seriously annoy another" for establishment of "harassment," were absent. Id. at 249, 657 A.2d 440. We further stated:
Separate and apart from these evidential insufficiencies which preclude a finding of the predicate act of harassment, defendant's conduct was plainly never contemplated by the Legislature when it addressed the serious social problem of domestic violence. Plaintiff's complaint asserted there was no history of domestic violence, and there was no finding by the judge of a history of abuse or an immediate threat to safety. What occurred between these parties, whose relationship had ended and who were living apart, was conflict over finances and possession of the marital premises. During an argument, tempers flared and defendant threatened drastic measures. He carried out this threat with the childish act of turning off the phone. While this was not conduct to be proud of, plaintiff was neither harmed (except in the most inconsequential way) nor was she subjected to potential injury. As such, the invocation of the domestic violence law trivialized the plight of true victims of domestic violence and misused the legislative vehicle which was developed to protect them. It also had a secondary negative effect: the potential for unfair advantage to a matrimonial litigant. . . .

The domestic violence law was intended to address matters of consequence, not ordinary domestic contretemps such as this. We conclude that on plaintiff's puny proofs, the domestic violence order was unwarranted.

Likewise, in Peranio, supra, we reversed entry of a domestic violence restraining order because there was no finding by the trial court that the defendant had uttered the statement, "I'll bury you," to the plaintiff with the purpose to harass her, nor was there a course or repeated acts of alarming conduct. 280 N.J. Super. at 55, 654 A.2d 495.

We view the task of a judge considering a domestic violence complaint, where the jurisdictional requirements have otherwise been met, to be two-fold.

First, the judge must determine whether the plaintiff has proven, by a preponderance of the credible evidence, that one or more of the predicate acts set forth in N.J.S.A. 2C:25-19a has occurred. See N.J.S.A. 2C:25-29a (stating that "the standard for proving the allegations in the complaint shall be by a preponderance of the evidence"). In performing that function, "the Act does require that 'acts claimed by a plaintiff to be domestic violence be evaluated in light of the previous history of violence between the parties.'" Cesare, supra, 154 N.J. at 402, 713 A.2d 390 [*126] (quoting Peranio, supra, 280 N.J. Super. at 54, 654 A.2d 495). Stated differently, when determining whether a restraining order should be issued based on an act of assault or, for that matter, any of the predicate acts, the court must consider the evidence in light of whether there is a previous history of domestic violence, and whether there exists immediate danger to person or property. See N.J.S.A. 2C:25-29a(1) and (2).

Here, the trial judge found that defendant had committed an act of assault against plaintiff, as well as an act of criminal trespass. Indeed, [*25] the record reflects that plaintiff was scratched and was bleeding to the extent that he required medical attention. 3 Although the trial court permitted testimony from both parties concerning prior allegations of acts of domestic violence—which included purported threats by defendant to use a knife against plaintiff—the finding by the judge that he "both believe[d] and disbelieve[d] each party as to those allegations to the same extent" is not clear. In other words, we cannot discern from this record which of the prior alleged acts of domestic violence the court found had occurred, if any. However, the trial judge did find, by a preponderance of the evidence, that defendant had committed acts of assault and criminal trespass against plaintiff; thereby, defendant had committed acts of "domestic violence," as defined by N.J.S.A. 2C:25-19a.

3 Photographs of plaintiff's appearance following the incident were marked into evidence at the January 5, 2005 hearing but have not been included in the record on appeal.
The second inquiry, upon a finding of the commission of a predicate act of domestic violence, is whether the court should enter a restraining order that provides protection for the victim. As we noted in *Kamen, supra*, the Legislature did not intend that the commission of one of the enumerated predicate acts of domestic violence automatically mandates the entry of a domestic violence restraining order. *322 N.J. Super. at 227, 730 A.2d 873.* See also *Corrente, supra, 281 N.J. Super. at 248, 657 A.2d 440; Peranio, supra, 280 N.J. Super. at 54, 654 A.2d 495.*

In *Kamen, supra*, for example, although the predicate act of trespass had occurred, we concluded that a domestic violence restraining order was not warranted because the trespass was "unaccompanied by violence or a threat of violence." *322 N.J. Super. at 228, 730 A.2d 873.* Here, in contrast, the act of trespass was accompanied by an act of violence in the form of an assault.

This second inquiry, therefore, begins after the plaintiff has established, by a preponderance of the evidence, the commission of one of the enumerated predicate acts "upon a person protected under this act by an adult or an emancipated minor." N.J.S.A. 2C:25-19a. Although this second determination—whether a domestic violence restraining order should be issued—is most often perfunctory and self-evident, the guiding standard is whether a restraining order is necessary, upon an evaluation of the factors set forth in N.J.S.A. 2C:25-29a(1) to -29a(6), to protect the victim from an immediate danger or to prevent further abuse. See N.J.S.A. 2C:25-29b (stating that "[i]n proceedings in which complaints for restraining orders have been filed, the court shall grant any relief necessary to prevent further abuse") (Emphasis added).

In *Kamen, supra*, since there was no act of violence or threat thereof, we found no need or basis for entry of a domestic violence restraining order because there was no immediate danger to the plaintiff and the order was not necessary to prevent further abuse. *322 N.J. Super. at 228, 730 A.2d 973.* Here, the record does not necessarily support such a finding. On the one hand, the judge found there was "volatility and rage" and a "substantial amount of acrimony" between the parties, and that plaintiff had committed an act of assault against plaintiff that necessitated medical treatment, as well as a trespass. On the other hand, the judge found "that whatever triggered the difficulty between the parties was situational and not intentional." However, the judge declined to characterize the incident as matrimonial contretemps.

Although it might be inferred from the conclusion of dismissal reached by the trial judge that he did not believe plaintiff was in immediate danger and that a restraining order was not necessary to prevent further abuse, the judge appears to have based his finding that "domestic violence" had not occurred on his determination that the record did not support a finding that there had been "a pattern of abuse and a pattern of controlling behavior."

Although it is clear that a pattern of abusive and controlling behavior is a classic characteristic of domestic violence, see *Cesare, supra, 154 N.J. at 397-98, 713 A.2d 390*, the need for an order of protection upon the commission of a predicate act of "domestic violence," as specifically defined in N.J.S.A. 2C:25-19a, may arise even in the absence of such a pattern where there is "one sufficiently egregious action." *Id. at 402, 713 A.2d 390.*

Therefore, we are constrained to vacate the order dismissing plaintiff's domestic violence complaint, reinstate the TRO, and remand the matter for a further hearing that focuses on this second step in the analysis. Specifically, having found that defendant committed the predicate act of assault—an act of violence—and an act of criminal trespass, and given the findings of an acrimonious relationship, manifested by volatility and rage, the trial court should determine whether a domestic violence restraining order is necessary to protect plaintiff from immediate danger or further acts of domestic violence. In that connection, the court should consider and make specific findings on the previous history of domestic violence, if any, between the plaintiff and defendant, and how that impacts, if at all, on the issue of whether a restraining order should issue.

---

4 The term "victim of domestic violence" is defined by N.J.S.A. 2C:25-19d as a person protected under the act who has been subjected to domestic violence by, *inter alia*, a spouse.
The order of dismissal is reversed, the TRO reinstated, and the matter is remanded for further proceedings consistent with this opinion.
**Case Summary**

**Procedural Posture**
Appellant former husband sought review of an order by a New Jersey trial court that dismissed appellant's request to have a restraining order that had been granted to appellee former wife dissolved.

**Overview**
Appellant former husband had harassed, followed, and telephoned appellee former wife. A restraining order was put into effect against appellant. Appellant sought to have the restraining order dissolved. The court determined that appellee had not consented to the dissolution, that she had an reasonable fear of appellant, and that appellant had violated the restraining order several times. The court affirmed the denial of appellant's motion for dissolution, having determined that he had failed to show good cause.
Outcome
The court affirmed the denial of appellant former husband's motion to dissolve appellee former wife's restraining
order against him, having determined that appellant had failed to show good cause for the dissolution.

LexisNexis® Headnotes

Civil Procedure > Remedies > Injunctions > Permanent Injunctions

Family Law > Family Protection & Welfare > Cohabitants & Spouses > General Overview

**HN1**

Injunctions, Permanent Injunctions

Under *N.J. Stat. Ann. § 2C:25-29(d)* the court may dissolve or modify a final restraining order upon good cause shown. Generally, a court may dissolve an injunction where there is a change of circumstances whereby the continued enforcement of the injunctive process would be inequitable, oppressive, or unjust, or in contravention of the policy of the law.

Criminal Law & Procedure > Defenses > Consent

Family Law > Family Protection & Welfare > Cohabitants & Spouses > General Overview

**HN2**

Defenses, Consent

The following framework may be followed as to an application to dissolve a final restraining order under *N.J. Stat. Ann. § 2C:25-29(d)* when the request has been made by a defendant: (1) whether the victim consented to lift the restraining order; (2) whether the victim fears the defendant; (3) the nature of the relationship between the parties today; (4) the number of times that the defendant has been convicted of contempt for violating the order; (5) whether the defendant has a continuing involvement with drug or alcohol abuse; (6) whether the defendant has been involved in other violent acts with other persons; (7) whether the defendant has engaged in counseling; (8) the age and health of the defendant; (9) whether the victim is acting in good faith when opposing the defendant's request; (10) whether another jurisdiction has entered a restraining order protecting the victim from the defendant; and (11) other factors deemed relevant by the court.

Criminal Law & Procedure > Defenses > Consent

Family Law > Family Protection & Welfare > Cohabitants & Spouses > General Overview

**HN3**

Defenses, Consent

Where the victim has consented to lifting the restraining order and the court finds that the victim is doing so voluntarily, the court should dissolve the order without further consideration or analysis.
Defenses, Consent

Final restraining orders may be dissolved upon good cause shown. N.J. Stat. Ann. § 2C:25-29(d). Permission of the victim is not required before the court can dissolve a final restraining order. Essentially, if the court were to consider only subjective fear, it would be merely determining whether the victim consented to dissolving the final restraining order without considering other relevant information. This interpretation would render the good cause shown language inoperative. Thus, the courts must consider objective fear -- not subjective fear.

Family Protection & Welfare, Cohabitants & Spouses

The court must look to determine whether the relationship today is one that would allow the defendant to exercise control over the victim. Where the parties do not have children in common and have little other reason to contact each other, it would be more appropriate to dissolve a final restraining order. Where the parties have reason to contact each other, such as where the parties have children in common, it may be less appropriate to dissolve a final restraining order.

Counsel: Jeney & Kingsland, Attorneys for Plaintiff (Robert J. Jeney, Jr., Esq. appearing).

Ferrara, Siberine, Woodford & Rizzo, Attorneys for Defendant (Mary Ann Bauer, Esq. appearing).

Judges: DILTS, J.S.C.

Opinion by: THOMAS H. DILTS

Opinion

The question presented is whether the defendant has shown good cause to dissolve a final restraining order issued pursuant to the Prevention of Domestic Violence Act of 1990 ("the Act").

PROCEDURAL HISTORY
On May 13, 1992, Ms. Carfagno filed a domestic violence complaint against Mr. Carfagno for allegedly harassing her. The harassment consisted of Mr. Carfagno telephoning Ms. Carfagno four times per day, Mr. Carfagno waiting at Ms. Carfagno's home, and Mr. Carfagno taking Ms. Carfagno's automobile without permission. On May 21, 1992, the court found that Mr. Carfagno committed the above alleged acts of domestic violence and entered a final restraining order against Mr. Carfagno. The order restrains Mr. Carfagno from contacting Ms. Carfagno, except to discuss the welfare of the parties' child in Ms. Carfagno's custody.

On September 3, 1992, Mr. Carfagno pled guilty to contempt of the final restraining order for following Ms. Carfagno, while she was driving, and directing harassing communications toward her. Mr. Carfagno received a noncustodial sentence for this conviction.

Mr. Carfagno requested an order against Ms. Carfagno and on September 16, 1992, the court entered a final restraining order against Ms. Carfagno, restraining her from contacting Mr. Carfagno except to discuss matters involving the welfare of the child.

On March 3, 1994, the court found Mr. Carfagno guilty of contempt for the second time for telephoning Ms. Carfagno, on her car telephone, stating that he was following her. For this conviction, the court sentenced Mr. Carfagno to a 30-day custodial term plus one year of probation. Mr. Carfagno appealed this conviction, and the Appellate Division affirmed the judgment of this court.

Presently, Mr. Carfagno has applied to dissolve the final restraining order pursuant to N.J.S.A. 2C:25-29(d). Counsel for both parties submitted briefs and certifications to support their positions. The court heard argument of counsel and testimony from both parties on November 8, 1995.

Mr. Carfagno argues that the court should dissolve the final restraining order because (1) there have been no incidents between the parties since he was found guilty of contempt for the second time; (2) it is in the best interests of the child that the court dissolve the final restraining order; (3) both parties have "inadvertently violated the orders"; (4) Ms. Carfagno does not presently need the order for protection; and (5) Ms. Carfagno is opposing Mr. Carfagno's request in bad faith to prevent him from obtaining full-time employment with the Beach Haven, N.J., Police Department.

Ms. Carfagno argues that the court should deny Mr. Carfagno's request because (1) there have been incidents between the parties since 1993; (2) she continues to fear Mr. Carfagno; (3) there have not been mutual violations of the final restraining orders; and (4) Mr. Carfagno is motivated to dissolve the final restraining order only to obtain full-time employment with the Beach Haven, N.J., Police Department.

At oral argument, counsel for Mr. Carfagno argued that Ms. Carfagno's assertion of fear lacked credibility. Noting that the court cannot decide credibility on the papers alone, the court scheduled a short plenary hearing where both parties offered testimony. See Harrington v. Harrington, 281 N.J. Super. 39, 47, 656 A.2d 456 (App. Div. 1995) (where the parties' certifications present a genuine issue of material fact, the court must hold a plenary hearing).

At the plenary hearing, Mr. Carfagno testified in part that, during telephone conversations with Ms. Carfagno regarding the child, Ms. Carfagno was verbally aggressive to Mr. Carfagno, resulting in arguments. Ms. Carfagno testified in part that the parties argued most of the time during the telephone conversations. Ms. Carfagno admitted that she did call Mr. Carfagno "a jerk" but that she did so because Mr. Carfagno forgot to pick the child up for visitation after school and the child waited at school for over two hours as a result. Ms. Carfagno asserted that she continues to be afraid of Mr. Carfagno because Mr. Carfagno constantly harassed her for a seven month period before the entry of the 1992 final restraining order, because Mr. Carfagno violated the final restraining order twice, because she believes that Mr. Carfagno is still watching and following her, and because Mr. Carfagno has continued to threaten her.

**FINDINGS OF FACT**
The court finds that Mr. Carfagno has continued to attempt to assert control and power over Ms. Carfagno. Mr. Carfagno has twice recently provoked Ms. Carfagno to argue in regard to the child. The court notes that Mr. Carfagno has been convicted twice for contempt for violating the final restraining order.

The court also finds that Ms. Carfagno continues to be afraid of Mr. Carfagno, both objectively and subjectively. Ms. Carfagno testified that she feared Mr. Carfagno. The court finds Ms. Carfagno's testimony to be credible despite Mr. Carfagno's assertions that she really does not fear him. Moreover, the court finds that Ms. Carfagno's fear of Mr. Carfagno is objectively reasonable because the final restraining order arose from circumstances where Mr. Carfagno was harassing and following Ms. Carfagno and because Mr. Carfagno has violated this order at least two times by harassing and following Ms. Carfagno. The court's finding that Mr. Carfagno continues to attempt to assert power and control over Ms. Carfagno bolsters the court's finding that Ms. Carfagno objectively fears Mr. Carfagno.

The court also finds that Ms. Carfagno has not consented to dissolving the final restraining order. The court further finds that Ms. Carfagno did not provoke Mr. Carfagno to start arguing with her in regard to the child. The court further finds that Ms. Carfagno is not motivated to prevent Mr. Carfagno from obtaining full time employment and has opposed Mr. Carfagno's application in good faith.

CONCLUSIONS OF LAW

**HN1** Under N.J.S.A. 2C:25-29(d) the court may dissolve or modify a final restraining order "upon good cause shown." Generally, a court may dissolve an injunction where there is a "a change of circumstances [whereby] the continued enforcement of the injunctive process would be inequitable, oppressive, or unjust, or in contravention of the policy of the law." Johnson & Johnson v. Weissbard, 11 N.J. 552, 555, 95 A.2d 403 (1953). For the reasons stated below, the court finds that Mr. Carfagno has failed to show good cause to dissolve the order.

In N.J.S.A. 2C:25-18, the Legislature provided the legislative findings and declarations as related to the Act:

". . . It is therefore, the intent of the Legislature to assure the victims of domestic violence the maximum protection from abuse the law can provide . . . Further, it is the responsibility of the courts to protect the victims of violence that occurs in a family or family-like setting by providing access to both emergent and long-term civil and criminal remedies and sanctions, and by ordering those remedies and sanctions that are available to assure the safety of the victims and the public . . ."

The Legislature intended to protect the victims—not to punish the person who committed the act of domestic violence. See generally Trans American Trucking Service, Inc. v. Ruane, 273 N.J.Super. 130, 133, 641 A.2d 274 (App.Div.1994) (purpose of an injunction is to protect injured party and not to punish the offending party).

There are no published decisions regarding the application of N.J.S.A. 2C:25-29(d). Although two published decisions state that reconciliation of the parties acts as a de facto vacation of the restraining order, Mohamed v. Mohamed, 232 N.J.Super. 474, 477, 557 A.2d 696 (App.Div.1989); Hayes v. Hayes, 251 N.J.Super. 160, 167, 597 A.2d 567 (Ch.Div.1991), a more recent case has suggested that the court must first make an independent finding that continued protection is unnecessary before vacating a restraining order due to reconciliation. Torres v. Lancellotti, 257 N.J.Super. 126, 128, 607 A.2d 1375 (Ch.Div.1992). These three cases do not address the factual inquiry that a court must perform when the defendant requests dissolution of a final restraining order in the absence of reconciliation. Therefore, this court concludes that the following offers a framework of legal analysis that may be followed when faced with an application to dissolve a final restraining order under N.J.S.A. 2C:25-29(d).

To accomplish the goal of protecting the victim, courts should consider a number of factors when determining whether good cause has been shown that the final restraining order should be dissolved upon request of the defendant: (1) whether the victim consented to lift the restraining order; (2) whether the victim fears the defendant; (3) the nature of the relationship between the parties today; (4) the number of times that the defendant has been convicted of contempt for violating the order; (5) whether the defendant has a continuing involvement with
drug or alcohol abuse; (6) whether the defendant has been involved in other violent acts with other persons; (7) whether the defendant has engaged in counseling; (8) the age and health of the defendant; (9) whether the victim is acting in good faith when opposing the defendant's request; (10) whether another jurisdiction has entered a restraining order protecting the victim from the defendant; and (11) other factors deemed relevant by the court.

FACTORS TO BE CONSIDERED IN DETERMINING WHETHER DEFENDANT HAS ESTABLISHED GOOD CAUSE

1. Consent of Victim to Lift the Order

The first factor is whether the victim consents to dissolve the final restraining order. Where the victim has consented to lifting the restraining order and the court finds that the victim is doing so voluntarily, the court should dissolve the order without further consideration or analysis.

The Legislature intended that the courts should follow the victim's request to dissolve a domestic violence order or dismiss a domestic violence complaint without further legal analysis. When construing a statute, the court must follow the legislative intent, considering the policy underlying the statute. Lesniak v. Budzash, 133 N.J. 1, 8, 626 A.2d 1073 (1993). "A statute is not to be given an arbitrary construction . . . but rather one that will advance the sense and meaning fairly deducible from the context." Id. at 14, 626 A.2d 1073.

The policy of the Act is to provide broad protection for the victim. N.J.S.A. 2C:25-18. The court notes that the Legislature provided that a restraining order would be a civil remedy, N.J.S.A. 2C:25-18 (legislative declarations) and that the victim—not the state—files the complaint to obtain the restraining order, N.J.S.A. 2C:25-23 (victims to be notified of their rights to file a civil complaint for a restraining order); N.J.S.A. 2C:25-28(a) (procedures for the victim to file a civil complaint). Thus, when looking at the entire Act, the court concludes that the Legislature intended to provide broad protection to the victim.

If judges disregard the victim's wishes in determining whether to dismiss a complaint or dissolve a restraining order on the victim's request, this has the effect of discouraging victims from filing complaints when necessary. If the victim perceives that the courts would not be responsive to their request to dismiss the action, that victim or other victims may refrain from filing a domestic violence complaint in the future. Certainly, this is not what the Legislature intended. Thus, if the victim voluntarily requests the court to dismiss a domestic violence action or dissolve a restraining order, the court should grant the request without conducting any further legal analysis.

Here, Ms. Carfagno has not consented to dissolving the final restraining order. Thus, this factor points to continuing the restraining order.

2. The Victim's Fear of the Defendant

The Act protects victims from physical harm. Yet, physical safety is not all that the Legislature intended to protect. Recognizing that domestic violence occurs in a relationship where one party asserts power and control over the other, the victim is also protected from mental or emotional harm.

Fear of the defendant is the center of the cycle of power and control existing in domestic violence situations. Restraining orders have the effect of empowering the victim to stand up to the defendant. Thus, fear is important to consider.

Fear of the defendant is especially important when the parties share children. In domestic violence cases involving children, the victim usually has custody of the children. See N.J.S.A. 2C:25-29(b)(11) (presumption that victim shall have custody of the children). It is also presumed that the custodial parent will act in the best interests of the children. Gubernat v. Deremer, 140 N.J. 120, 142, 657 A.2d 856 (1995). However, where the victim has continual fear of the defendant, the defendant's perceived control over the victim may attenuate the victim's
ability to act in the best interests of the children. Moreover, fear might attenuate the ability of the victim to act in his or her own best interests. Accordingly, it is important to consider the victim's fear of the defendant.

A question remains whether the court should focus on subjective fear or objective fear. Subjective fear is the fear produced by and within the mind of the victim as the victim understands and communicates it. Objective fear is that fear which a reasonable victim similarly situated would have under the circumstances. The court holds that courts should focus on objective fear. The Legislature intended the courts to consider objective—not subjective—fear. Courts should not construe a statute in a manner that would leave a portion of the statute inoperative. *State v. Reynolds*, 124 N.J. 559, 564, 592 A.2d 194 (1991). The Legislature provided that [HN4] final restraining orders may be dissolved upon good cause shown. N.J.S.A. 2C:25-29(d). The Legislature did not state that permission of the victim is required before the court can dissolve a final restraining order. Essentially, if the court were to consider only subjective fear, it would be merely determining whether the victim consented to dissolving the final restraining order without considering other relevant information. This is not what the Legislature intended because this interpretation would render the "good cause shown" language inoperative. Thus, the courts must consider objective fear—not subjective fear.

Moreover, considering merely subjective fear would result in overly broad restraining orders. "The duration of an injunctive order should be no longer than is reasonably required to protect the interest of the injured party." *Trans American Trucking Service, Inc. v. Ruane*, 273 N.J.Super. at 133, 641 A.2d 274 (emphasis added). The court must balance the parties' individual rights when determining the breadth of the injunctive order. *Id.* If the courts were to merely focus on subjective fear alone, the scope of the injunction might be broader than is reasonably required to protect the victim and might unduly infringe the rights of the defendant. Thus, when determining whether good cause exists to dissolve a restraining order, the courts must determine whether the victim continues to fear the defendant, and to apply an objective standard for evaluation: would a reasonable victim similarly situated have fear of the defendant under the circumstances.

Here, the court has found that Ms. Carfagno continues to fear Mr. Carfagno and that a reasonable victim similarly situated would fear Mr. Carfagno. The court notes that, with the order in place, Ms. Carfagno was able to criticize Mr. Carfagno when he failed to pick up the child from school for visitation. Mr. Carfagno's failure to pick up the child was inimical to the child's best interests because the child waited at school for two hours before she was picked up. The court finds that, because Ms. Carfagno still objectively fears Mr. Carfagno, absent a final restraining order, she would have a diminished capacity to act in her or the child's best interest. Thus, this factor points to continuing the final restraining order.

3. Nature of the Relationship Between the Parties Today

The third factor is the nature of the relationship between the parties today. Here, [HN5] the court must look to determine whether the relationship today is one that would allow the defendant to exercise control over the victim. Where the parties do not have children in common and have little other reason to contact each other, it would be more appropriate to dissolve a final restraining order. Where the parties have reason to contact each other, such as where the parties have children in common, it may be less appropriate to dissolve a final restraining order. Other factors for the court's consideration is the relationship of the parties at the time the order was entered. If, for example, there was a dating relationship when the order was entered and two years later when the application is filed, both parties are married to other persons, dissolution may be more appropriate. Certainly, the physical proximity of the parties to each other is another factor bearing upon the relationship. If the parties live in different areas, depending upon other factors present, dissolution may be appropriate.

In all cases, however, when considering the relationship of the parties, the court must determine whether there are indicia of control and domination exercised by the defendant over the victim in the limited amount of contact between the parties permitted under the final restraining order.

Here, the parties have a child in common. Moreover, the court has found that the parties have engaged in arguments in regard to the welfare of the child, which is within the scope of the limited contact permitted under the final restraining order. This leads the court to believe that the order has not been effective in breaking the cycle of
control and domination. Thus, this factor leads the court to believe that the final restraining order should be continued.

4. Contempt Convictions

The fourth factor is the number of times that the defendant has been convicted of contempt for violating the final restraining order. The number of violations of the final restraining order gives an indication that the final restraining order is not totally effective in breaking the cycle of power and control exercised by the defendant. Here, Mr. Carfagno was convicted twice for violating the final restraining order. Both convictions involved [*440] Mr. Carfagno contacting and harassing Ms. Carfagno. Certainly, these convictions do not show that the cycle of power and control [***17] has been broken. Thus, this factor points to continuing the final restraining order.

5. Alcohol and Drug Involvement

The fifth factor is whether the defendant has a continuing involvement with drugs or alcohol. In 1994, 39% of all domestic violence incidents involved drugs or alcohol. Crime in New Jersey: Uniform Crime Report, 1994 at 189, 198. Alcohol alone was involved in 34% of all reported domestic violence cases. Id. Accordingly, drug or alcohol use is highly relevant in determining whether the victim still needs protection. Here, there is no evidence that Mr. Carfagno is involved with drugs or alcohol. Thus, this factor points to dissolving the final restraining order.

6. Other Violent Acts

The sixth factor is whether the defendant has perpetrated violent acts upon the victim or other persons. The defendant's violent nature as evidenced by other violent acts is relevant to whether the victim needs continued protection. See Richard J. Gelles, Ph.D., Regina Lackner, Glenn D. Wolfner, Men Who Batter, Violence Update, August 1994 at 10. (“Perhaps the most important risk marker . . . is prior violent or abusive behavior. In the absence of clear or convincing [***18] change, past behavior is probably the single most reliable indicator of future behavior, and battering is no exception.”) Here, there is no evidence before the court that Mr. Carfagno has engaged in other violent acts. Thus, this factor leads to dissolving the order.

7. Whether Defendant Has Engaged in Domestic Violence Counseling

The seventh factor is whether the defendant has engaged in domestic violence counseling. Counseling may be effective in breaking the cycle of power and control. "Without intervention or [*441] some form of change agent, the batterer is likely to continue battering." Id. Here, the defendant has not shown that he has successfully completed domestic violence counseling. Thus, this factor points to continuing the final restraining order.

8. Age/Health of Defendant

The eighth factor is the age and health of the defendant. In some cases of age or infirmity, it might be appropriate to dissolve the final restraining order. Here, the defendant is a physically fit male who is 33 years old. Thus, this factor points to continuing the final restraining order.

9. Good Faith of Victim

The next factor is the good faith of the victim in opposing the defendant's [***19] request to dissolve the final restraining order. The court is mindful that sometimes one party to a divorce action abuses the Act to gain advantage in the underlying matrimonial action. See, State v. L.C., 283 N.J.Super. 441, 449, 662 A.2d 577 (App.Div.1995); Murray v. Murray, 267 N.J. Super. 406, 631 A.2d 984 (App.Div.1993). Here, the court has found that Ms. Carfagno opposed Mr. Carfagno's request in good faith. Thus, this factor leads to the conclusion that the final restraining order should be continued.

[**760] 10. Orders Entered by Other Jurisdictions

The final factor is whether the victim is protected from the aggressor by a "a verifiable order of protection from another jurisdiction." Under 18 U.S.C. § 2265(a), a restraining order entered in one state is entitled to full faith and
credit by courts of another state. Thus, the fact that a foreign state has entered a restraining order protecting the victim from the aggressor must be known and considered by the court.

Here, the parties have not alleged that a foreign jurisdiction has entered a restraining order to protect Ms. Carfagno from Mr. Carfagno. Thus, this factor points to dissolving the final restraining order.

11. Other Factors Deemed Relevant by the Court

The court also needs to consider any other factors raised by the parties which, based upon the evidence presented, may show that good cause exists to dissolve the restraining order. In this case, the court concludes that there are no other factors which affect the court's judgment.

CONCLUSION

The legislative standard for dissolution is whether the defendant has shown that good cause appears to dissolve or modify the order. The above factors need to be weighed qualitatively, and not quantitatively, to determine whether defendant has met the required burden. In this case, the court concludes that Mr. Carfagno has not shown good cause to dissolve the order, and his motion is denied.
I have been engaged in the practice of civil law for 29 years, 23 of those as a licensed attorney (before I worked at law firms during college and Law School).

I have nearly 100 full jury trials to verdict. The only way you learn the rules of evidence is when you cannot enter a key piece of evidence during trial. I have been a certified civil trial attorney for 15 years.

I have been a partner at a big firm, run my own law office and I am currently back to being a partner at a large law office.

I taught this lecture for ICLE until they moved to mandatory CLE in 2010.

Different than in NY: The Court of Appeals, sitting in Albany and consisting of seven judges, is the state's highest court. The Appellate Division of the New York State Supreme Court is the principal intermediate appellate court. The New York State Supreme Court is the trial court of general jurisdiction in civil cases statewide and in criminal cases in New York City. In addition, the New York City Civil Court has monetary jurisdiction up to $25,000.00,

STRUCTURE OF THE COURT FOR CIVIL MATTERS

SUPERIOR COURT- Original general jurisdiction through NJ Constitution Article 6.

Special Civil- The court where the amount in controversy cannot exceed $15,000.00. Rule 6:1-2.
Forum may be appropriate where dispute is nominal and you want a quick resolution. The Discovery period is much shorter. DANGER: Be careful putting a case in special civil where the initial damages may seem to be less than $15,000 but the damages escalate.

Law Division- The court where most matters are filed. This is where you will spend most of your time.

Chancery Division- The court that handles equitable (non-monetary) forms of relief. Rule 4:3-1(a)(1).
Enforce the performance of contracts, trusts and fiduciary obligations; Re-execute or correct instruments lost or erroneously drafted; Set aside transactions that were illegal, fraudulent, etc.; Execute writs of attachment; Stop actions that will cause irreparable harm; Grant the reacquisition of property upon default of mortgage or tax payments

Emergent Applications There are three types of actions that judges hear on an emergent basis:
1) Orders to Show Cause
2) Sheriff’s Evictions
3) Special Medical Guardianships

Foreclosures

Until an Answer is filed, all uncontested foreclosures are handled by the Foreclosure Unit in Trenton, NJ. The Foreclosure Unit forwards all cases in which contested Answers are filed (and all subsequent papers involving the contested foreclosure) to the Essex Vicinage’s Chancery Division)
**Probate Jurisdiction**

Execute wills

Distribute Estates

Protect infants or persons with mental incompetence

Complete gifts according to the donor’s intent

**Appellate Division** - The intermediate court that handles appeals of final judgments (appealable as a right pursuant to R. 2:2-3(a)(1) and reviews decisions that are not final (known as interlocutory appeals which must be sought by motion pursuant to Rule 2:2-4 and Rule 2:5-6(b).

A) Standards of Review – Tell the judges how they should consider the argument. The common standards are:

i) Plain Error

(1) Error that is clearly capable of producing an unjust result. R. 2:10-2.

(2) "The possibility of an unjust result must be sufficient to raise a reasonable doubt as to whether the error led the jury to a result [that] it otherwise might not have reached." Szczecina v. PV Holding Corp., 414 N.J. Super. 173, 184 (App. Div. 2010) (citation and internal quotation marks omitted).


ii) Issues Not Raised at Trial

(1) The Appellate Division frequently declines to consider issues not raised at the trial level.


iii) Jury and Bench Trials

(1) The issue of whether a jury verdict is against the weight of the evidence is not cognizable on appeal unless a motion for a new trial on that ground is first made in the trial court. R. 2:10-1.


(3) The standard in non-jury trials is generally whether there was "sufficient credible evidence" to support the judge’s findings. See Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974).

iv) Doctrine of Invited Error

(1) If a party urges the judge to adopt a proposition that the party later contends was the product of error, then the party will be unable to raise the error on appeal. Brett v. Great Am. Recreation, Inc., 144 N.J. 479, 503 (1996).

(2) When a party urges the judge to admit an exhibit into evidence, then the invited error doctrine may bar that party from later raising as an issue on appeal the prejudicial effect of that document. Venuto v. Lubik Oldsmobile, Inc., 70 N.J. Super. 221, 229 (App. Div. 1961).

v) Discretionary Decisions

(1) A trial judge has the discretion to enter an order adjourning a trial, extending discovery, admitting testimony and documents into evidence, qualifying an expert, granting a mistrial, and denying reconsideration. See e.g., Litton Indus., Inc. v. IMO Indus., Inc.
200 N.J. 372, 392 (2009) (recognizing that "[t]he trial court has broad discretion in the conduct of the trial").

(2) Ordinarily, we will not reverse these orders unless the judge abused his or her discretion. Hisenaj v. Kuehner, 194 N.J. 6, 12 (2008).

(3) The "abuse of discretion standard . . . arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (citation and internal quotation marks omitted).

vi) Legal Decisions


vii) Summary Judgment


(2) In reviewing a grant of summary judgment, the Appellate Division applies the same standard under Rule 4:46-2(c) that governed the trial court. Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 564 (2012).

(3) We must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

viii) Administrative Appeals

(1) This court generally affords an agency's interpretation of its own regulations "substantial deference." In re Freshwater Wetlands Gen. Permit No. 16, 379 N.J. Super. 331, 341 (App. Div. 2005). This is because "the agency that drafted and promulgated the rule should know the meaning of that rule." Id. at 342.

(2) An appellate court will not reverse the ultimate determination of an administrative agency unless it was "arbitrary, capricious or unreasonable, or that it lacked fair support in the evidence, or that it violated legislative policies[.]" Campbell v. Dep’t of Civil Serv., 39 N.J. 556, 562 (1963).

SUPREME COURT- the final appellate court in the NJ Court System.

OTHER FORUMS

Tax Court- All state tax matters. Rule 8:2(a)
Office of Administrative Law- Handles contested cases in state administrative agencies. N.J.S.A. 52:14B-10 (c)

INITIAL CLIENT CONTACT

Conflict search – Must have a system in place—look out for maiden names/name changes and corporate entities. DANGER!! Conflicts have created much harm – loss of clients for firm, loss of careers at firms.
Interview—What to ask. Hidden traps: Prior litigation/representation, accuracy of social security/identity cards, multiple household coverages, work (on or off the books?), ISO Search.
Clients will not be honest with you. Either they honestly forget, purposefully evade or truly believe they are not supposed to disclose certain things to you. You have to earn their trust initially—let them know how privilege works. Let them know that when the courts or adversary find out, their case will be done.

Get Complete history, all documents, authorizations, contact information, close friends/family. Trust but verify.

**WHO IS YOUR CLIENT?** In a wrongful death, is client a beneficiary, the executor of estate? Where client is an infant, are both natural parents on board with representation? In business litigation, are the other owners/partners on board? If you are defending a group or business

MAKE SURE THERE ARE NO CONFLICTS BETWEEN YOUR CLIENTS!!

Per quod claims.

**Retainer**- Rule 1:21-7 Contingency Fee; Rule 5:3-5 Family Law retainers. If you do not have a retainer, you will not be paid. I worked on the Fee Arbitration Committee and had to force the turnover of funds.

**Arbitration Clauses**- Many disputes are governed by arbitration clauses and a claim can be extinguished if protocol is not followed. DANGER!! Especially in employment, contract, consumer and business litigation, many hidden arbitration provisions exist. If you are not aware and do not exhaust the arbitration provisions, you may extinguish your client’s legal rights and be subject to malpractice. Many of these arbitration provisions have timing and procedural clauses. While most employees are “at will” and do not have employment contracts, some arbitration clauses are contained in the employment application.

**Notice Requirements**- Analyze all possible claim notices that may apply: Tort Claims Act—municipal, police, fire, county, state. NJSA 59:2-1. Port Authority and Federal Tort claims. Where filed, what claim must contain. DANGER!! There are public employees hidden in plain sight among private entities. In medical malpractice cases, UMDNJ doctors rotate to private facilities. Govt. contractors work alongside private contractors at construction sites. Govt. entities rent space at private office buildings.

**Investigations**- What photographs, statements, evidence preservation steps must be taken. Do these investigations quickly before locations are changed. Go with client to make sure you are talking about the same property. Take photos—mark photos. Watch e-mails from clients that get blocked!! Take witness statements before everyone lawyers up!

**Statute of Limitations**- 1 year Port Authority, See N.J.S.A. 32:1-163. 1 year for whistleblower claims- Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to -8 (CEPA) 2 years personal injury and discrimination and hostile work environment cases brough under New Jersey’s Law Against Discrimination (NJLAD) 6 years contract/property, 2 years medical malpractice, 6 years professional malpractice. See NJ Statute 2A:14-1 through 2. DANGER: A blown statute is among the most common malpractice, along with notice, not naming a proper defendant or party.

**Instruction on Social Media**- Must preserve, cannot change, but client must be made aware that it is discoverable. No case on point yet in NJ. Most jurisdictions do not allow fishing expeditions but once discovery is established, they will get social media info. Advise client to make their sites private—cannot remove or adjust social media—will lead to spoliation/sanctions/penalty to the lawyer possible. May suggest to make settings private

**Most common client questions**- How much will I get, how much will this cost and how long will this take. Don’t ever answer this question. Improper, client will always hold you to most optimistic figures.
PRE-TRIAL PROCEDURE

**Jury charge**- Always look to what you will have to prove at trial in preparing for a particular case. Begin with the end in mind.

**Expert reports**- Government reports, medical records, bills, pay stubs, receivables, articles and photos are not enough in most cases to prove your case—you will need an expert to present these losses as evidence. See Evidence Rule 702 and 703. Rule 4:17-4(e). Because discovery moves so quickly once you file suit and an answer is filed, you want to have all your experts lined up before you file suit.

**Settlement packages**- Make good faith effort to resolve pre-suit because once in court the Discovery Rule train may take you places you do not want to go. The glossier/fancier/more detailed the better. I always make a “recommendation” rather than a demand.

**Mediation**- Effective when all parties have good faith interest in resolution—does NOT toll discovery schedule. Be careful. Some adversaries simply request mediation to flesh out your strengths, weaknesses and your bottom line settlement numbers.

**Injury/lawsuit threshold issues (Title 59 and Title 39)**- Make sure your damages claim can breach threshold

**Keep client informed!!** If circumstances change—if it looks like there are limited “pockets” for recovery, if damages increase because of a change in circumstance, etc.

PLEADINGS

**Jurisdiction/Venue**- See Rule 4:3-2 for proper county. See Rule 4:5A1 and 2 for Track Assignments. Venue is proper in the county where the cause of action arose, where any party resides when the action is instituted. R. 4:3-2(b) provides that, “[F]or purposes of this rule, a business entity shall be deemed to reside in the county in which its registered office is located or in any county in which it is actually doing business.

Some venues are pro-plaintiff, some pro-defense, some pro-tenant, some pro-business, etc. Should consider the calendar, who is on the civil bench.

**The Complaint**—When to file. (not too soon because you will not be ready when discovery concludes/not to late because of the risk of new parties appearing beyond statute). Pleadings and CIS filed together. See Rule 4:5-2. Must designate trial counsel, demand a jury (otherwise waived). Add John Does. Amount of damages sought do not have to be specific unless it is a specific liquidated amount (book account).

**PER QUOD CLAIMS:** Loss of consortium in a personal injury matter.

CASE INFORMATION

4:26-4. Fictitious Names; In Personam Actions

In any action, irrespective of the amount in controversy, other than an action governed by R. 4:4-5 (affecting specific property or a res), if the defendant’s true name is unknown to the plaintiff, process may issue against the defendant under a fictitious name, stating it to be fictitious and adding an appropriate
description sufficient for identification. Plaintiff shall on motion, prior to judgment, amend the complaint
to state defendant's true name, such motion to be accompanied by an affidavit stating the manner in
which that information was obtained. If, however, defendant acknowledges his or her true name by
written appearance or orally in open court, the complaint may be amended without notice and affidavit.
No final judgment shall be entered against a person designated by a fictitious name.

Summons- All complaints must be served with a summons. See Rule 4:4-1, 4:4-2
Service- Rule 4:4-3. The Sheriff OR A COMMERCIAL SERVICE may make service. Rule 4:4-7
provides requirement for proof of service. Most corporations have registered agents—you get this
from NJ Secretary of State for a fee. You can serve a defendant by regular and certified mail but this is only
effective if defendant wishes to respond to same and file answer—you cannot enter default or judgment by
mail service.

MOTION FOR SUBSTITUTED SERVICE

Rule 4:4-4. Summons; Personal Service; In Personam Jurisdiction; (b) Obtaining In Personam
Jurisdiction by Substituted or Constructive Service.

may be obtained by substituted service "[i]f it appears by affidavit . . . that despite diligent effort and
inquiry personal service cannot be made." "[I]n an automobile collision case where the driver of a
vehicle was a New Jersey resident who could not be found for the service of process upon him, such
service could be made upon the automobile liability carrier (per R. 4:4-4[b]) without violating rules of
due process."

What does court require for proof of insurance as some of these motions are being denied on that basis.

Answer to Complaint- See Rule 4:5-3, 4:5-5 (if you fail to deny allegation in pleading, it is admitted);
4:6-2; Counterclaims see Rule 4:7. Every defense, legal or equitable, in law or fact MUST be asserted in
the answer.

Lack of jurisdiction over person, insufficiency of process and service are waived if not asserted in
answer and raised by a motion within 90 days after answer is filed.
The defenses of lack of subject matter jurisdiction, failure to state a claim and failure to join a
party may be raised at any point before trial.
Motion to change venue must be filed right away or waived. (10 days after last responsive
pleading due) See Rule 4:3-3(b)

Counter Claims, cross claims and third party complaints- Some counter claims are mandatory
per Rule 4:7-1—some are permissive.
Cross claims are governed by Rule 4:7-5 (against co-plaintiffs/co-DEfs)
Replies: To Answer—rarely used.

1:4-8. Frivolous Litigation. (a) Effect of Signing, Filing or Advocating a Paper. The signature of an
attorney or pro se party constitutes a certificate that the signatory has read the pleading, written motion
or other paper. By signing, filing or advocating a pleading, written motion, or other paper, an attorney or
pro se party certifies that to the best of his or her knowledge, information, and belief, formed after an
inquiry reasonable under the circumstances:
(1) the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the factual allegations have evidentiary support or, as to specifically identified allegations, they are either likely to have evidentiary support or they will be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support; and

(4) the denials of factual allegations are warranted on the evidence or, as to specifically identified denials, they are reasonably based on a lack of information or belief or they will be withdrawn or corrected if a reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support.

If the pleading, written motion or other paper is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the document had not been served. Any adverse party may also seek sanctions in accordance with the provisions of paragraph (b) of this rule.


Affidavit of Merit (Malpractice claims): See N.J.S.A. 2A:53A-26-29—applies to a list of professionals

Dismissals for Failure to Prosecute- See Rule 1:13-7. In multi-party cases must restore within 90 days or exceptional circumstances apply.

1:13-7. Dismissal of Civil Cases for Lack of Prosecution

- (a) Except in receivership and liquidation proceedings and in condemnation and foreclosure actions governed by R. 4:64-8 and except as otherwise provided by rule or court order, whenever an action has been pending for four months or, if a general equity action, for two months, without a required proceeding having been taken therein as hereafter defined in subsection (b), the court shall issue written
notice to the plaintiff advising that the action as to any or all defendants will be
discharged without prejudice 60 days following the date of the notice or 30 days
thereafter in general equity cases unless, within said period, action specified in
subsection (c) is taken. If no such action is taken, the court shall enter an order of
dismissal without prejudice as to any named defendant and shall furnish the
plaintiff with a copy thereof. After dismissal, reinstatement of an action against a
single defendant may be permitted on submission of a consent order vacating the
dismissal and allowing the dismissed defendant to file an answer, provided the
proposed consent order is accompanied by the answer for filing, a case information
statement, and the requisite fee. If the defendant has been properly served but
delays in executing a consent order, plaintiff shall move on good cause shown for
vacation of the dismissal. In multi-defendant actions in which at least one
defendant has been properly served, the consent order shall be submitted within
60 days of the order of dismissal, and if not so submitted, a motion for
reinstatement shall be required. The motion shall be granted on good cause
shown if filed within 90 days of the order of dismissal, and thereafter shall be
granted only on a showing of exceptional circumstances. In multi-defendant
actions, if an order of dismissal pursuant to this rule is vacated and an answering
pleading is filed by the restored defendant during or after the discovery period, the
restored defendant shall be considered an added party, and discovery shall be
extended pursuant to Rule 4:24-1(b). Nothing in this rule precludes the court with
respect to a particular defendant from imposing reasonable additional or different
procedures to facilitate the timely occurrence of the next required proceeding to be
taken in the case with respect to that defendant.

(b) The following events constitute required proceedings that must be timely taken
to avoid the issuance by the court of a written notice of dismissal as set forth in
subsection (a):

- (1) proof of service or acknowledgment of service filed with the court; or
- (2) filing of answer; or
- (3) entry of default; or
- (4) entry of default judgment. However, in any case involving multiple defendants in
  which at least one defendant has answered, no defaulted defendant will be noticed
  for dismissal due to the plaintiff’s failure to timely convert a default into a default
  judgment as required by R. 4:43-2.

In the event the answer of any defendant is suppressed under R. 4:23-5(a) or
otherwise and the plaintiff takes no further action, the court will place the defendant
on the dismissal list 120 days from the date of the order of suppression.

- No defendant will be automatically noticed for dismissal if a motion has been filed by or with respect to that defendant during the four-month period, unless the court in a particular case directs otherwise.

- (c) The order of dismissal required by paragraph (a) shall not be entered if, during the period following the notice of dismissal as therein prescribed, one of the following actions is taken:
  - (1) a proof of service or acknowledgment of service is filed, if the required action not timely taken was failure to file proof of service or acknowledgment of service with the court;
  - (2) an answer is filed or a default is requested, if the required action not timely taken was failure to answer or enter default;
  - (3) a default judgment is obtained, if the required action not timely taken was failure to convert a default request into a default judgment;
  - (4) a motion is filed by or with respect to a defendant noticed for dismissal. If a motion to remove the defendant from the dismissal list is denied, the defendant will be dismissed without further notice.

- (d) Special Civil Part. If original process in an action filed in the Special Civil Part has not been served within 60 days after the date of the filing of the complaint, the clerk of the court shall dismiss the action as to any unserved defendant and notify plaintiff that it has been marked “dismissed subject to automatic reinstatement within one year as to the non-answering defendant or defendants.” The action shall be reinstated without motion or further order of the court if the complaint and summons are served within one year from the date of the dismissal. A case dismissed pursuant to this rule may be restored after one year only by order upon application, which may be made ex parte, and a showing of good cause for the delay in making service and due diligence in attempting to serve the summons and complaint. A new page 2 of the summons and the re-service fee shall be included with the documents submitted to support the application. The entry of such an order shall not prejudice any right the defendant has to raise a statute of limitations defense in the restored action.

**DISMISSEALS FOR LACK OF PROSECUTION**

Court Rule 1:13-7(a) governs a plaintiff’s course when seeking to restore an administratively-dismissed complaint. The Rule has a differentiated restoration process that depends upon whether the case is single- or multi-defendant. R. 1:13-7(a). In multi-defendant cases, where at least one defendant has been served, the case may be restored within 60 days of dismissal by consent order, within 90 of dismissal upon motion
demonstrating good cause, and, thereafter, only upon motion demonstrating “exceptional circumstances.”

Id. This is a stricter standard than single-defendant cases, the restoration of which is governed by good cause at all times. Id. The distinction’s intent has been described as follows:

Multi-defendant cases in which at least one defendant has been served present, however, a different management problem in that the case likely will have proceeded and discovery undertaken before the unserved defendant is brought in. Thus vacation of the dismissal against that defendant has the capacity of substantially delaying all further proceedings. To permit appropriate case management, the rule requires the consent order to be submitted within 60 days after the dismissal, and thereafter a motion must be filed. Moreover, good cause is the standard if the motion is filed within 90 days after the dismissal order and thereafter, the exceptional-circumstance standard applies.

Pressler & Verniero, N.J. Court Rules, comment 1.1 on R. 1:13-7 (2012).

What constitutes exceptional circumstances. How often is this issue coming up before the courts.

Recent App Div cases have reversed R. 1:13-7 dismissals.
Uzuriaga v. Smith, Unpublished, A-2493-12T2
Velarde v. Carmichael, Unpublished,

DISCOVERY

Discovery Methods- See Rule 4:10-1
Form Interrogatories- See 4:17-1 and Appendix II of court rules
Supplemental Interrogatories- Limited to 10 with no subparts
Notice to Produce- Document requests. Rule 4:18-1
Inspections of land- See Rule 4:18-1(a)
Physical and mental examinations- Rule 4:19
Request for Admissions- Rule 4:22-1. Not subject to Discovery End Date.
E-Discovery- Social media/Cell phone data/computer files. No controlling case on point regarding social media in NJ…yet!
Subpoenas- Rule 4:14-7(a). Testimony or document request from non-party.
Depositions- Rule 4:14-1. Can object to form or privilege (or right to confidentiality or prior court order) See Rule 4:14-3. Cannot object with explanation that suggests an answer. Contested objections dealt with by getting a judge on the phone. Or, by threat of motion seeking sanctions and cost of re-deposition.
Cannot consult with counsel once deposition has started “while testimony is being taken”. See Rule 4:14-3 (f).
Timing of Discovery/Discovery End Date- See Rule 4:24-1. Track I- 150 days, Track II- 300 days, Track II and IV – 450 days. Discovery End Date dangers—Good cause v. Exceptional circumstances (once an arbitration or trial date is fixed).

4:24-1. Time for Completion of Discovery

• (c) Extensions of Time. The parties may consent to extend the time for discovery for an additional 60 days by stipulation filed with the court or by submission of a writing signed by one party and copied to all parties, representing that all parties have consented to the extension. A consensual extension of discovery must be sought prior to the expiration of the discovery period. If the parties do not agree or a longer extension is sought, a motion for relief shall be filed with the Civil Presiding Judge or designee in Track I, II, and III cases and with the designated
managing judge in Track IV cases, and made returnable prior to the conclusion of the applicable discovery period. The movant shall append to such motion copies of all previous orders granting or denying an extension of discovery or a certification stating that there are none. On restoration of a pleading dismissed pursuant to Rule 1:13-7 or Rule 4:23-5(a)(1) or if good cause is otherwise shown, the court shall enter an order extending discovery. Any proposed form of extension order shall describe the discovery to be completed, set forth proposed dates for completion, and state whether the adverse parties consent. Any order of extension may include such other terms and conditions as appropriate. No extension of the discovery period may be permitted after an arbitration or trial date is fixed, unless exceptional circumstances are shown.

Tucci v. Tropicana Casino and Resort, Inc., 364 N.J.Super. 48, 834 A.2d 448 (App.Div.2003) refused to bar a late report. In Tucci, the Appellate Division found that an expert report submitted thirty-nine days after the discovery deadline passed should have been allowed by the motion judge. Id. at 54, 834 A.2d at 451. However, the Appellate Division decision plainly was controlled by the facts presented. According to the Appellate Division, the delay was a result of unavoidable scheduling delays. While the plaintiffs clearly should have sought a discovery extension, “a twelfth hour submission of new information amending discovery by one's adversary requiring a reasonable investigation”, at least in the eyes of one trial judge, provides the requisite exceptional circumstances. O'Donnell v. Ahmed, 363 N.J.Super. 44, 51, 830 A.2d 924, 928 (Law Div.2003).

Surely, plaintiff's attorney might well have sought a further extension of the expert-report deadline. On the other hand, he reasonably relied on the cooperation of his adversaries who made no objection to the expert's inspection of the elevator after the submission deadline. We point out, moreover, that the litigation process cannot effectively take place without some measure of cooperation among adversaries. Clearly the court ought not be unduly applied to for relief that the parties are able to arrange for themselves without prejudice to the justice system. Beyond that, the trial court's concern for the additional discovery by defendants that the expert report would require cannot justify the dismissal with prejudice. The May 14 case management order anticipated the necessity for that additional discovery. Hence, the late report simply delayed that supplementary discovery by thirty-nine days. If the thirty-nine-day delay resulted in an inability of the parties to complete the additional discovery in the more than two months remaining prior to the trial date, then the trial date could have been adjourned.

[Tucci, supra, 364 N.J.Super. at 53, 834 A.2d at 451.]

MOTION PRACTICE


Rule 1:6-6. Evidence on Motions; Affidavits: If a motion is based on facts not appearing of record, or not judicially noticeable, the court may hear it on affidavits made on personal knowledge, setting forth
only facts which are admissible in evidence to which the affiant is competent to testify and which may have annexed thereto certified copies of all papers or parts thereof referred to therein. The court may direct the affiant to submit to cross-examination, or hear the matter wholly or partly on oral testimony or depositions.

Is it personal knowledge? Are proofs attached? Are facts noticeable? How often is this rule followed/ignored?

Personal knowledge excludes facts based on information and belief. See Wang v. Allstate 125 NJ 2, 16 (1991); Affidavit by lawyer based not on their personal knowledge but on information related to them by their client is IMPROPER. See Murray v. Allstate, 209 NJ Super 163, 169 (App. Div. 1986). Documents attached to motions that are not certified as authentic are IMPROPER. See Celino v. General Acc. Ins. 211 NJ Super 538 (App. Div. 1986)

**Discovery Motions**- For motions to compel discovery See Rule 4:23-1. For failure to comply with an Order, See Rule 4:23-2. For failure to attend deposition, See Rule 4:23-4. For sanctions, See Rule 6:4-6.

**Dismissal for Failure to Provide Discovery/Dismissal with Prejudice**- Rule 23-5


**SUMMARY JUDGMENT RULE- 30 day requirement**

Rule 4:46-1. (Time for Making, Filing and serving Summary Judgment Motion). “…All motions for summary judgment shall be returnable no later than 30 days before the scheduled trial date, unless the court otherwise orders for good cause shown…”

What issues regarding summary judgment and the timing of these motions does the court want the bar to be aware of? Should these motions be made at end of discovery? Just before trial?

Can parties waive rule and have judge entertain a summary judgment application?

On a motion for summary judgment, the moving party has “the burden of showing clearly the absence of a genuine issue of material fact.” Judson v. People’s Bank and Trust Co., 17 N.J. 67, 74 (1954). The Court must weigh the competent evidentiary materials, in view of the evidentiary standard of proof, e.g., preponderance of the evidence, and in light of which party would have the ultimate burden of proof if the case were to go to trial, to determine whether there is a genuine issue of material fact. Brill v. Guardian Life. Ins. Co. of America, 142 N.J. 520, 525 (1995).

“all legitimate inferences [must be construed in] favor[] [of] the non-moving papery …” Rule 4:46-2(c)

**Motions for Reconsideration**- Rule 4:49-2. Must be filed no later than 20 days after service of order. Must provide a statement of what matters or controlling decisions the court overlooked.

**OTHER PRE-TRIAL PROCEDURES**

**Offer of Judgment**- Rule 4:58. Useful tool for defendants and plaintiffs in a civil case. Allow you to recoup fees and costs if an offer/demand is not accepted under certain circumstances.

**RULE 4:58. Offer Of Judgment**

4:58-1. Time and Manner of Making and Accepting Offer

- (a) Except in a matrimonial action, any party may, at any time more than 20 days before the
actual trial date, serve on any adverse party, without prejudice, and file with the court, an offer to take a monetary judgment in the offeror's favor, or as the case may be, to allow judgment to be taken against the offeror, for a sum stated therein (including costs). The offer shall not be effective unless, at the time the offer is extended, the relief sought by the parties in the case is exclusively monetary in nature.

(b) If at any time on or prior to the 10th day before the actual trial date the offer is accepted, the offeree shall serve on the offeror and file a notice of acceptance with the court. The making of a further offer shall constitute a withdrawal of all previous offers made by that party. An offer shall not, however, be deemed withdrawn upon the making of a counter-offer by an adverse party but shall remain open until accepted or withdrawn as is herein provided. If the offer is not accepted on or prior to the 10th day before the actual trial date or within 90 days of its service, whichever period first expires, it shall be deemed withdrawn and evidence thereof shall not be admissible except in a proceeding after the trial to fix costs, interest, and attorney's fee. The fact that an offer is not accepted does not preclude a further offer within the time herein prescribed in the same or another amount or as specified therein.

Note: Source - R.R. 4:73. Amended July 7, 1971 to be effective September 13, 1971; amended July 13, 1994 to be effective September 1, 1994; amended June 28, 1996 to be effective September 1, 1996; amended July 10, 1998 to be effective September 1, 1998; text allocated to paragraphs (a) and (b), and paragraphs (a) and (b) amended July 27, 2006 to be effective September 1, 2006.

4:58-2. Consequences of Non-Acceptance of Claimant's Offer

(a) If the offer of a claimant is not accepted and the claimant obtains a money judgment, in an amount that is 120% of the offer or more, excluding allowable prejudgment interest and counsel fees, the claimant shall be allowed, in addition to costs of suit: (1) all reasonable litigation expenses incurred following non-acceptance; (2) prejudgment interest of eight percent on the amount of any money recovery from the date of the offer or the date of completion of discovery, whichever is later, but only to the extent that such prejudgment interest exceeds the interest prescribed by R. 4:42-11(b), which also shall be allowable; and (3) a reasonable attorney's fee for such subsequent services as are compelled by the non-acceptance.

(b) No allowances shall be granted pursuant to paragraph (a) if they would impose undue hardship. If undue hardship can be eliminated by reducing the allowance to a lower sum, the court shall reduce the amount of the allowance accordingly.

Note: Amended July 7, 1971 to be effective September 13, 1971; amended July 14, 1972 to be effective September 5, 1972; amended July 17, 1975 to be effective September 8, 1975; amended July 13, 1994 to be effective September 1, 1994; amended July 5, 2000 to be effective September 5, 2000; amended July 28, 2004 to be effective September 1, 2004; text amended and designated as paragraph (a), new paragraph (b) adopted July 27, 2006 to be effective September 1, 2006; paragraph (a) amended July 23, 2010 to be effective September 1, 2010.


(a) If the offer of a party other than the claimant is not accepted, and the claimant obtains a monetary judgment that is favorable to the offeror as defined by this rule, the offeror shall be allowed, in addition to costs of suit, the allowances as prescribed by R. 4:58-2, which shall constitute a prior charge on the judgment.
• (b) A favorable determination qualifying for allowances under this rule is a money judgment in an amount, excluding allowable prejudgment interest and counsel fees, that is 80% of the offer or less.

• (c) No allowances shall be granted if (1) the claimant's claim is dismissed, (2) a no-cause verdict is returned, (3) only nominal damages are awarded, (4) a fee allowance would conflict with the policies underlying a fee-shifting statute or rule of court, or (5) an allowance would impose undue hardship. If, however, undue hardship can be eliminated by reducing the allowance to a lower sum, the court shall reduce the amount of the allowance accordingly.

Note: Source - R. R. 4:73; amended July 13, 1994 to be effective September 1, 1994; amended July 5, 2000 to be effective September 5, 2000; amended July 28, 2004 to be effective September 1, 2004; text allocated into paragraphs (a), (b), (c), and paragraphs (a), (b), (c) amended July 27, 2006 to be effective September 1, 2006.

4:58-4. Multiple Claims; Multiple Parties

• (a) Multiple Plaintiffs. If a party joins as plaintiff for the purpose of asserting a per quod claim, the claimants may make a single unallocated offer.

• (b) Multiple Defendants. If there are multiple defendants against whom a joint and several judgment is sought, and one of the defendants offers in response less than a pro rata share, that defendant shall, for purposes of the allowances under R. 4:58-2 and 3, be deemed not to have accepted the claimant's offer. If, however, the offer of a single defendant, whether or not intended as the offer of a pro rated share, is at least as favorable to the offeree as the determination of total damages to which the offeree is entitled, the single offering defendant shall be entitled to the allowances prescribed in R. 4:58-3, provided, however, that the single defendant's offer is at least 80% of the total damages determined.

• (c) Multiple Claims. If a claimant asserts multiple claims for relief or if a counterclaim has been asserted against the claimant, the claimant's offer shall include all claims made by or against that claimant. If a party not originally a claimant asserts a counterclaim, that party's offer shall also include all claims by and against that party.

Note: Adopted July 5, 2000 to be effective September 5, 2000; caption amended, former text redesignated as paragraph (b) and amended, and new paragraphs (a) and (c) adopted July 28, 2004 to be effective September 1, 2004.

4:58-5. Application for Fee; Limitations

If an action is required to be retried, a party who made a rejected offer of judgment in the original trial may, within 10 days after the fixing of the first date for the retrial, serve the actual notice on the offeree that the offer then made is renewed and, if the offeror prevails, the renewed offer will be effective as of the date of the original offer. If the offeror elects not to so renew the original offer, a new offer may be made under this rule, which will be effective as of the date of the new offer.


4:58-6. Application for Fee; Limitations
Applications for allowances pursuant to R. 4:58 shall be made in accordance with the provisions of R. 4:42-9(b) within 20 days after entry of final judgment. A party who is awarded counsel fees, costs, or interest as a prevailing party pursuant to a fee-shifting statute, rule of court, contractual provision, or decisional law shall not be allowed to recover duplicative fees, costs, or interest under this rule.


Settlement Conferences- Most courts provide judges upon request many schedule post Discover End Date.

Mediation- Does NOT toll Discovery End Date

Mandatory Arbitration- Rule 4:21A-1(a)(1)-(3). For all cases on Track I, II and III. Be very aware of the risks of the Trial De Novo and failure to file/serve on adversary.

DANGER!! Failure to notify client, failure to file trial de-novo/failure to put adversary on notice of trial de-novo. Must present a defense.

Settlements/Subrogation/Liens/Longworth UIM letters Rule 4:80: Settlement of matters for minors/incapacitated must be approved by the court

ADJOURNMENT PROCEDURES
Discuss what is the appropriate practice and procedure for getting an adjournment for arbitration, trial and a motion. What constitutes good cause. Timing requirements. Court personnel to address requests to.

CIVIL TRIALS AND ARBITRATIONS
[AS APPROVED BY THE SUPREME COURT
AND PROMULGATED BY DIRECTIVE #6-04]
1. All requests to adjourn a civil trial or an arbitration are governed by Rule 4:36-3(b).
2. A good faith effort shall be made to discuss any request for an adjournment with all other parties before the request is presented to the court.
3. All adjournment requests must be made in writing, submitted to the Civil Division Manager. Faxed submissions are acceptable. Telephone requests will not be accepted absent exceptional circumstances. Requests must be copied to all other parties.
4. Any request for an adjournment must be presented as soon as the need for an adjournment is known. Absent exceptional circumstances, the request must be presented no later than the close of business on the Wednesday preceding the Monday of the week the matter is scheduled for trial or arbitration.
5. The written request must indicate the reason or reasons the adjournment has been requested, and whether the other parties have consented to the proposed adjournment. The written request should also include a new proposed date for trial or arbitration, consented to by all parties. If consent cannot be obtained, the court will determine the matter by conference call with all parties.
6. If the adjournment request is based upon a conflict with another court proceeding, the party requesting the adjournment must indicate whether he or she is designated trial counsel and supply the name of the other matter, the court and county in which
it is pending, and the docket number assigned to the matter.

7. No adjournments will be granted to accommodate dispositive motions returnable on or after the scheduled trial date.

8. A matter should not be considered adjourned until court staff has confirmed that the request for an adjournment has been granted. Timely response will be given to the party requesting the adjournment, who will then be responsible for communicating the decision to all other parties.

9. To the extent any party is dissatisfied with the decision made by the Civil Case Management Office, the following procedure should be followed:

P in master calendar counties, the aggrieved party should present the matter to the Civil Division Manager directly; to the extent that any party is dissatisfied with the decision made by the Civil Division Manager, that party may ask that the matter be presented to the Civil Presiding Judge;

P in individual/team calendar counties, the aggrieved party should present the matter to the Civil Division Manager directly; to the extent that any party is dissatisfied with the decision made by the Civil Division Manager, that party may ask that the matter be presented to the pretrial or managing judge.

10. Requests for adjournment of a civil trial based on expert unavailability are governed by R. 4:36-3(c).

4:36-3. Trial Calendar

- (a) Notice of Trial. The court shall advise all parties of the initial trial date no less than ten weeks prior thereto. Cases scheduled for trial shall be ready to proceed on the initial trial date. If a case is not reached during the week in which the trial date falls, it shall be forthwith scheduled for a date certain after consultation with counsel provided, however, that no case shall be relisted for trial sooner than four weeks from the initial trial date without agreement by all counsel. The court shall issue written notice confirming the new trial date.

- (b) Adjournments, Generally. An initial request for an adjournment for a reasonable period of time to accommodate a scheduling conflict or the unavailability of an attorney, a party, or a witness shall be granted if made timely in accordance with this rule. The request shall be made in writing stating the reason for the request and that all parties have consented thereto. The written adjournment request, which shall be submitted to the civil division manager, shall also include a proposed trial date, agreed upon by all parties, to occur as soon as possible after the problem requiring the adjournment is resolved. If consent cannot be obtained or if a second request is made, the court shall determine the matter by conference call with all parties. Requests for adjournment should be made as soon as the need is known but in no event, absent exceptional circumstances, shall such request be made later than the close of business on the Wednesday preceding the Monday of the trial week. No adjournments shall be granted to accommodate dispositive motions returnable on or after the scheduled trial date.

- (c) Adjournments, Expert Unavailability. If the reason stated for the initial request for an adjournment was the unavailability of an expert witness, no further adjournment request based on that expert's unavailability shall be granted, except upon a showing of exceptional circumstances, but rather that expert shall be required to appear in person or by videotaped testimony taken pursuant to R. 4:14-9 or, provided all parties consent, the expert's de bene esse deposition shall be read to the jury in lieu of the expert's appearance. If appropriate, given the circumstances of the particular case, the court may order that no further adjournments will
be granted for the failure of any expert to appear.

TRIAL

Mandatory Pre-Trial Exchange – Rule 4:25-7 and Appendix XXIII.

PRE-TRIAL EXCHANGE MATERIALS (MOTIONS AND JURY CHARGE)

IN LIMINE MOTIONS AT TRIAL—procedure/service

Rule 4:25-7 (Exchange of Information). “Except as otherwise provided by paragraph (d) of this rule, in cases that have not been pretri, attorneys shall confer and, seven days prior to the initial trial date, exchange the pretrial information...Failure to exchange and submit all the information required by this rule may result in sanctions as determined by the trial judge”

Paragraph (d): “Waiver of Exchange. The parties may, in writing, waive the requirement of the exchange...but such waiver shall not affect the obligations to provide that information to the court at the commencement of trial.”

Any comments on what aspects of the pre-trial exchange requirement are being followed. Issues with in limine motions. Issues with submitting a complete jury charge/jury verdict sheet.

In Limine motions only mentioned in Appendix XXIII of Court Rules, Pretrial Exchange #4, requiring any in limine motions intended to be made at the commencement of trial. Such motions shall not go on the regular motion calendar.


VOIR DIRE/JURY SELECTION METHODS

Rule 1:8-3: Examination of jurors. Comments discuss Directive 21-06.

(c) Peremptory Challenges in Civil Actions. In civil actions each party shall be entitled to 6 peremptory challenges. Parties represented by the same attorney shall be deemed 1 party for the purposes of this rule. Where, however, multiple parties having a substantial identity of interest in one or more issues are represented by different attorneys, the trial court in its discretion may, on application of counsel prior to the selection of the jury, accord the adverse party such additional number of peremptory challenges as it deems appropriate in order to avoid unfairness to the adverse party.

(e) (3) The passing of a peremptory challenge by any party shall not constitute a waiver of the right thereafter to exercise the same against any juror, unless all parties pass successive challenges. Peremptory challenges used to exclude minority class member on that basis alone See State v. Gilmore, 103 N.J. 508 (1986); Russell v. Rutgers Health Plan, 280 N.J. Super. 445 (App. Div. 1995)

QUESTIONS/NOTES BY JURORS— Rule 1:8-8

(c) Juror Note-Taking. Prior to opening statements, the attorneys or any party may request that the jury be permitted to take notes during the trial or portion thereof, including opening and closing statements. If the court determines to permit note-taking after all parties have had an opportunity to be heard, it shall provide the jurors with note-taking materials and shall take such steps as will ensure the security and confidentiality of each juror’s notes.

(d) Juror Questions. Prior to the commencement of the voir dire of prospective jurors in a civil action, the court shall determine whether to allow jurors to propose questions to be asked of the
witnesses. The court shall make its determination after the parties have been given an opportunity to address the issue, but they need not consent. If the court determines to permit jurors to submit proposed questions, it shall explain to the jury in its opening remarks that subject to the rules of evidence and the court's discretion, questions by the jurors will be allowed for the purpose of clarifying the testimony of a witness. The jurors' questions shall be submitted to the court in writing at the conclusion of the testimony of each witness and before the witness is excused. The court, with counsel, shall review the questions out of the presence of the jury. Counsel shall state on the record any objections they may have, and the court shall rule on the permissibility of each question. The witness shall then be recalled, and the court shall ask the witness those questions ruled permissible. Counsel shall, on request, be permitted to reopen direct and cross-examination to respond to the jurors' questions and the witness's answers. A witness who has been excused shall not be recalled to respond to juror questions unless all counsel and the court agree or unless the court otherwise orders for good cause shown.


Cliché, cliché, but one that is true and one that works...START WITH THE STORY! Jury does not want to hear who you are (they know), does not want to be thanked for service (not at this point)—they want to know why they are here and why should they care. Only a story makes them care. A recitation of facts does not create memories. Only a story creates vivid images in the mind of a juror. It should be like a movie trailer in their minds...not a reading of Cliffs Notes.

Once I Get Going versus Virtuoso: Great athletes, musicians and lawyers are not good “once they get going”. You do not have time to warm up, get settled. This matters because you lose the jury. Jurors will tune you out if you don’t catch them when they are really focused—at the beginning.

Goals of opening: establish your trustworthiness, make vivid your basic facts, defuse your case weaknesses, create doubt about your opponent’s facts, personalize your client.

FIRST IMPRESSIONS: Do not look at the jury panel as they walk in—makes them think you are studying them [there is nothing you are going to learn by looking at them at this early stage of the game. Instead, look at your trial notebook, your client, etc. When you glance occasionally to the jury pool, be professional and natural. Give them the non-verbal message: “welcome friends, we are going to be getting to know each other better shortly.” “ Keep table neat and uncluttered—YOU ARE PREPARED!

You go first. You get to frame your theme and provide the jury with what the case is really about. If the jury accepts your version of the story this first impression is what she will use to process all of the evidence. She will reject the parts that don’t fit or give them less weight. Jurors may not decide the case based on opening, but they do decide what the case is about: a fraud that will raise their insurance rates or compensating someone with money for their lost health.

Acknowledge the problems in your case—own them so that you can use them to your advantage.

In some situations, it may not even be your client’s story. It may be the client’s parent or spouse (where the injury is significant and disabling). It may be the defendant’s story (where the liability is inflammatory or tenuous).
Start dropping anchor words, phrases and statements in your opening that you will come back to throughout the trial: “Objective v. subjective”, “permanent injury”, “preponderance of the credible evidence”, “permanent loss of body function”. Take ownership over these terms. Do not run away from them. Use them in your opening, direct, cross and closing. When they are mentioned by the judge in his jury charge, they are your words and arguments, not the defense’s.

Honesty. Be brutally honest with the jury. This is the first chance they get to calibrate their B.S. detectors. If they do not think you are being honest from the get go, they will not listen to a word you say the rest of the trial.

How to get around the “golden rule” (which prohibits you from asking jury to award damages that they would want for their own injury).

Ask, “what would a healthy 16 year old accept in return for giving up their health, their unlimited enjoyment of life?”

Be honest:

“They say there are too many lawsuits. Guess what, I agree. Frivolous lawsuits make it far more difficult for me to prove the real cases, the cases with real loss. Cases like the one we are here for today.” “People get upset because someone sues when they spill coffee on themselves. I agree. That is not this case. This case involves a 16 year old who had two tons of steel smash into the back of her car while she was in the middle of an ordinary school day, on her way to SAT prep classes.”

After the “story” explain what the law is in New Jersey—what you are looking for. Money. Cut to the chase. Get that out of the way. Be honest.

Give the jury two stories they must evaluate: 1. Ptf is hurt and still hurting or 2. Ptf is a liar, cheat and fraud.

Let the jury know that as they listen to the testimony, they have to develop in their mind what amount of money will “fairly and reasonably compensate the plaintiff” (again, drop anchor words that will be in the charge and jury verdict sheet).

Know your jury—you have just completed voir-dire. You know which have kids, which golf, which have desk jobs, which are unemployed. You can carefully (and I mean CAREFULLY) cater your statements/arguments to these individual jurors. If a juror has a 16 year old child, play up how overscheduled kids are at that age—and how difficult it would be to try to jam in physical therapy appointments to that schedule (the time it takes to driver there, to wait in the waiting room, to get undressed, to set up the therapy, to get dressed, to drive back). Nobody goes through that unless they are actually hurt and seeking relief.

85% of jurors think there are too many lawsuits. Show the jury you recognize the problem, it bothers you too, it makes your job more difficult, but your case is different.

Rehearse the rough spots. We lose eye contact when we do not know quickly how to respond to a problem (think of tough oral argument) Maintaining eye contact during an assault makes you look invulnerable.
At some point in the opening, give a brief overview of what is going to happen at trial. The jury is nervous, they do not know what to expect. Tell them what your job is and what their job is—you are their guide. Put them at ease. “My job is to prove the case and I do that introducing evidence. Most of the evidence in this case, other than some car crash photos and diagnostic films will come in the form of testimony. I will call Ms. Bae and her treating doctors. Your job is to listen to the evidence, always thinking of what amount of money will fairly and reasonably compensate her for her loss of health.”

Don’t assume that the jury knows what is happening. Don’t get lazy and forget the fundamentals. There are trials where juries have come back with “not guilty” in a civil case. There are trials where juries have come back with questions as to how are they supposed to figure out how much money they should award. Do not assume jurors know what a herniated, bulging or normal disc represents. Do not assume jurors all know what MRIs are, what prior or subsequent mean, what diagnostic testing represents, etc. Permanent means permanent. If you are dead in 2007, you are still dead in 2014.

Own the following terms: Preponderance of the evidence/Proximate cause/ your damages. These are the issues jurors get tripped up on, ask questions on. These are the strongest weapons that the defense has against your case. Take them away from the defendant. Own them. Make them yours. Make them your by defining them, sprinkle the terms throughout your opening, your direct, your cross and your closing...that way the jurors ears perk up and they stare your way when they are being mentioned by the judge during the jury charge.

Make clear to the jury that the standard is “preponderance of the credible evidence” and NOT “beyond a reasonable doubt”. USE THE SCALES OF JUSTICE example (the judge will usually use this example also). What is the one term that the defense avoids at all cost—an explanation of preponderance of the credible evidence—all they say is “The plaintiff has the burden”.

**Direct Examination of lay witness/Expert- Rule 611(a)**

You may consider calling an adverse witness as part of your case-in-chief. In such a situation, “interrogation may be by leading questions, subject to the discretion of the court.” N.J.R.E. 611(c). One important fact to remember is that defense counsel will then be able to cross-examine its own witness and utilize leading questions. See N.J.R.E. 611(b)

You may find citing to adverse witnesses’ deposition testimony a better option. You are permitted to may utilize deposition testimony of any party or officer, director, managing or authorized agent or corporate designee of a party as though the individual were present and testifying. Rule 4:16-1(b);

Procedure and practice for introducing diagnostic testing and non-testifying expert witnesses.

Evidence Rule 802. Rule 808. Expert opinion included in a hearsay statement admissible under an exception: Expert opinion which is included in an admissible hearsay statement shall be excluded if the
declarant has not been produced as a witness unless the trial judge finds that the circumstances involved
in rendering the opinion, including the motive, duty, and interest of the declarant, whether litigation was
contemplated by the declarant, the complexity of the subject matter, and the likelihood of accuracy of the
opinion, tend to establish its trustworthiness.

Rule 703. Basis of opinion testimony by experts
The facts or data in the particular case upon which an expert bases an opinion or inference may be those
perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by
experts in the particular field in forming opinions or inferences upon the subject, the facts or data need
not be admissible in evidence.

James v. Ruiz Holding: “We hold that a civil trial attorney may not pose such consistency/inconsistency
questions to a testifying expert, where the manifest purpose of those questions is to have the jury consider
for their truth the absent expert's hearsay opinions about complex and disputed matters. Even where the
questioner's claimed purpose is solely restricted to impeaching the credibility of an adversary's testifying
expert, **127 spotlighting that opposing expert's disregard or rejection of the non-testifying expert's
complex and disputed opinions, we hold that such questioning ordinarily should be disallowed under
N.J.R.E. 403.”

Cross examination of lay witness- Rule 611 (b)

N.J.R.E. 611. Mode and Order of Interrogation and Presentation

(a) Control by court. --The court shall exercise reasonable control over the mode and order of
interrogating witnesses and presenting evidence so as to (1) make the interrogation and
presentation effective for the ascertainment of the truth, (2) avoid needless consumption of
time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination. --Cross-examination should be limited to the subject matter
of the direct examination and matters affecting the credibility of the witness. The court may, in
the exercise of discretion, permit inquiry into additional matters as if on direct examination.

Cross examination of Defendant is different from cross examination of a defense expert. The expert is a
well trained, well paid assassin whose job it is to kill your case. The defendant is produced, usually, only
to generate sympathy and compassion for defense. Do not play into defense hand by reflexively attacking
this witness...unless he deserves it.

Take it down a notch—25%.

In doing your cross, just like in doing your opening, direct and close, be your “authentic” self. Do it in
your style. Do NOT try to be someone else. Steal from Ed Cappozzi and Andy Fraser and Mike
Maggiano and Gerry Baker—but do not try to be them.
Keep in mind that cross examination is your chance to testify about the case in front of the jury through your questions.

“It usually takes 3 weeks of preparation to make an impromptu speech.” Mark Twain. It actually takes a lifetime. Your lifetime.

You have to brainstorm the facts while preparing for defendant’s cross exam: What do you really need, if anything, from this witness—what must the witness concede or face having his answer labeled a lie, a mistake or preposterous.

You have to be yourself. If you are aggressive or combative by nature, go at the witness this way.. I have seen that work—but rarely. I have won many cases where I truly believe the jury punished my adversary for treating the plaintiff with disrespect (there is one lawyer I have beaten 6 consecutive times based on this). If you are more low key use that approach. You have to be comfortable.

CLASSIC QUESTION: Prepared questions or a General Outline? BOTH. You type out the cross exam so you have it. Then you use it of you need it. But the cross should flow. Leave a killer last questions to end and then maybe take a minute to go over notes toward the end to make sure you do not miss anything.

Surprise the Defendant by knowing things they do not expect you to know. This sets the tone early and dissuades them from being evasive or deceptive. Google them, look up facebook, run a DMV search on them. I recently discovered that DEF witness/former boyfriend was convicted of child murder in Georgia.

At deposition, as at trial, it is only when the witness senses that you know what you are talking about that you inspire fear and contradiction—this is especially true of expert witnesses. They know when they are in for a battle. ASIDE: During voir dire of expert, I always bring out facts that let them know I have the book on them—this tempers their testimony on direct.

Look at Facebook or twitter posts RIGHT after accident—treasure trove of brutally honest information.

CLASSIC: At trial, never ask a question you do not know the answer to. Unless you have no choice. Then play it safe. Or play it safely reckless (See James McComas, Dynamic Cross Examination).

CLASSIC: Exceptions when you CAN ask a question you do not know the answer to:
1. Low risk/likely good returns
2. No matter what the answer is, it helps your case
3. Honest witness—will give you an honest answer
4. The need to know outweighs the danger of a harmful answer
5. Where the answer does not matter
6. Where you ask the witness to elaborate on a complete lie

CLASSIC: Mark all your cross examination exhibits before you begin. Question laid out with answer and indexed document ready to confront the witness. UNLESS you have some that you want to “spring on DEF”. In that case, wait until direct is done.

You want to start quick with a lethal first blow, but you may want to put the witness at ease by lulling him into a full sense of security: 1. You were not on your phone correct? 2. The weather did not affect your visibility, correct? 3. You did not observe my client do anything that contributed to the happening of the accident, correct? Take advantage of the initial anxiety.
What happens when the witness fights you back in a combative way? Climbing into the gutter with them rarely works. Even when it feels good, you come out looking muddy to the jury. That may help you, especially with an expert—not so much with a lay witness. Jurors identify with lay witnesses. Always keep your authentic tone.

Don’t attack a hostile witness right away—it is what they want and expect. When dealing with a bad dog, try to soothe and pet the hound first. Gets his tail wagging. If you attack a bad dog, you are likely going to get bit.

CLASSIC ADVICE: Avoid adjectives and adverbs that can be denied, dodged or evaded by a clever witness: “complete stop” v. ”stop”; “Fully understand police report” v. “understand the police report narrative description”

Never ask “how” or “why”

Be fair and courteous even as you do damage to the witness—your continuing goal is to show the jury that you are trustworthy and you represent the truth—which you do. HOWEVER: You must call out the witness on outrageous statements.

Often, your adversary simply calls a liable defendant to the stand to gain sympathy from the jury. On cross, ask the questions you need to ask in order to move for a directed verdict and sit down. Don’t help build sympathy for the defense by attacking a likeable defendant.

When you barrage a helpless witness, you are really attacking the jury—you force them to take the side of the witness.

If the witness is conceding the case to you, there is NO NEED TO IMPEACH!! Why damage the credibility of someone who is helping you? SIT DOWN.-- common judicial observation.

PRACTICE TIP: Do NOT Get perturbed by objections.

BE CAREFUL: As lawyers, we often tend to hear only what is helpful. Sometime you think you have made a point but the answer was unclear, mumbled or your question was unclear—jury may not have gotten it. At a dep, when you have made a good point, repeat it the question clearly and get a solid answer—don’t run away because you think you snuck in a good punch. At trial, its always good to have an assistant (a lawyer, paralegal or law clerk) to hand you notes in case you missed something.

CLASSIC CROSS EXAM: “The picture cannot be painted if the significant and insignificant are given equal prominence. One must know how to select” Benjamin Cardozo. DO NOT overwhelm the jury with every inconsistent fact (Tues. v. Wed.; 3:00 v. 4:00)

DAMAGE WITNESS EARLY (primary)
QUIT WHILE AHEAD (recency)
GO OUT WITH A BANG NOT A WHIMPER

Summation- Rule 1:7-1 (b)
Jury Charge- See Model Jury Charge on NJ Courts Website

During the course of his or her summation, it is understood that “[c]ounsel's arguments are

However, a few things to avoid.


In Geler, supra, the court rebuked plaintiff’s counsel for referring to defendants’ case as “rotten” and as “garbage” and their arguments as “hogwash” designed “[t]o confuse, to muddle, put up smoke screens.” The court also criticized plaintiff’s counsel’s characterization of defendants’ testimony as a “joke,” “bunk,” “nonsense,” and an “outrage”; referring to defendant’s expert as “wily and wiggly”; his opinions as “cute,” “nonsense,” “garbage,” “absurd,” and “not worth a hill of beans.”

**Be careful about urging the jury to “send a message.”** Jackowitz, supra (in auto case in which defendant had stipulated to liability, “the use of the ‘sending a message’ argument [wa]s inappropriate . . .”)

**Beware of excessive appeals to emotion,** e.g., in wrongful birth case in which plaintiffs alleged medical negligence on the part of two obstetricians, reversing and remanding where plaintiffs’ counsel “incessantly and impermissibly invited the jury to view the case as though they, not [plaintiffs], were the parents of the child ....” Geler, supra

**Rule 1:1-2 Construction and Relaxation.** “The rules …shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice.”
Norberto A. Garcia is a trial attorney with offices in New York and New Jersey. He is a Partner at Blume Forte Fried Zerres & Molinari in Chatham, New Jersey. He is the past president of the Hudson County Bar Association where he has been a trustee since 2000. He is on the executive board of the New Jersey State Bar Foundation where he currently serves as President. He serves on a number of committees for the New Jersey State Bar Association including the Civil Trial Bar Section and the Diversity Committee (co-chairperson). Mr. Garcia has been certified by the New Jersey Supreme Court as a civil trial attorney since 2001. He has been active in the Hudson County Inns of Court program since 1996 and is currently a Master in the program. He served as president of the North Hudson Lawyers Club in 2003. He has been co-chairperson of the Hudson County Civil Practice Committee since 2003. He served on the Office of Attorney Ethics of the Supreme Court, District VI, Fee Arbitration Committee from 2004 through 2009, becoming its chairperson in 2009. From 2005 through 2008 he served on the Supreme Court Committee on Minority Affairs. He has been a member of the American Board of Trial Advocates since 2004. He has a B.A. cum laude in history from Seton Hall University and graduated from the University of Pennsylvania Law School. He has been admitted to the bars of New Jersey, New York and Pennsylvania. Mr. Garcia resides in Kinnelon, New Jersey with his wife and two sons.
A PRIMER ON ATTORNEY-CLIENT PRIVILEGE

150-JAN N.J. Law. 48

New Jersey Lawyer, the Magazine
January, 1993

Worth Repeating

Copyright (c) 1993 by the New State Jersey Bar Association.

A PRIMER ON ATTORNEY-CLIENT PRIVILEGE

This case concerns the triadic relationship between and among insurer, insured and counsel recently discussed by our Supreme Court in *Lieberman v. Employers Ins. Co. of Wausau*, 84 N.J. 325 (1980). Plaintiff instituted this action against his insurer claiming that it acted in bad faith by exposing him to payment of substantial sums in excess of policy limits in an underlying personal injury suit.

This is a motion by plaintiff to compel production of all correspondence between defendant and the attorney it assigned to represent plaintiff in the prior action. Defendant contends that these materials fall within the purview of the attorney-client privilege....

It has been said that the privilege constitutes “an accommodation of competing public interests.” More specifically, the policy of promoting full disclosure of relevant evidence conflicts with the necessity of protecting a client's freedom to consult an attorney in confidence. In general, the attorney-client privilege constitutes a resolution of these competing social values by barring disclosure of confidential communications.

This much conceded, the privilege is at war with the principal purpose for which our courts exist and thus should be applied sparingly. Perhaps it bears repeating that the primary mission of our judicial system is to resolve disputes and to search for the truth. No one currently disputes the value of full pretrial disclosure in that regard. It is axiomatic that justice is best served by affording litigants every reasonable avenue of inquiry before trial. Toward that end, our courts have emphatically eschewed gamesmanship and have liberally construed our discovery rules. Our Supreme Court has observed that “[t]ruth and justice are inseparable” and that a false judgment is likely to ensue when relevant evidence is suppressed. Impediments to pretrial disclosure debase the judicial process by promoting surprise. To justify so serious an insult to the search for the truth, some compensating gains should be apparent.

It is within this context that the attorney-client privilege must be construed. The privilege had its genesis in the early common law and is presently codified in *Evid. R. 26*. Although not originally embodied in either constitutional or statutory provisions, the privilege has been applied in all phases of civil and criminal proceedings, including pretrial discovery. The privilege is designed to promote “freedom of professional consultation.” The essential policy “is grounded in the subjective consideration of the client's freedom from apprehension in consulting his legal advisor, assured by removing the risk of disclosure by the attorney even at the hands of the law.” Further, it has been said that the privilege is “an extension of the client's personal privacy.” The privilege is thus predicated upon the belief inherent in our adversary system that justice is best served by fully informed advocates loyal to their client's interests...

It has been recognized that the tripartite relationship between and among insurer, insured and counsel is fraught with real and potential conflicts of interest. Insurance defense counsel routinely represent two clients: the insurer and the insured. Although our courts have generally disfavored representation of multiple clients by an attorney in a single case, only recently has this delicate relationship been the subject of litigation with respect to counsel retained by an insurer to represent its insured.
Problems are particularly acute with respect to counsel's representation of an insurer and the insured. The attorney's relationship with the insurer is contractual and often ongoing. In contrast, his representation of the insured is usually transitory. The “insured's interest in the litigation will vary according to the magnitude of the claim.” Note, *Insurer's Liability For Refusal to Settle*, 50 S.CAL L.REV. 751 (1977). Only if there is a possibility that the claim will exceed the policy limits will the insured have a direct pecuniary interest in disposition of the suit. Further, the interests of the insurer and the insured in settling a claim may well conflict. For these reasons, our courts have carefully scrutinized the rule of counsel in such litigation. In this context, our Supreme Court has characterized as “paramount” the loyalty owed to the insured by the attorney. A lawyer so retained is duty-bound to represent the insured with undivided fidelity. His ethical obligation is in no sense diminished by reason of his relationship with the insurer.

In sum, it is my conclusion that this case falls squarely within the exception set forth in *Evid. R. 26*. The attorney represented both the insurer and the insured. Counsel owed the insured the same unqualified loyalty as he would had he been personally retained. It is incumbent upon him to represent the interests of the insurer and the insured with due diligence. The rights of one could not be subordinated to those of the other. If the attorney had reason to believe that the discharge of his duties to the insured would collide with his ethical obligation to the carrier, he was duty-bound to withdraw from the case. Thus, full pretrial disclosure will not frustrate the policy underlying the privilege. To the extent that the interests of both clients were coterminous, neither had reason to fear disclosure of communications to the other. In short, the exception set forth in *Evid. R. 26* bars invocation of the privilege by one client against the other. [“Citations Omitted”]
# An Overview of New York Bail Reforms

<table>
<thead>
<tr>
<th>Permissible Under CPL § 510.10(1)</th>
<th>Release</th>
<th>Release With Conditions</th>
<th>Pre-Trial Services</th>
<th>Electronic Monitoring</th>
<th>Money Bail</th>
<th>Remand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violent Felonies (except burglary &amp; (dwelling) &amp; robbery 2 (AIC))</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Non-Violent Felonies That Are Qualifying Offenses</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>All Other Non-Violent Felonies</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Misdemeanor Sex Offenses (CPL § 130)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Misdemeanor DV Contempt</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Domestic Violence Misdemeanors (Other Than Contempt, See Above)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>All Other Misdemeanors</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

**No, unless while out the defendant:**
- Commits Class A, violent felony, or witness intimidation OR
- a) Persistently and willfully fails to appear; b) Violates an order of protection; c) Tampers or intimidates a witness; or d) Commits a felony

**Possibly, if:**
- a defendant has a violent felony conviction within the past 5 years incl. incarceration OR
- while out the defendant: a) persistently and willfully fails to appear; b) violates an order of protection; c) tampers or intimidates a witness

**No, unless while out the defendant:**
- a) persistently and willfully fails to appear; b) violates an order of protection; c) tampers or intimidates a witness
OBSTACLES TO SECURING A DIVERSE JURY IN NEW JERSEY COURTS

Why Do We Want Diversity in Trial Juries?

Obtaining a jury of one's peers has always been difficult. But before the law evolved on who can be excluded on a peremptory challenge, obtaining a diverse group was even more difficult. Since 1983, when the U.S. Supreme Court decided *Batson v. Kentucky*, courts throughout the nation have been re-examining who can be excluded from the jury pool on the basis of a peremptory challenge. As a result, gone are the juries that look like one particular sex, race and ethnicity. Still, there are obstacles to securing a diverse jury in New Jersey. The nation has come a long way from the days when trials were decided exclusively by white males. One thinks of the classic 1957 film “12 Angry Men,” and the difficulty Henry Fonda's character had in swaying 11 other jurors, who were all white men. While the movie is fiction, it is interesting to note that as relatively recently as 1961, the United States Supreme Court, in a unanimous decision, upheld a Florida law automatically exempting women from jury service.

According to the Court:

> Despite the enlightened emancipation of women from the restrictions and protections of bygone years, and their entry into many parts of community life formerly considered to be reserved to men, woman is still regarded as the center of home and family life. We cannot say that it is constitutionally impermissible for a State, acting in pursuit of the general welfare, to conclude that a woman should be relieved from the civic duty of jury service unless she herself determines that such service is consistent with her own special responsibilities.

It was not until the 1975 case of *Taylor v. Louisiana* that the Supreme Court reversed itself and held that excluding women from jury duty was unconstitutional.

Today, the courts have recognized that a diverse jury leads to better results. Justice Thurgood Marshall wrote of how diverse viewpoints enhanced the deliberative process in a 1972 Supreme Court opinion: “When any large or identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable.” A 2006 study by Tufts University psychology professor Samuel Sommers found that racially diverse juries deliberated longer, discussed more trial evidence and made fewer factually inaccurate statements when discussing the evidence than did all-white juries.
In high-profile cases, diverse juries enhance public acceptance of jury verdicts—a diverse jury makes them legitimate. At a practical level, minority clients will more likely be at peace with a verdict rendered by a diverse jury than one rendered by a non-diverse jury.

A diverse panel provides a better chance to get one's message across. Studies using mock juries conducted by Sommers showed that diverse juries deliberated longer, cited more case-relevant facts during deliberation, made fewer factual mistakes, and were more likely to correct inaccurate statements than the all-white juries were.

Obstacles to Selecting a Diverse Jury

Proper voir dire operates to select a jury that is free of potential prejudice. Selecting a diverse jury creates an environment that exposes and minimizes unfair bias. Initially, the big obstacle to securing a diverse jury is the lawyer. Lawyers tend to be wealthier than the average juror. That is why mock jury panels are important. They reveal the practitioner's own blind spots.

A general obstacle to picking a diverse jury is that at trial, one is not really selecting a jury at all—the practitioner is de-selecting the ones he or she does not want. While the rules of voir dire try to assure exposure of unfair bias, practitioners try to use voir dire to empanel jurors sympathetic to their client's case. The courts have recognized this conflict: “...the aim of counsel [during voir dire] is no longer exclusion of unfit or partial or biased jurors. It has become the selection of a jury as favorable to the party's point of view as indoctrination through the medium of questions on assumed facts and rules of law can accomplish.”

Rule 1:8-2(a) was designed to eliminate open jury questioning by counsel that sought to persuade, instruct, commit or pledge jurors to a point of view before hearing any evidence. As such, one is really looking to excuse a juror who is part of a growing block of fellow jurors from a similar background.

It is very important to start with as much diversity as one can on the general venire panel. Rule 1:8-5 allows the practitioner to secure a jury list 10 days before a trial date. Depending on the size of the pool, one can go through the list to identify the backgrounds.

Statutory Disqualifications

The statutory disqualifications are the first obstacle to a diverse jury pool. For instance, pursuant to Rule 1-8, N.J.S.A. 2B:23-1, a juror is disqualified if they:

a. Are not a citizen

b. Are under 18 years of age

c. Are unable to read, write, understand English

d. Were found guilty of a prior indictable conviction
e. Have a mental or physical disability that would prevent him or her from properly serving as a juror.

The citizenship disqualification affects a jury's ability to reflect the diversity of the local population in immigrant-heavy jurisdictions. The prior indictable conviction disqualification has been questioned and there have been calls to end this practice.

*63 Interaction with the Venire

The rules of court limit direct interaction between lawyers and the venire. The judge is the one actively running the voir dire. This limits one's ability to get to know the background and mindset of the potential jurors. In New York, voir dire for the lawyer is far more interactive--the judge tends to take a back seat and lets the lawyers drive the selection process. It should be noted that the New Jersey voir dire rules allow the lawyers, at the judge's discretion, to question a juror directly, similar to how voir dire is conducted in New York. In the right case, and under the appropriate circumstances, this method of voir dire may be appropriate:

2B:23-10. Examination of jurors

a. In the discretion of the court, parties to any trial may question any person summoned as a juror after the name is drawn and before the swearing, and without the interposition of any challenge, to determine whether or not to interpose a peremptory challenge or a challenge for cause. Such examination shall be permitted in order to disclose whether or not the juror is qualified, impartial and without interest in the result of the action. The questioning shall be conducted in open court under the trial judge's supervision.

The Peremptory Challenge--A Sword or Shield in Securing Diversity?

Rule 1:8-3 controls the examination of jurors and peremptory challenges. A peremptory challenge allows a lawyer to strike a proposed juror without needing to give a reason. In New Jersey civil cases each party is allowed six strikes. Where there are multiple parties having substantial identity of interest, represented by different lawyers, the adversely affected party can request additional peremptory challenges from the court. While the peremptory challenge can be used to enhance diversity, it has often been used by lawyers to reduce diversity and keep minorities off a jury panel. When a peremptory challenge is used to exclude certain classifications of citizens, it is improper. Batson v. Kentucky is the United States Supreme Court case prohibiting the exercise of peremptory challenges based on a prohibited classification. New Jersey has adopted Batson and extended it to both criminal and civil jury trial settings. A practitioner does not have to wait until a pattern of discrimination emerges--he or she can object the moment a suspect challenge is made. By the time the practitioner can establish a pattern, he or she may already be left without diverse jurors and without a remedy. It should also be noted that one's client and the struck juror do not have to be members of the same cognizable group--a white client can challenge the exclusion of black jurors. Be ready to combat the slew of race-neutral reasons to justify a Batson challenge: The juror is the same age as one's client, the juror was ‘chatty’ with other jurors, the juror was bored, the juror is unemployed, the juror is disinterested, the juror is inattentive, or the juror has no family responsibilities.
Attacks on age diversity are more difficult to challenge. Under current law, a peremptory challenge can be made based on age, and is not subject to *Batson* challenges. "Although the United States Supreme Court has never ruled on the permissibility of striking a juror based on age, in *Cleburne v. Cleburne Living Centers* the Court noted that age discrimination was afforded rational basis review because historically, people have not been discriminated against based on age.

Peremptory challenges based on sexual orientation or gender identity also are currently not subject to *Batson* in New Jersey, which is why the New Jersey Senate introduced a bill on Feb. 22, 2018, to prohibit juror disqualification on those bases.

It should be noted that while *Batson* is grounded on the principles of the equal protection clause of the U.S. Constitution, New Jersey's peremptory challenge jurisprudence is based on the New Jersey constitutional right to “trial by an impartial jury drawn from a cross section of the community.” *Batson*’s federal constitutional underpinnings “establishes the floor of minimum protection.” As such, principles of diversity are baked into New Jersey's peremptory challenge jurisprudence. This can be used to argue for additional peremptory challenges and/or original jurors in the *venire* when a jury panel is lacking in diversity. It should be stressed to the court, when making this request, that the “goal of the peremptory challenge is to secure an impartial jury.”

During *voir dire*, a judge has the authority to raise the issue of racial bias in the exercise of peremptory challenges *sua sponte* to maintain diversity. This is based on the court's duty to ensure a fair trial by an impartial jury that is a representative cross section of the community. Before doing this, the court must first identify a *prima facie* showing of discrimination.

### The Effect of Directive #21-06 in Securing Diversity

Directive #21-06 was issued in 2006, and is binding on all trial judges in New Jersey. It sets forth a list of required questions that must be asked during the *voir dire* process, while allowing litigants to include their own list of questions.

The process of jury selection does take longer under Directive #21-06. The courts have recognized that this is an acceptable cost of securing an unbiased jury: “We recognize that the Directive [#21-06] may cause jury selection to take longer, but that has been deemed an acceptable price to pay for a jury without bias, prejudice or unfairness with regard to the trial matter or anyone involved on the trial.”

### Future Considerations

At the conclusion of one's case, the rules allow a jury of eight rather than six to decide the case. While this reduction makes prevailing more mathematically challenging if one is a plaintiff, one does not want to run the risk of losing the diverse juror he or she fought so hard to seat.

Future considerations for the practitioner: Beware of lengthy *voir dire* and lengthy trials. Nothing shortens the list of available jurors more than the prospect of multiple weeks on jury duty. Don't be afraid to ask for additional challenges or jury panels where appropriate.

---

**Footnotes**

a1 *Norberto Garcia* is a certified civil trial attorney and is a partner at Javerbaum Wurgaft in Jersey City. He currently serves as the vice president of the New Jersey State Bar Foundation and co-chair of the New Jersey State Bar Association Diversity Committee.
3. Id.
10. Id. (study finds that diverse juries had longer deliberations, discussed more case facts, made fewer inaccurate statements, and were more likely to correct inaccurate statements).
17. New Jersey Court Rule 1:8-5 “Availability of Petit Jury List.”
21. New Jersey Court Rule 1:8-3 Examination of Jurors.
22. 22 Court Rules and Regulations, New York, 202.33 Conduct of the Voir Dire.
24. N.J. Court Rule 1:8-3.
25. N.J. Court Rule 1:8-3 (c).
26. Id.
30 Russell, 280 N.J. Super. at 454.
33 U.S. v. Roberts, 913 F2d 211 (5th Cir. 1990).
34 U.S. v. Lance, 853 F2d 1177 (5th Cir. 1988).
38 Batson, 476 U.S. at 89.
39 Gilmore, 103 N.J. at 522-23.
40 State v. DiFrisco, 137 N.J 434, 468 (1994).
44 Carchman, Directive #21-06.
46 N.J. Court Rule 1:8-2. Number of Jurors.

313-AUG NJLAW 61
WHY -- OR WHY NOT -- FEDERAL COURT? (BE CAREFUL WHAT YOU ASK FOR)

When I sat down to write this article, I had initially planned to address pleadings and first filings, with an overview of the basic steps in commencing a civil action in federal court, whether by filing a complaint or removal from state court. I quickly realized, however, that this has already been done, and that such an article would probably be of little value. So if you are looking for an overview of pleadings and first filings, I direct you to other excellent sources.¹

*10 More useful, I believe, is a discussion of the questions that should precede the how to of federal civil practice. Why (or why not) federal court? Why (or why not) state court? Based upon all the facts and circumstances you know about your case, does federal court or state court provide the most advantageous venue to obtain the relief your client seeks? What's the best fit for this case overall to achieve your client's objectives?

These are questions I suspect many lawyers do not ask. Needless to say, I will not describe any potentially incriminating instances, let alone name names. Most trial lawyers could probably think of their own examples. Suffice it to say that some lawyers seem to believe (at least from what they say) that federal court is always the better forum. With all due respect to our distinguished bench and bar, that simply is not always true.

Whether to go to federal court should always precede the question of how and what to do to get there.² One should not take a case to any court - federal or state -- without thinking through whether that venue is the best fit for your case. The answer to this inquiry depends on a consideration of many pertinent factors in the context of the particular case at bar.

The starting point, of course, is what your case is about. For example, a personal injury case will involve different considerations than a commercial case involving breach of contract, antitrust, unfair competition, or intellectual property. And among personal injury cases, or commercial cases, different kinds will, of course, have different considerations. For example, a catastrophic automobile accident is dramatically different from a pharmaceutical product liability case. The point is that you should consider the legal issues involved, the parties, the third-party witnesses, the likely discovery, and a host of other issues that will be important in your case, and think about how the venue could affect the outcome, given these variables.

We Could Get Judge X

In some cases, state court may be preferable, based upon the applicable case law (unfavorable federal vs. favorable state court decisions on the same key issue), the federal court judges who might hear the case in the vicinage (Camden, Trenton or Newark), or the state court judges who could hear the case in the particular county where it might be brought.

For example, as a young associate, I was involved in defending a series of product liability cases in Philadelphia. Although the Philadelphia County Court of Common Pleas was far from what would be considered a defendant's ideal venue, we made a
strategic decision not to remove any of those cases to federal court (notwithstanding that diversity jurisdiction existed) because we wanted to avoid having the cases assigned to a particular judge. Let's call him or her Judge X for purposes of this article. Every time I questioned whether we should remove, the partner I worked for would say: “We could get Judge X.” Every time, the comment would put an end to the removal discussion.

Think through your case, including the key factual and legal issues involved. Are there any federal court judges to whom your case may be assigned before whom -- for whatever reason -- your case is likely to fail? There may be, for example, a federal court judge who has written an opinion on your key issue that goes against you, even perhaps where favorable opinions also exist from other judges within this district. If that one opinion would sink your case, guess what? That judge may be, with all due respect, your Judge X. The risk of having your case assigned to Judge X and having his or her unfavorable opinion applied in your case may well outweigh any benefits of federal court, where an alternative state forum exists without a similar unfavorable opinion. Alternatively, you may have had past experience with a particular judge in a similar case that suggests he or she is a potential Judge X for that kind of case. There could even be a particular judge who, based upon your past experience, apparently does not like you or your client. There are a multitude of possibilities for your case to be doomed from the start by its being assigned, through pure dumb luck, to Judge X.  

Conversely, you may have a favorable opinion written by a state court judge in a county where you might file, with no similar federal case law. Or you may just be more comfortable with the state court judges in a particular county on your issue. In such instances, state court may well be a preferable venue.

Summary Judgment Considerations

In many cases, the potential for summary judgment is a primary consideration in the decision to bring a case to federal court, particularly as a defendant considering removal from state court. Rightly or wrongly, a widely held perception among practitioners is that state court judges are less likely to grant summary judgment than their federal court brethren, notwithstanding similarities in the language of Federal Rule of Civil Procedure 56 and New Jersey Rule 4:46-2(c).

In truth, this conventional wisdom is a generality that merits careful consideration in each instance. There is no question, that as a general matter, federal court judges in New Jersey and elsewhere have taken to heart the Supreme Court trilogy of summary judgment cases from 1986, and regularly apply them to grant summary judgment in appropriate cases. However, there certainly are many state court judges who do not apply the summary judgment procedure reluctantly. And federal court judges, being human, do not necessarily apply the summary judgment standards in precisely the same way in all cases. With all due respect, idiosyncrasies are evident to experienced practitioners.

As with so many other things in law, it all depends. Like the Judge X factor discussed above, whether or not a federal court forum will provide a more favorable venue for summary judgment in a specific case depends on the alternatives as well as the specifics of the case. Most experienced practitioners can think of state court judges before whom they would prefer to present summary judgment motions, as well as federal court judges before whom they would not prefer to present such motions. This is a very subjective judgment, and one influenced as much by individual experience before particular judges as anything else. Nevertheless, the issue is one that should be considered in determining whether to pursue a federal court forum.

Motion Practice Considerations

Related factors to summary judgment considerations are the differences between federal and state court motion practice and the effect those differences may have on the disposition of your case. A serious disincentive to seeking federal court in the eyes of some attorneys is the length of time from filing to disposition inherent in federal motion practice.
In state court, you file a motion, returnable in 16 days (28 days for summary judgment), and argue the motion on the return date. In virtually all cases, the court renders its ruling, followed by an order, at the conclusion of oral argument on the return date. You get your ruling, you move on with your case, all within a few weeks. It's pretty straightforward.

Not so in federal court. Rather than an oral argument date, the return date in federal court is virtually always used as a date from which motion filing deadlines are calculated. The return date rarely, if ever, serves as the oral argument date. Moreover, federal court judges do not always grant oral argument, a striking difference from state court, where (but for routine discovery motions), oral argument is virtually always granted if requested by one of the parties.

Most significantly, from a timing standpoint, a federal court litigant never really knows when its motion will be decided. Motions often remain undecided for months.

This can be particularly frustrating for a client that has filed a viable summary judgment motion in a timely manner in advance of trial. In many instances, the court requires the client to proceed with the preparation of the final pretrial order, and with its counsel's trial preparation, notwithstanding that the summary judgment motion could resolve the entire case without a trial and save lots of money. While counsel is free to ask, many judges will not stay the case pending a ruling on the summary judgment motion. We are invariably told “the case must be ready for trial.” Administrative pressure due to the age of the case is typically cited as the reason we must forge on with trial preparation. The result is that the client has little choice but to incur substantial trial preparation expenses, which will prove to have been unnecessary if its motion is granted.

As we all know, litigation is extremely expensive, and the approach taken by many judges in these instances is, quite frankly, insensitive to the cost issue. Many litigants perceive this as a triumph of administrative convenience over the interests of the parties in achieving a cost-effective, just result.

Delay in deciding a motion is also problematic where the motion seeks dismissal or relief of less than all claims in the case. While the motion is pending, the discovery period clock continues to tick. Counsel and the parties are often faced with a dilemma. Do they really want to omit discovery on the issues that are the subject of the motion? If the motion is denied, those issues remain in the case, and by then, the discovery period may be over or almost over. In many instances, parties see little alternative but to take the safer course and continue with discovery on the entire case. Delays in adjudication of motions frequently undermine the parties' efforts to conduct the most cost-efficient discovery.

Sometimes this situation can take an even worse turn from the litigant's perspective. Some judges have been known to hold a pending summary judgment motion (or critical *Daubert* or *in limine* motions) over the moving party's head in order to put pressure on the party to settle the case. The message, often presented implicitly rather than explicitly, is “counsel, you may have a valid motion, but your client had better settle the case because I'm not going to rule on it.” Trials have even been known to start with pending summary judgment motions.

Your client may have a perfectly legitimate summary judgment motion, may not desire to settle with its opponent, but may have no practical alternative but to bite the bullet and make a deal with the Devil in view of the expense and risk of a trial. It is these situations, among others, that cause corporate attorneys to tell litigators how much they hate litigation.

**Discovery Considerations**

In some cases, discovery considerations can be of paramount importance. There are a number of factors involving discovery that should be considered when determining whether to seek federal court jurisdiction.

One extremely convenient advantage of federal court is the nationwide subpoena power under *Federal Rule of Civil Procedure 45*. This is a tremendous benefit in cases where there are documents and/or witnesses located in other states. Under *Rule 45*, an
WHY -- OR WHY NOT -- FEDERAL COURT? (BE CAREFUL..., 226-FEB N.J. Law. 9

attorney as officer of the court may issue and sign subpoenas for document production and/or depositions not only in the court in which the attorney is authorized to practice (e.g., New Jersey), but also in any court in which the deposition or document production is to occur, provided the discovery pertains to an action pending in a court in which the attorney is authorized to practice. In other words, as a New Jersey attorney handling an action pending in federal court in New Jersey, one is permitted to prepare and sign subpoenas to obtain documents and/or depositions from third parties in any other states, without the need for any application or permission from the courts of other states. This is a tremendous convenience and time saver, as anyone who has had to obtain commissions for subpoenas in other states will attest.

Another advantage of federal court is the close involvement of our United States magistrate judges in ongoing pretrial case management. Our magistrate judges are actively involved in case management on an ongoing basis from the outset of the case. Their involvement facilitates individualized handling of complicated issues, particularly since cases are typically assigned to a single magistrate judge for all pretrial purposes, and the judge becomes familiar with the case and issues. Because the same magistrate handles the case from commencement to the eve of trial, the issues are generally handled consistently.

This can be a tremendous advantage, particularly in cases where contentious or complicated discovery issues are anticipated, including, for example, privileges, relevance, and extensive document or electronic discovery. Individualized case handling facilitates focused, individualized adjudication of discovery issues, much more so than is typically the case in state court. Further, discovery motion practice is substantially faster and more streamlined in federal court under Local Civil Rule 37.1, which requires discovery disputes to be submitted informally by letter rather than motion in the first instance. Discovery disputes submitted under Local Civil Rule 37.1 are generally resolved promptly and efficiently, in many instances without the need for formal motions.

Besides individualized case management as a useful concept, we are fortunate in New Jersey to have an extremely competent and hard working group of United States magistrate judges (not to mention district judges) who are not reluctant to tackle thorny discovery issues. It is not unusual, for example, for our magistrates to hold hearings and consider detailed briefing on complex and important discovery issues. Further, if your case initially does not require active case management, magistrate judges in our federal court are generally willing to adapt their involvement to the specific needs of the case, even if developments occur that changes the scope or extent of the issues. Depending upon the issues and specifics of your case, this may be a paramount consideration.

Finally, federal court has a number of limitations on discovery that may or may not be important in a particular case. One limitation of varying importance from case to case is the 10 depositions per side limit set forth in Federal Rule of Civil Procedure 30. You may have a case where substantially more than 10 depositions will be needed. Under Rule 30, a showing of cause is needed to exceed the 10-deposition limitation. What this means as a practical matter, however, is that a party needs to be able to articulate a good reason why more than 10 depositions are needed. One such reason, for example, is that the opposing party has identified or will identify more than 10 persons as having relevant knowledge or as potential trial witnesses. In practice, most magistrate judges afford the parties the discovery they reasonably need, and if this exceeds 10 depositions, there is usually no problem. Judges are not without limits, and your case may well be one where you have concerns about obtaining all of the deposition testimony you need. Federal court may not be the best venue for your case.

More importantly, however, are the limitations on the scope of discovery under Federal Rule of Civil Procedure 26(b)(1). Discovery practice under this rule was fundamentally changed by the 2000 amendments to Rule 26(b)(1), which narrowed the scope of discovery available without court involvement to “any matter, not privileged, that is relevant to the claim or defense of any party ....” (emphasis added). Rule 26(b)(1) goes on to say that for good cause, the court may order discovery of any matter relevant to the subject matter involved in the action.” (emphasis added). “The good-cause standard warranting broader discovery is meant to be flexible.”

Rule 26 now puts the primary emphasis on discovery of issues that are expressly set forth in the parties' pleadings. As explained by the advisory committee:
[The rule change signals to the court that it has the authority to confine discovery to the claims and defenses asserted in the pleadings, and signals to the parties that they have no entitlement to discovery to develop new claims or defenses that are not already identified in the pleadings.9

The two-tier structure of discoverable information under Rule 26(b)(1) may be used advantageously by either the plaintiff or the defendant to expand discovery or attempt to keep a close reign on discovery. By preparing detailed and specific pleadings, a party can put itself in a strong position to argue for expansive discovery of facts relating to the specific allegations in its pleadings, whether in the plaintiff's complaint or the defendant's answer. Rule 26(b)(1) specifically states that “parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party.” Based upon this language, the party opposing discovery of facts specifically alleged in the pleadings, even where they may be extraordinarily intrusive to its business, has a difficult, if not often impossible, argument to limit its opponent's discovery.

On the other hand, where a plaintiff has filed a boilerplate complaint with little factual detail, the defendant has a far stronger argument to limit discovery in that case in federal court than it would have in state court, simply based upon the text of the applicable rules. In state court, Rule 4:10-2(a) allows for discovery of “any matter ... which is relevant to the subject matter involved in the pending action ....” Thus, discovery in New Jersey state court is still based on subject matter relevancy, rather than claims or defenses relevancy as under Federal Rule of Civil Procedure 26(b)(1). Rule 26(b)(1) provides a benefit that is simply not available in state court.

**Daubert and its Progeny**

In many cases, Federal Court jurisdiction is sought so that *Daubert v. Merrell Dow Pharmaceuticals, Inc.* and its progeny apply to govern the admissibility of expert testimony. As discussed at length in Anne Patterson's article in this issue, *Daubert* and its progeny established that in admitting expert testimony, federal courts have an obligation to perform a gatekeeping role to ensure only reliable expert testimony is admitted into evidence, and this role applies to scientific and other expert testimony.

In cases where expert testimony is critical, such as pharmaceutical product liability cases, or toxic tort cases, defendants often seek to remove cases to federal court so *Daubert* governs the admissibility of expert testimony, and to restrict the availability of so-called junk science. Many attorneys view the application of *Daubert* in particular cases in and of itself as a sufficient basis for seeking a federal court venue.

**Time From Filing to Trial**

One factor that is in a state of flux is the time from filing of the complaint to trial. In light of the large case backlog that had existed in many counties around the state, it was generally true that the time from filing to trial was faster in federal court. In the wake of best practices, and recent efforts in many counties to reduce backlog, it is not clear that this general rule holds true in all cases. It may depend on the kind of case, the backlog in the counties where it might be filed, the federal court vicinage and judges where it would be assigned if filed in federal court, and possibly other factors. It is important to know the lay of the land in the potential courts where the case might be filed.

**Avoidance of Local Bias and the Available Juror Pool**

Historically, one of the reasons for federal court jurisdiction in civil cases was the avoidance of local bias. The concern, for example, was that a citizen of Massachusetts sued in a New Jersey state court would not receive a fair hearing or trial because of local prejudice against citizens of other states. This concern has become less important because over time, we have come to regard ourselves as Americans rather than as citizens of our individual states.
Nevertheless, certain cases in certain counties around the state may well present issues of local bias against a litigant. One situation could be where a major local employer is a party. Another situation could be where a foreigner or foreign company is a party. In today's post-9/11 world, it is not a stretch to imagine that a litigant of Middle Eastern ancestry could well be concerned about local prejudice in certain areas of the state. Again, conscientious counsel should know and consider the lay of the land.

Related to the issue of local bias is the pool of potential jurors. In state courts, jurors come from a single county. In federal court, on the other hand, jurors are drawn from the counties comprising the vicinage (Camden, Trenton, or Newark) to which the case is assigned. Depending upon the case, the parties, and the potential witnesses, you may prefer to be before jurors from a single county, or before jurors from a larger geographic area. A Somerset County jury pool is probably going to be different from the federal court jury pool in Newark. Again, it all depends, and counsel should take this into account.

Conclusion

There are other factors that may come into play in determining whether counsel should seek federal court jurisdiction in a particular case. Your instincts will undoubtedly reveal important considerations to you in particular cases, but you have to keep an open mind to the issues. Federal court may be the most advantageous forum, or it may present unnecessary obstacles or expense in your client's case. Hopefully, this article suggests factors that will assist you in providing the most effective advice to your clients.

Footnotes

a1 James J. Ferrelli, a member of the New Jersey Lawyer Magazine Editorial Board, is a partner in the firm of Duane Morris LLP, resident in its Cherry Hill office. Licensed to practice in New Jersey and Pennsylvania, he practices business, commercial, product liability, and intellectual property litigation.

1 The author highly recommends the following six essential resources for federal court litigation in New Jersey:
• New Jersey Federal Practice Rules with comments and annotations by Allyn Z. Lite (Gann) includes local civil and criminal rules, extensively annotated, along with Federal Rules of Civil, Criminal, and Appellate Procedure, Evidence and Third Circuit Rules.
• New Jersey Federal Civil Procedure (Robert E. Bartkus, Ed.) (New Jersey Law Journal Books) includes excellent chapters on various issues of civil litigation, with citations to New Jersey and Third Circuit case law.
• Gibbons on Federal Practice in New Jersey (N.J. ICLE) includes excellent how-to approach on filing, covering all of the nuts and bolts (including points like number of copies required) and extensive forms.
• Wright and Miller, Federal Practice and Procedure (West), and Moore's Federal Courts (Matthew Bender) both provide extensive scholarly discussion of all issues arising in federal court litigation, with extensive nationwide citations to cases in all circuits, and are very well written. If you can't find an answer in either Wright and Miller or Moore's, you're probably on the cutting edge, and your case may end up being the leading case in their next edition.

This article assumes the availability of federal court subject matter jurisdiction, which is beyond the scope of this article and is discussed at length in four of the sources cited in endnote 1 above.

Needless to say, this article is not intended to be and should not be interpreted as being critical of any particular judge, lawyer, or client, or anyone else for that matter. The fact of the matter is that as human beings, we all bring our own views and predispositions to our work. It is no secret that on a daily basis, lawyers discuss judges and the way they might rule in specific cases. Indeed, it is one of the topics most frequently raised by clients.

In light of the purpose of the Rule 56 summary judgment procedure (e.g., eliminate the need for trial, thereby effecting cost and time savings), it is difficult if not impossible to understand how a court could ever start a trial without first ruling on any timely filed summary judgment motions. One can imagine it would be even more difficult to explain to a client how something like that could happen. The prospect of appellate relief would seem to offer little consolation to the client in that situation.

Additionally, Fed. R. Civ. P. 33 limits the number of interrogatories each party may serve to 25, including all subparts, but this is not likely to be an issue of concern in determining whether to pursue a federal court forum in light of the relative unimportance of interrogatories as compared to other discovery tools, such as depositions, requests for documents, and third-party subpoenas.

Advisory Committee Notes to Rule 26, 2000 Amendment, found in Federal Civil Judicial Procedure and Rules at 167 (West 2003 Rev. Ed.).

---


7 In light of the purpose of the Rule 56 summary judgment procedure (e.g., eliminate the need for trial, thereby effecting cost and time savings), it is difficult if not impossible to understand how a court could ever start a trial without first ruling on any timely filed summary judgment motions. One can imagine it would be even more difficult to explain to a client how something like that could happen. The prospect of appellate relief would seem to offer little consolation to the client in that situation.

8 Additionally, Fed. R. Civ. P. 33 limits the number of interrogatories each party may serve to 25, including all subparts, but this is not likely to be an issue of concern in determining whether to pursue a federal court forum in light of the relative unimportance of interrogatories as compared to other discovery tools, such as depositions, requests for documents, and third-party subpoenas.

9 Advisory Committee Notes to Rule 26, 2000 Amendment, found in Federal Civil Judicial Procedure and Rules at 167 (West 2003 Rev. Ed.).
WHY? BECAUSE I SAID SO, THAT'S WHY! OPENING AND CLOSING ARGUMENTS

Having been raised watching the gentle sincerity of Gregory Peck in “To Kill a Mockingbird,” the aw shucks approach of Jimmy Stewart in “Anatomy of a Murder,” the fiery rhetoric of Spencer Tracy in “Inherit the Wind,” the mania of Al Pacino in “... And Justice for All,” and the blue-eyed charm of Paul Newman in “The Verdict,” some lawyers, notably newer lawyers, feel intimidated by the prospect of matching such performances. What most lawyers fail to realize is that, sadly, the average address to the jury is closer to the wooden mannequin approach of Keanu Reeves in “The Devil's Advocate”—hardly a standard that should produce nightmares.

Strategies differ; styles widely diverge; but every lawyer can create an opening or deliver a summation that can be not just effective, but winning. Sure, you suffer the normal anxieties about not being a Hollywood type. That kind of charisma is helpful, but not critical to being effective. It may not even be important. Content is king. You can win your case without winning an Academy Award.

Winning begins with preparation. It is a cliché, but there is no substitute for preparation. It is disturbing the number of attorneys who wing it. Merely reciting facts and their favorable inferences is not an opening or closing argument. Children on a playground can do that because it is easy. What is difficult, what requires preparation, is persuasion.

Persuasion requires a plan, organization, structure, boldness and long stretches of quiet time for creative thinking. If you are not willing to put in the time--if you do not feel a burning desire and need to put in the time--the trial game is not for you. It is great fun only if you put in the hard work it demands.

One theme common to good trial attorneys is a genuine belief in what they are advocating. No matter how much of a stretch the argument may be, the good trial attorneys will exercise a willing suspension of their own disbelief so they believe, genuinely believe, at least for the duration of the trial, what they are selling. If you do not believe it, you will not be able to sell it. The jury will read your tone of voice, inflection and body language, and just know, one way or the other. It is said that the key to persuading a jury is sincerity—if you can fake that, you have it made. Be sincere, and be a true believer.

With all the media attention and movie treatments summations get, you would think they are the most important part of a trial. The most dramatic, maybe. But the most important part of a trial is the opening. It is here that you develop a rapport with the jury, inducing the jurors ever so subtly to like and trust you, or feel for your client. This will make them want to find in your favor if they can. Jury studies show that the majority of jurors vote the same verdict as they would have after the openings. Once jurors have a rooting interest, they tend to view the participants and the evidence through their own biased prism, skewing the ultimate outcome.
Most of us try our case, and then, following the close of testimony, prepare our summation. But before trial you should daydream the strongest and most persuasive summation you could possibly give, replete with all the facts that mandate a verdict in your client's favor. Having done so, you then know exactly what facts you must elicit and scenarios you must create during the trial to enable you to ultimately deliver that killer closing. And you begin to deliver that killer closing in your *opening*. Your opening and summation are but a single continuing monologue, separated by a few days.

**Openings**

Strategies for opening differ depending on which side of the aisle you sit. Having been on both sides, this author can tell you that the prosecution, be it the state or the federal government, has three things going for it that make its job much easier: It has an indictment, it usually has the facts, and it frequently has police witnesses.

Prosecutors should:

- not underestimate the power of an indictment. The jury will be told that it is not evidence, that it is merely a pleading that brings this matter to trial. But what the jury members hear, if the prosecutor resolutely and with firm conviction reads the indictment to them, is that whatever act the defendant did, he or she did against the “peace of this state, the government, and the dignity of the same.” These are powerful, condemning words.

- pound home the facts. Good facts are a great marketing tool for the product the prosecutor is pushing: guilt beyond a reasonable doubt.

- drape themselves in the flag. The third arrow in the prosecutorial quiver is the reality that often governmental agents, dressed in blue or displaying badges, will appear from on high as the anointed of the people, to testify for the government. In their *voir dire*, the jurors have agreed that they will judge the credibility of a police officer the same as that of any other citizen, but this is simply not so. The 12 people in that box are not a jury of the defendant's peers, for they are not alleged murderers, drug dealers, embezzlers or pedophiles. Blue is a winning color--wear it; wave it.

What does the defense have to oppose this formidable governmental troika? Defense counsel occasionally has some scraps or shards of evidence, but always has both the law and their own boundless creativity. Of these three, the law may be your most powerful ally. The jury should be reminded of the following in opening:

- The defendant is presumed to be innocent. Do not be afraid to tell the jurors that it is human nature to believe that because someone has been accused of something they are in fact guilty. Drive home that the presumption of innocence is a mental discipline and not a visceral response. Tell the jurors to sit back, fold their arms, and skeptically listen to see if the prosecutor can dissuade them from their firmly held opinion that the accused is indeed innocent.
• The burden of proof is always on the government. The jury will be told this by the judge, so adopt it; reinforce it; embrace it. Remind the jurors that our criminal justice system is premised on the truism that in a trial, as in life, it is impossible to prove a negative, that is, to prove that something did not occur.

• You should not call your client “the defendant.” Explain to the jury that others may do so, but that the term is inappropriate, as a defendant has no obligation to defend against anything. The state has the burden of proving guilt beyond a reasonable doubt, and that burden continues not only through the trial, the summations and the charge by the court, but even into and through their jury deliberations; and, that burden never shifts.

• An indictment is not evidence of guilt. Drive home the point by discussing with the jury how an indictment is obtained; how the prosecutor alone appears before the grand jury; how only the state's witnesses are presented; how there is no defense attorney to cross-examine the witnesses, or to present witnesses who will tell the whole story. Jurors are sometimes horrified at the one-sided nature of a grand jury proceeding, and may even believe the accused was brought to trial unfairly.

• All trials follow a specific structure. Despite all the televised dramas regarding the practice of law, many jurors are still uncertain exactly how a trial unfolds. Tell the jurors that the state will present its evidence first, just as the state opened first to the jury. Remind the jurors that they have sworn an oath to keep an open mind until all the evidence is in. Ask the jurors how they would feel if one of their loved ones was on trial--their son, their husband, their brother, their father--and after only the state's opening, or the state's case, they saw those jurors walking out commenting that they had already made up their minds.

Trial

Openings and summations are interrupted in our system of justice by what we call the trial. It is a filler proceeding whose sole function is to allow you to gather fodder for your summation. In the trial, defend your case on the pure and simple theory you intended from the outset, shunning the distracting clutter of the shotgun approach, being ever mindful to catch whatever nuggets of good fortune may fall into your lap.

Summation

What many experienced criminal trial attorneys have in common is a pattern, a patter, a script of sorts, a pre-formatted framework and strategy to communicate those elements that are common to all their summations, allowing them to get across to the jury important ideas that are not case specific while they focus on the facts and defenses unique to the current case. Consider the following when preparing your summation:

• Most legal commentators will tell you to pound home the theory of your defense from the outset, using the rule of threes. Under the rule, tell them what you are going to say; tell them what you are saying; and then tell them what you just said. While true for the government, this author preaches a heretical view. It is rare to try a case that unfolds exactly as expected. Weak witnesses suddenly turn strong; strong witnesses crumble. Bedrock facts become ambiguous, and information unknown to either side oozes from each witness in cross-examination. In
short, often the case you prepared to try is far different than the case you actually try. As a result, in most cases the best approach is to remain flexible in your opening.

Do not address the facts in your opening, because facts lock you in and narrow your options. Leave your defense open to the possibility of taking advantage of unforeseen circumstances. Furthermore, an opening that pounds home the legal principles enunciated above becomes diluted, and the jury becomes distracted, when you also address the facts. In advertising lingo, you take the jurors off message.

Key points to keep in mind are:

• The prosecution has to prove each and every element of the offense. Let the prosecutor prove five out of six, and the accused wins. Do not be afraid to admit the elements that cannot be credibly disputed. Attack only the element(s) the state has trouble proving. A laser-like approach that narrows and focuses your efforts brings clarity to your defense, enhances your credibility and keeps the jury attentive.

• Do not use notes when speaking to a jury. There is no thicker or more imposing wall between an attorney and a jury than the psychological wall of just a few sheets of legal paper. Yes, you do run the risk of forgetting one or two thoughts you jotted down in constructing your jury address, but the credibility you will create with the jury by making direct eye contact, and not hiding behind the bullet-proof glass of your legal pad, will advance your cause much further than those one or two omitted points ever would have.

• Structure your opening and closing arguments so each argument logically flows into the next, and inexorably walks the jury up the ladder of persuasion step by step to the ultimate conclusion. Plan and create segues, eloquent connective phrases you will seemingly pluck from the air as needed. Being spontaneous requires much forethought and planning.

• Remind the jurors that the prosecutor was not present when the offense was committed, and he or she does not know what occurred that night. What he or she will tell the jury after you sit down is merely comment on the evidence the jurors have heard for themselves.

*37 • Drive home the advantage the prosecutor has by being allowed to speak last. The prosecutor has had the opportunity to listen to and comment upon everything you as a defense attorney say, but you will not be allowed the same opportunity. Request that during deliberations the jurors make you the 13th juror: What summation response would you have made if you were given the opportunity?

• It is one thing to be given a solution to a puzzle, and quite another to solve it yourself. When you solve it yourself, you are invested in the answer; you own it. Phrase many of your stronger points not as statements, but as rhetorical questions. Do not tell the jurors that no one bothered to look for fingerprints on the gun to prove the accused possessed it. Ask instead what evidence there was that could have proven, unequivocally, that the accused held
the gun in his or her own hand. Then pause (silence is such a powerful tool), while they themselves solve the puzzle. On more than one occasion this author has had jurors respond to that rhetorical question with a shout of “Fingerprints!” While those Perry Mason moments are rare, the point is rarely lost on a jury.

• Beyond a reasonable doubt really is an extraordinarily high standard, with good reason to a noble purpose. It is the shield we wield to protect against that which our system of justice most despises—an innocent man being wrongfully convicted. It expresses our belief—no, our dogma— that it is better 100 guilty men go free lest one innocent man be convicted. It is not to be taken lightly. Tell the jurors that if they go into that jury room and decide the accused is probably guilty, then that is an acquittal; if they think the accused is almost certainly guilty, that mandates a verdict of not guilty, for neither is proof beyond a reasonable doubt.

• Your client and the state of New Jersey request nothing more than fairness. If the jurors can go home that night, lay their heads on a pillow and feel comfortable with their verdict, then justice has been done. It is discomfiting to convict someone of a crime. The jurors will understand an improvident conviction will affect not only the accused, but them as well.

• If there is a particularly helpful phrase in the jury charge, memorize it and use it, verbatim. When the judge, who is seen as a paragon of justice and neutrality by the jurors, charges the jury using those exact words, he or she will be seen as having allied with you, as having given you his or her imprimatur. You will share the judge's mantle of credibility.

• Consider, lastly, not using the phrase “not guilty.” It comes back to the rhetorical question and puzzle-solving strategy. Tell the jurors that if the state has proven every element of the offense to their satisfaction beyond a reasonable doubt, then they may convict; but if they still have a doubt, a reasonable uncertainty about the guilt of the accused, then they know what the verdict must be. The answer will come from their own inner voice, louder and more credibly than if spoken by you.

Conclusion

Take comfort in the words of Justice (and former solicitor general) Robert Jackson:

I made three arguments of every case. First came the one that I planned—as I thought, logical, coherent, complete. Second was the one actually presented—interrupted, incoherent, disjointed, disappointing. The third was the utterly devastating argument that I thought of after going to bed that night. 2

Whether you toil in the fields of the state, or the pastures of the defense, if you conduct yourself in a professional and collegial manner, if you do not take unfair advantages or liberties with your ethical obligations, you will impress your client and earn the respect of the court and your colleagues. You will be confident that you have done the job the framers of our Constitution envisioned, that so many soldiers have fought and died to protect. You will be a worthy heir to our legal tradition. And no
matter how insecure you may be about your performance--and yes, as was Justice Jackson, we all are--you will take comfort in knowing you demonstrated greater emotional range than Keanu Reeves.

Footnotes

a1 Joseph P. Rem Jr. is the senior partner in Rem Zeller Law Group, P.C., in Hackensack. A former Passaic County assistant prosecutor, he is certified by the New Jersey Supreme Court as a criminal trial attorney, and serves as treasurer of the Bergen County Bar Association.

1 An admission of any fact in opening becomes an admission that obviates the need for the adversary to prove it by other means. State v. Wright, 155 N.J. Super. 549 (App. Div. 1978).

2 Advocacy Before the Supreme Court, 37 ABA J. 801, 803 (1951).
NEW JERSEY MUNICIPAL COURT PRACTICE

A. History:

- Creation of Legislature not Constitution (Superior Court i.e Law Division(trial courts) Appellate & Supreme Courts (2nd & final level appeals courts)

- Majority are part time with part time judges but who are, well trained & subject to the same oversight & discipline as the Constitutionally mandated court judges.

- Training is ongoing.

- Often said that Municipal Courts are the most important courts b/c they serve as the face of the Judiciary to the majority of citizens

B. Jurisdiction:

- Territorial: Property within a given municipality

- Subject Matter: As provided by NJSA 2B: 12-17

1. Violations of municipal ordinances

2. Violations of state and local motor vehicle and traffic laws

3. Disorderly & Petty Persons
   e.g. Simple Assault
       Harassment
       Shoplifting
       Theft
       Minor drug offenses (under 50 grams of marijuana)
       Trespass

4. Violations of fish & game laws
5. Proceedings to collect a penalty where jurisdiction is granted by statute.

6. Any other proceedings where jurisdiction is granted by statute.

7. In general municipal court has jurisdiction over offenses not crimes (offenses of the 4th degree or higher)

C. Rules of Court

- Rule 7 of the Rules of Court control day to of M.C. practice

- Discovery
  1. Written demand must be served on Prosecutor/Defendant (R.7:7-7)
  2. Note: any items missing from a party’s discovery response must be identified and explained.
  3. Defense discovery served w/ appearance and served simultaneously on court and prosecutor.

D. Disorderly & Petty Disorderly Persons Offenses: NJSA 2C:1-4(b)

- Any offense designated as such by Legislature
- Characterized by sentence limitation (generally)
  DP. up to 6mths jail, and/or $1,000.00 fine
  PDP. up to 30 days, and/or $500.00 fine.
- No right to indictment by Grand Jury of jury trial
- Conviction does not result in loss of right to vote or serve on jury
- Can lead to forfeiture of public office, deportation and/or loss of driving privileges.
- Law enforcement officers will have firearms removed if convicted of a DP/PDP issued in connection with a DV complaint.
- Presumption of non-incarceration for first offenders

E. Drug Offenses

- No plea bargaining allowed
- Guilty plea or finding can result in eviction from leased premises, if violation occurred on/in those premises.
- Guilty plea or conviction will result in loss of license for 2 years
F. Driving While Intoxicated/under the Influence (NJSA 39:4-50)

1. Public policy of NJ courts
   - Judiciary is fully engaged in the battle to rid the roadways of drunk drivers
   - "We firmly endorse the governmental commitment to the eradication of drunk driving as one of the judiciary's highest priorities." (Matter of Collester, 126 NJ 468, 473 (1992)).

2. Implementation of public policy
   - Ban on plea bargaining in DWI cases
   - No right to jury trials
   - DWI cases to be resolved within 60 days of complaint filing date.
   - Dismissals due to failure of police officer to appear discouraged and appropriate record made when done.
   - Diligent administrative oversight.

3. Relevant Issues
   - Operation (intent to drive rather than actual operation)
     "When an intoxicated person places himself behind the wheel of a motor vehicle and not only intends to operate it in a public place, but also attempts to do so (even though the attempt is unsuccessful) and the possibility of motion exists, the defendant has operated the vehicle and is liable under NJSA 39:4-50" State v. Stiene, 203 NJ N.J. Super 275 (1985).
   - Probable cause
   - Breath test procedure.
   - Proofs needed at trial
     can be field sobriety tests/observation
     or breath test readings ("per se" violation - see State v. Chun, 194 NJ 54 (2008))
   - Amt of time between operation and breath test (must be "within a reasonable period of time")
   - As of 12/1/19, loss of license no longer mandated on first offenses if BAC between .08% and .15%. Ignition interlock device substituted.
G. Parking Offense Adjudication Act (POAA) (NJSA 39:4-139.2 to NJSA 39:4-139-14)

- Permits almost summary disposition at trial
- Officer need not appear
- Ticket proves itself (admitted as business record w/out authentication)
- Only proof the State needs is the ticket and proof of defndt’s ownership of vehicle from Motor Vehicle Commission.

H. Domestic Violence

- Among most serious matters within municipal court jurisdiction
- Strong legislative and judiciary policy to provide maximum protection to victims from domestic abuse.
- Door to courthouse never closed to DV victims
- Temporary Restraining Orders at any time day or night
- DV victim defined as an 18 yr old or emancipated minor, subjected to violence by present or former spouse, present or former household member, person with whom victim has a child in common, person with whom victim has/had a dating relationship

- Underlying DV offenses
  - simple assault
  - false imprisonment
  - lewdness
  - criminal mischief
  - criminal trespass
  - harassment

- Municipal court hears & disposes of the underlying offense
- Superior Court Family Part decides if TRO will become permanent or otherwise
I. Supreme Court Guidelines

1. Plea Agreements (R. 7-6-2)- occurs when defndt agrees to plead guilty in exchange for the prosecutor’s recommendation to the judge that:
   a. Another offense or offenses be dismissed;
   b. The court accept a plea to a lesser included offense;
   c. The court impose an agreed upon sentence (within the court’s authority)

   Standard applied by court: Interest of justice

2. Plea Agreements prohibited:
   a. Driving While Intoxicated/Under the Influence (NJSA 39:4-50)
   b. Possession of marijuana (2C: 35:10a(4)
   c. Use or possession of drug paraphernalia (NJSA 2C:36-2)

J. Pre-Trial Procedures:

1. Initial Appearance (Arraignment) (R.7-3-2(a)
   • Defndt informed of rights (to be silent, to counsel, Public Defender), range of penalties & copy of Complaint.
   • Defndt enters plea
   • If plea is guilty & accepted by court, judge proceeds to sentence & pmt issues
   • If plea is “not guilty”, trial/pre-trial date is scheduled.

2. Discovery exchanged

3. Motion practice

K. Diversionary Programs/Pre-Trial Intervention

a. Conditional Discharge (NJSA 2C: 36A-1)
   • Only applicable to first time drug offenders
   • Does not require a guilty plea
   • If approved after a guilty plea or finding, dfndt will lose license from 6 mths to 2 years
   • Charges dismissed upon successful completion of probation term
b. Conditional Dismissal

- Only applicable to first offenders, (once and done)
- Not applicable if previously granted diversion (e.g. Conditional Discharge)
- Only applicable to disorderly and petty disorderly offenses, but not to all DP/PDPs.
- Requires guilty plea
- Defndt placed on probation (typically for a year) with conditions
- Charges dismissed after successful completion of probation.

L. Bail Reform/Criminal Justice Reform: (2A:162-15 – 26); Effective 1/1/17

- Legislative response to perceived inequity in pre-trial tmt of arrested individuals.
  
  i.e. persons of means can post bail; those w/out means languish in jail
- Prior to CJR all defendants (except capital offenders) had right to bail.
- After 1/1/17 all arrested defendants are detained while a risk assessment
  
  i.e. risk of flight;
  perceived threat to community;
  commissions of crimes
- Defndt released on conditions rather than bail.
- Bail required only when no other conditions will reasonably dfndt’s appearance, and is not a threat to community.
1. Rules Governing The Courts of the State of New Jersey; Rule 7
2. Municipal Court Practice Manual, By Robert Ramsey; (Vol 51 of the NJ Practice Series)
3. New Jersey Municipal Court Practice, By Michael S. Richmond & Keith J. Burns

Another client comes into your office with a summons for an ordinance violation for Failure to maintain property in a litter free condition in violation of Municipal Ordinance 620-48.


What do you do???

Find out the circumstances of the stop/arrest/alleged violation and take copious notes. It is always smart to make a copy of the summonses/complaint for your file.

What steps do you take after that?

1) REVIEW THE STATUTE/ORDINANCE! Specifically you want to know what constitutes a violation under the Statute and every element that the State has to prove in order to meet its burden. You also want to advise your client as to the penalties they are facing under the statute. Maximums and minimums, jail time, community service, license suspension, etc. Tip…. In New Jersey the lawyers diary is a great resource! It sets forth all motor vehicle fines, points and penalties. There is also some statutory language. Some municipalities have their ordinances online for your review.

2) Have your client remediate the issue if possible. If it is a license suspension you want to provide proof that the person is restored or has taken substantial steps to restore. Great examples are documentation from the Motor Vehicle Commission, documents from other jurisdictions indicating that they have taken care of matters which had them suspended from their court etc. The more relevant documentation you have to show and convince the Prosecutor that the issues are resolved, the quicker you are able to conclude the matter most favorable to your client.

3) After being retained by the client always send a Letter of Representation to the Court. This way your information will be placed in the database to receive notices for court dates etc. Also this is a great opportunity to enter a plea of not guilty on behalf of your client and request discovery.

What happens when you actually get to Court???

1) Get there on time and make sure your client does too!
2) Discussion of the order of court proceedings
3) Carve in time to wait because there are many things that a Court has to do prior to the start of the session
4) The Judge will come out and proceed with the opening statement
   A. Welcome
   B. Order of Court Calendar
   C. Proceedings are Recorded
   D. Charges and Penalties
E. Right to Postponement
F. Right to Representation by an Attorney
G. Right to a Public Defender
H. Right to Remain Silent
I. Defendant Presumed Innocent/Introduction of the Prosecutor
J. Guilty of Not Guilty Plea
K. Rights Given Up by a Plea of Guilty
L. Not Guilty Plea
M. Jurisdiction of the Court
N. Commercial Drivers License
O. Plea Bargaining
P. In Court Fines, Costs and Penalties Differing from Statewide Violations Bureau Schedule
Q. Additional Penalties Imposed by the Motor Vehicle Commission
R. Parking Tickets
S. Right and Time to Appeal
T. Immigration and Deportation Consequences
U. New Jersey Veterans Assistance Project/Prosecutor’s Veterans Diversionary Program
V. Fines
W. Conflict
X. Defendant’s Questions

6) Now the fun begins! You will get to speak to the Prosecutor on your client’s behalf. If you have done your research and followed steps 1-3, you are in a much better bargaining position. Hint…. Ask colleagues that have been in the court you are going to on a prior occasion and find out about their experiences. Legal professional organizations and associations are always a great resource in this regard. Note…. Procedurally some courts do things differently. Sometimes the process may call for you to speak to the prosecutor before or after your client’s arraignment.

7) After speaking to the Prosecutor, the Prosecutor on behalf of the State will make a recommendation. There will be an agreement, no agreement or additional motions. If there is an agreement, it must be reasonable within the confines of the law based upon what is placed on the record. The Judge will ultimately make that decision. If no agreement can be reached, then additional motions may be made (dismissal, adjournment etc.) and the matter can be set down for additional conferences or a trial and all of these issues will be discussed before the Judge.

8) The Judge must be knowledgeable of the law, hear arguments, decide motions and conduct court sessions in fair and impartial manner at all times. When accepting a plea and placing it on the record the Judge will do the following:
   - Advise the Defendant of the penalties which can be assessed if they plead guilty
   - Again advise them of the right to a trial, right to an attorney, and right to remain silent
   - Advise them that they are waiving the rights that were articulated.
   - Ensure that a factual basis is established on the record - Under normal circumstances the defense attorney will ask the client questions that they will answer under oath indicating which actions they took to violate the mandates set forth in the statute.

9) If the Judge accepts the plea, your client will be sentenced within the parameters of the statute/ordinance and all parties will have the opportunity to be heard prior to imposing sentence. The State and defense attorney will make recommendations to the Judge as to the appropriate sentence. Prior offenses, driving history, criminal case history, victim impact, remediation, and other factors will also be taken into consideration.
10) If there is no agreement then a bench trial will be conducted. The Judge will take testimony and make a decision. Both parties will have an opportunity to present an opening statement to the Judge indicating what facts they intend to establish throughout the testimony.

- Prosecutor will present the State’s case first and call witnesses. (It will generally be police officers or any victim/witnesses who were present at the time of the alleged offense)
- Defendant cross examines - asks questions regarding the testimony that has been provided. (Many attorneys will make a Motion to Dismiss at the end of the State’s case indicating that the State has not met its burden. The Judge will then make a decision based upon whether the State has proven every element of the alleged violation.)

- Once the Prosecutor has rested its case, the Defendant may call witnesses and present evidence. The Defendant is never compelled to testify due to the right to remain silent. The burden is on the State and the Defendant is not required to prove innocence. However if the Defendant does decide to testify they will be subject to cross examination by the State where the Defendant will be required to answer questions under oath.

- There will then be Closing Arguments and Summation. The Judge will assess the credibility of the witnesses (impressions they make and the truth or veracity of the testimony.) The Judge will also make findings of fact and apply same to the law to make a determination of whether the State has proven its case beyond a reasonable doubt in criminal and quasi criminal proceedings. The standard of proof will vary depending on the type of violation alleged. The Judge can rule right away or reserve decision and render at a later date. The opinion can be orally on the record of in writing.

Appeal of Decision

11) All parties have 20 (twenty) days to appeal a decision if dissatisfied. The appeal will be heard in Superior Court before a Superior Court Judge based upon the record that is made below. Generally the County Prosecutor will argue the appeal.
RULE 7:1. Scope

The rules in Part VII govern the practice and procedure in the municipal courts in all matters within their statutory jurisdiction, including disorderly and petty disorderly persons offenses; other non-indictable offenses not within the exclusive jurisdiction of the Superior Court; violations of motor vehicle and traffic, fish and game, and boating laws; proceedings to collect penalties where jurisdiction is granted by statute; violations of county and municipal ordinances; and all other proceedings in which jurisdiction is granted by statute. The rules in Part III govern the practice and procedure in indictable actions, and Rule 5:7A governs the practice and procedure in the issuance of temporary restraining orders pursuant to the Prevention of Domestic Violence Act of 1990.

7:2-1. Contents of Complaint, Complaint-Warrant (CDR-2) and Summons

(a) Complaint: General. The complaint shall be a written statement of the essential facts constituting the offense charged made on a form approved by the Administrative Director of the Courts. Except as otherwise provided by paragraphs (f) (Traffic Offenses), (g) (Special Form of Complaint and Summons), and (h) (Use of Special Form of Complaint and Summons in Penalty Enforcement Proceedings), the complaining witness shall attest to the facts contained in the complaint by signing a certification or signing an oath before a judge or other person so authorized by N.J.S.A. 2B:12-21.

If the complaining witness is a law enforcement officer, the complaint may be signed by an electronic entry secured by a Personal Identification Number (hereinafter referred to as an electronic signature) on the certification, which shall be equivalent to and have the same force and effect as an original signature.

(b) Acceptance of Complaint. The municipal court administrator or deputy court administrator shall accept for filing every complaint made by any person.

(c) Summons: General. The summons shall be on a Complaint-Summons form (CDR-1) or other form prescribed by the Administrative Director of the Courts and shall be signed by the officer issuing it. An electronic signature of any law enforcement officer or any other person authorized by law to issue a Complaint-Summons shall be equivalent to and have the same force and effect as an original signature. The summons shall be directed to the defendant named in the complaint, shall require defendant’s appearance at a stated time and place before the court in which the complaint is made, and shall inform defendant that an arrest a bench warrant may be issued for a failure to appear.

(d) Complaint-Warrant (CDR-2)

(1) Complaint-Warrant (CDR-2): General. The arrest warrant for an initial charge shall be made on a Complaint-Warrant (CDR-2) or other form prescribed by the Administrative Director of the Courts and shall be signed by a judicial officer after a determination of probable cause that an offense was committed and that the defendant committed it. A judicial officer, for purposes of the Part VII rules, is defined as a judge, authorized municipal court administrator or deputy court administrator. An electronic signature by the judicial officer shall be equivalent to and have the same force and effect as an original signature. The warrant shall contain the defendant's name or, if unknown, any name or description that identifies the defendant with reasonable certainty. It shall be directed to any officer authorized to execute it.
(2) Complaint-Warrant (CDR-2) -- Disorderly Persons Offenses. When a Complaint-Warrant (CDR-2) is issued and the most serious charge is a disorderly persons offense, the court shall order that the defendant be arrested and remanded to the county jail pending a determination of conditions of pretrial release. Complaints in which the most serious charge is an indictable offense are governed by R. 3:2-1.

(3) Complaint-Warrant (CDR-2) -- Petty Disorderly Persons Offense or Other Matters within the Jurisdiction of the Municipal Court. When a Complaint-Warrant (CDR-2) is issued and the most serious charge is a petty disorderly persons offense or other non-disorderly persons offense within the jurisdiction of the Municipal Court, the court shall order that the defendant be arrested and brought before the court issuing the warrant. The judicial officer issuing a warrant may specify therein the amount and conditions of bail or release on personal recognizance, consistent with R. 7:4, required for defendant's release.

(e) Issuance of a Complaint-Warrant (CDR-2) When Law Enforcement Applicant is Not Physically Before a Judicial Officer. A judicial officer may issue a Complaint-Warrant (CDR-2) upon sworn oral testimony of a law enforcement applicant who is not physically present. Such sworn oral testimony may be communicated by the applicant to the judicial officer by telephone, radio, or other means of electronic communication.

The judicial officer shall administer the oath to the applicant. After taking the oath, the applicant must identify himself or herself and read verbatim the Complaint-Warrant (CDR-2) and any supplemental affidavit that establishes probable cause for the issuance of a Complaint-Warrant (CDR-2). If the facts necessary to establish probable cause are contained entirely on the Complaint-Warrant (CDR-2) and/or supplemental affidavit, the judicial officer need not make a contemporaneous written or electronic recordation of the facts in support of probable cause. If the law enforcement applicant provides additional sworn oral testimony in support of probable cause, the judicial officer shall contemporaneously record such sworn oral testimony by means of a recording device if available; otherwise, adequate notes summarizing the contents of the law enforcement applicant's testimony shall be made by the judicial officer. This sworn testimony shall be deemed to be an affidavit or a supplemental affidavit for the purposes of issuance of a Complaint-Warrant (CDR-2).

A Complaint-Warrant (CDR-2) may issue if the judicial officer finds that probable cause exists and that there is also justification for the issuance of a Complaint-Warrant (CDR-2) pursuant to the factors identified in Rule 7:2-2(b). If a judicial officer does not find justification for a warrant under Rule 7:2-2(b), the judicial officer shall issue a summons.

If the judicial officer has determined that a warrant shall issue and has the ability to promptly access the Judiciary's computerized system used to generate complaints, the judicial officer shall electronically issue the Complaint-Warrant (CDR-2) in that computer system. If the judicial officer has determined that a warrant shall issue and
does not have the ability to promptly access the Judiciary’s computerized system used to generate complaints, the judicial officer shall direct the applicant to complete the required certification and activate the complaint pursuant to procedures prescribed by the Administrative Director of the Courts.

Upon approval of a Complaint-Warrant (CDR-2), the judicial officer shall memorialize the date, time, defendant's name, complaint number, the basis for the probable cause determination, and any other specific terms of the authorization. That memorialization shall be either by means of a recording device or by adequate notes.

A judicial officer authorized for that court shall verify, as soon as practicable, any warrant authorized under this subsection and activated by law enforcement. Remand to the county jail for defendants charged with a disorderly persons offense and a pretrial release decision are not contingent upon completion of this verification.

Procedures authorizing issuance of restraining orders pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") and N.J.S.A. 2C:14-12 ("Nicole’s Law") by electronic communications are governed by R. 7:4-1(d).

(f) Traffic Offenses

(1) Form of Complaint and Process. The Administrative Director of the Courts shall prescribe the form of Uniform Traffic Ticket to serve as the complaint, summons or other process to be used for all parking and other traffic offenses. On a complaint and summons for a parking or other non-moving traffic offense, the defendant need not be named. It shall be sufficient to set forth the license plate number of the vehicle, and its owner or operator shall be charged with the violation.

(2) Issuance. The complaint may be made and signed by any person, but the summons shall be signed and issued only by a law enforcement officer or other person authorized by law to issue a Complaint-Summons, the municipal court judge, municipal court administrator or deputy court administrator of the court having territorial jurisdiction. An electronic signature of any law enforcement officer or other person authorized by law to issue a Complaint-Summons shall be equivalent to and have the same force and effect as an original signature.

(3) Records and Reports. Each court shall be responsible for all Uniform Traffic Tickets printed and distributed to law enforcement officers or others in its territorial jurisdiction, for the proper disposition of Uniform Traffic Tickets, and for the preparation of such records and reports as the Administrative Director of the Courts prescribes. The provisions of this subparagraph shall apply to the Chief Administrator of the Motor Vehicle Commission, the Superintendent of State Police in the Department of Law and Public Safety, and to the responsible official of any other agency authorized by the Administrative Director of the Courts to print and distribute the Uniform Traffic Ticket to its law enforcement personnel.
(g) Special Form of Complaint and Summons. A special form of complaint and summons for any action, as prescribed by the Administrative Director of the Courts, shall be used in the manner prescribed in place of any other form of complaint and process.

(h) Use of Special Form of Complaint and Summons in Penalty Enforcement Proceedings. The Special Form of Complaint and Summons, as prescribed by the Administrative Director of the Courts, shall be used for all penalty enforcement proceedings in the municipal court, including those that may involve the confiscation and/or forfeiture of chattels. If the Special Form of Complaint and Summons is made by a governmental body or officer, it may be certified or verified on information and belief by any person duly authorized to act on its or the State's behalf.

Note: Source – Paragraph (a): R. (1969) 7:2, 7:3-1, 3:2-1; paragraph (b): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-2; paragraph (c): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-3; paragraph (d): R. (1969) 7:6-1; paragraph (e): R. (1969) 4:70-3(a); paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) caption added, former paragraph (a) amended and redesignated as paragraph (a)(1), former paragraph (b) amended and redesignated as paragraph (a)(2), former paragraph (c) redesignated as paragraph (a)(3), former paragraph (d) redesignated as paragraph (b), former paragraph (e) caption and text amended and redesignated as paragraph (c), and former paragraph (f) redesignated as paragraph (d) July 12, 2002 to be effective September 3, 2002; caption for paragraph (a) deleted, former paragraphs (a)(1) and (a)(2) amended and redesignated as paragraphs (a) and (b), former paragraph (a)(3) redesignated as paragraph (c), new paragraph (d) adopted, former paragraph (b) amended and redesignated as paragraph (e), former paragraph (c) deleted, former paragraph (d) amended and redesignated as paragraph (f), and new paragraph (g) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) amended, new paragraph (b) adopted, former paragraphs (b), (c), (d), and (e) amended and redesignated as paragraphs (c), (d), (e), and (f), former paragraphs (f) and (g) redesignated as paragraphs (g) and (h) July 16, 2009 to be effective September 1, 2009; paragraph (e) caption and text amended July 9, 2013 to be effective September 1, 2013; caption amended, and paragraphs (d) and (e) caption and text amended August 30, 2016 to be effective January 1, 2017; paragraph (d) reallocated as paragraphs (d)(1) and (d)(2), new paragraph (d)(3) added, new paragraph (d) caption added, and paragraph (e) amended November 14, 2016 to be effective January 1, 2017.

7:2-2. Issuance of Complaint-Warrant (CDR-2) or Summons

(a) Authorization for Process

(1) Citizen Complaint. A Complaint-Warrant (CDR-2) or a summons charging any offense made by a private citizen may be issued only by a judge or, if authorized by the judge, by a municipal court administrator or deputy court administrator of a court with jurisdiction in the municipality where the offense is alleged to have been committed within the statutory time limitation. The complaint-warrant (CDR-2) or summons may be issued only if it appears to the judicial officer from the complaint, affidavit, certification or testimony that there is probable cause to believe that an offense was committed, the defendant committed it, and a Complaint-Warrant (CDR-2) or summons can be issued. The judicial officer's finding of probable cause shall be noted on the face of the summons or warrant and shall be confirmed by the judicial officer's signature issuing the Complaint-Warrant (CDR-2) or summons. If, however, the municipal court administrator or deputy court administrator finds that no probable cause
exists to issue a Complaint-Warrant (CDR-2) or summons, or that the applicable statutory time limitation to issue the Complaint-Warrant (CDR-2) or summons has expired, that finding shall be reviewed by the judge. A judge finding no probable cause to believe that an offense occurred or that the statutory time limitation to issue a Complaint-Warrant (CDR-2) or summons has expired shall dismiss the complaint.

(2) Complaint by Law Enforcement Officer or Other Statutorily Authorized Person. A summons on a complaint made by a law enforcement officer charging any offense may be issued by a law enforcement officer or by any person authorized to do so by statute without a finding by a judicial officer of probable cause for issuance. A law enforcement officer may personally serve the summons on the defendant without making a custodial arrest.

(3) Complaint by Code Enforcement Officer. A summons on a complaint made by a Code Enforcement Officer charging any offense within the scope of the Code Enforcement Officer's authority and territorial jurisdiction may be issued without a finding by a judicial officer of probable cause for issuance. A Code Enforcement Officer may personally serve the summons on the defendant. Otherwise, service shall be in accordance with these rules. For purposes of this rule, a "Code Enforcement Officer" is a public employee who is responsible for enforcing the provisions of any state, county or municipal law, ordinance or regulation which the public employee is empowered to enforce.

(b) Issuance of a Complaint-Warrant (CDR-2) or Summons

(1) Issuance of a summons. A summons may be issued on a complaint only if:

(i) a judge, authorized municipal court administrator or authorized deputy municipal court administrator (judicial officer) finds from the complaint or an accompanying affidavit or deposition, that there is probable cause to believe that an offense was committed and that the defendant committed it and notes that finding on the summons; or

(ii) the law enforcement officer or code enforcement officer who made the complaint, issues the summons.

(2) Issuance of a Warrant. A Complaint-Warrant (CDR-2) may be issued only if:

(i) a judicial officer finds from the complaint or an accompanying affidavit or deposition, that there is probable cause to believe that an offense was committed and that the defendant committed it and notes that finding on the Complaint-Warrant (CDR-2); and

(ii) a judicial officer finds that subsection (e), (f), or (g) of this rule allows a Complaint-Warrant (CDR-2) rather than a summons to be issued.

(c) Indictable Offenses. Complaints involving indictable offenses are governed by the Part III Rules, which address mandatory and presumed warrants for certain indictable offenses in Rule 3:3-1(e), (f).
(d) Offenses Where Issuance of a Summons is Presumed. A summons rather than a Complaint-Warrant (CDR-2) shall be issued unless issuance of a Complaint-Warrant (CDR-2) is authorized pursuant to subsection (e) of this rule.

(e) Grounds for Overcoming the Presumption of Issuance of Complaint-Summons. Regarding a defendant charged on matters in which a summons is presumed, when a law enforcement officer requests, in accordance with guidelines issued by the Attorney General pursuant to N.J.S.A. 2A:162-16, the issuance of a Complaint-Warrant (CDR-2) rather than issues a complaint-summons, the judicial officer may issue a Complaint-Warrant (CDR-2) when the judicial officer finds that there is probable cause to believe that the defendant committed the offense, and the judicial officer has reason to believe, based on one or more of the following factors, that a Complaint-Warrant (CDR-2) is needed to reasonably assure a defendant’s appearance in court when required, to protect the safety of any other person or the community, or to assure that the defendant will not obstruct or attempt to obstruct the criminal justice process:

1. the defendant has been served with a summons for any prior indictable offense and has failed to appear;

2. there is reason to believe that the defendant is dangerous to self or will pose a danger to the safety of any other person or the community if released on a summons;

3. there is one or more outstanding warrants for the defendant;

4. the defendant’s identity or address is not known and a warrant is necessary to subject the defendant to the jurisdiction of the court;

5. there is reason to believe that the defendant will obstruct or attempt to obstruct the criminal justice process if released on a summons;

6. there is reason to believe that the defendant will not appear in response to a summons;

7. there is reason to believe that the monitoring of pretrial release conditions by the pretrial services program established pursuant to N.J.S.A. 2A:162-25 is necessary to protect any victim, witness, other specified person, or the community.

The judicial officer shall consider the results of any available preliminary public safety assessment using a risk assessment instrument approved by the Administrative Director of the Courts pursuant to N.J.S.A. 2A:162-25, and shall also consider, when such information is available, whether within the preceding ten years the defendant as a juvenile was adjudicated delinquent for a crime involving a firearm, or a crime that if committed by an adult would be subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), or an attempt to commit any of the foregoing offenses. The judicial officer shall also consider any additional relevant information provided by the law enforcement officer or prosecutor applying for a Complaint-Warrant (CDR-2).
(f) **Charges Against Corporations, Partnerships, Unincorporated Associations.** A summons rather than a Complaint-Warrant (CDR-2) shall issue if the defendant is a corporation, partnership, or unincorporated association.

(g) **Failure to Appear After Summons.** If a defendant who has been served with a summons fails to appear on the return date, a bench warrant may issue pursuant to law and Rule 7:8-9 (Procedures on Failure to Appear). If a corporation, partnership or unincorporated association has been served with a summons and has failed to appear on the return date, the court shall proceed as if the entity had appeared and entered a plea of not guilty.

(h) **Additional Complaint-Warrants (CDR-2) or Summonses.** More than one Complaint-Warrant (CDR-2) or summons may issue on the same complaint.

(i) **Identification Procedures.** If a summons has been issued or a Complaint-Warrant (CDR-2) executed on a complaint charging either the offense of shoplifting or prostitution or on a complaint charging any non-indictable offense where the identity of the person charged is in question, the defendant shall submit to the identification procedures prescribed by N.J.S.A. 53:1-15. Upon the defendant's refusal to submit to any required identification procedures, the court may issue a Complaint-Warrant (CDR-2).

**Note:** Source - R. (1969) 7:2, 7:3-1, 3:3-1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b) and (c) amended July 10, 1998 to be effective September 1, 1998; paragraph (a)(1) amended July 5, 2000 to be effective September 5, 2000; paragraph (a)(1) amended, new paragraph (b)(5) added, and former paragraph (b)(5) redesignated as paragraph (b)(6) July 12, 2002 to be effective September 3, 2002; paragraph (a)(1) amended, and paragraph (a)(2) caption and text amended July 28, 2004 to be effective September 1, 2004; paragraph (a)(1) amended and new paragraph (a)(3) adopted July 16, 2009 to be effective September 1, 2009; caption amended, paragraph (a)(1) amended, former paragraph (b) deleted, new paragraphs (b), (c), (d), (e), (f) adopted, former paragraph (c) amended and redesignated as paragraph (g), former paragraph (d) caption and text amended and redesignated as paragraph (h), and former paragraph (e) amended and redesignated as paragraph (i) August 30, 2016 to be effective January 1, 2017.

7:2-3. Warrants; Execution and Service: Return

(a) **By Whom Executed; Territorial Limits.** A warrant shall be executed by any officer authorized by law. The warrant may be executed at any place within this State. This applies to all warrants issued by the municipal court, including Complaint-Warrants (CDR-2) and bench warrants that may be issued after the initial filing of the complaint. A bench warrant is any warrant, other than a Complaint-Warrant (CDR-2), that is issued by the court that orders a law enforcement officer to take the defendant into custody.

(b) **How Executed.** The warrant shall be executed by the arrest of the defendant. The law enforcement officer need not possess the warrant at the time of the arrest, but upon request, the officer shall show the warrant or a copy of an Automated Traffic System/Automated Complaint System (ATS/ACS) electronic record evidencing its issuance to the defendant as soon as possible. If the law enforcement officer does not have the actual warrant to show or does not have access to an ATS/ACS printer to
produce a copy of the electronic record at the time of the arrest, the officer shall inform
the defendant of the offense charged and that a warrant has been issued. Defendants
arrested on a Complaint-Warrant (CDR-2) charging an indictable or disorderly persons
offense shall be remanded to the county jail pending a determination regarding
conditions of pretrial release. Defendants arrested on a Complaint-Warrant (CDR-2)
charging any other matter shall be brought before the court issuing the warrant,
pursuant to Rule 7:2-1(d)(3).

(c) Return. The law enforcement officer executing a warrant shall make prompt
return of the warrant to the court that issued the warrant. The arresting officer shall
promptly notify the court issuing the warrant by electronic communication through the
appropriate Judiciary computer system of the date and time of the arrest. If the
defendant is incarcerated, the law enforcement officer shall promptly notify the court of
the place of the defendant's incarceration.

Note: Source -- Paragraph (a): R. (1969) 7:2; 7:3-1, 3:3-3(a), (b), (c), (e); Paragraphs (b)(1), (2), (3): R.
(1969) 7:3-1: Paragraph (b)(4): R. (1969) 7:2, 7:3-1, 3:3-3(e). Adopted October 6, 1997 to be effective
February 1, 1998; caption amended, caption of former paragraph (a) deleted, caption and text of former
paragraph (b) deleted and relocated to new Rule 7:2-4, former paragraphs (a)(1), (a)(2), and (a)(3)
redesignated as paragraphs (a), (b), and (c) July 28, 2004 to be effective September 1, 2004; caption
amended, paragraphs (a), (b), (c) amended August 30, 2016 to be effective January 1, 2017; paragraph
(b) amended November 14, 2016 to be effective January 1, 2017.

7:2-4. Summons: Execution and Service; Return

(a) Summons; Personal Service Under R. 4:4-4 or By Ordinary Mail.

(1) The Complaint-Summons shall be served personally in accordance
with R. 4:4-4(a), by ordinary mail or by simultaneous mailing in accordance with
paragraph (b) of this rule. Service of the Complaint-Summons by ordinary mail may be
attempted by the court, by the law enforcement agency that prepared the complaint or
by an agency or individual authorized by law to serve process.

(2) Service by ordinary mail shall have the same effect as personal service
if the defendant contacts the court orally or in writing in response to or in
acknowledgment of the service of the Complaint-Summons. Service by ordinary mail
shall not be attempted until a court date for the first appearance has been set by the
municipal court administrator, deputy court administrator, or other authorized court
employee.

(3) If the court is provided with a different, updated address for the
defendant, along with a postal verification or other proof satisfactory to the court that the
defendant receives mail at that address, service of the Complaint-Summons may be re-
attempted.
(b) Simultaneous Service by Mail.

1. If service is attempted by ordinary mail and the defendant does not appear in court on the first appearance date or does not contact the court orally or in writing by that date, the court subsequently shall send the Complaint-Summons simultaneously by ordinary mail and certified mail with return receipt requested to the defendant's last known mailing address. Service by simultaneous mailing shall not be attempted until a new court date for the first appearance has been set by the municipal court administrator, deputy court administrator, or other authorized court employee.

2. When the Complaint-Summons is addressed and mailed to the defendant at a place of business or employment with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the defendant to whom the Complaint-Summons was mailed.

3. Consistent with due process of law, service by simultaneous mailing, as provided in Section (b)(1) of this rule, shall constitute effective service unless the mail is returned to the court by the postal service marked "Moved, Left No Address", "Attempted - Not Known", "No Such Number", "No Such Street", "Insufficient Address", "Not Deliverable as Addressed--Unable to Forward" or the court has other reason to believe that service was not effected. However, if the certified mail is returned to the court marked "Refused" or "Unclaimed," service is effective providing that the ordinary mail has not been returned.

4. Process served by ordinary or certified mail with return receipt requested may be addressed to a post office box.

(c) Notice to Prosecuting Attorney and Complaining Witness; Dismissal of Complaint.

1. If the court has not obtained effective service over the defendant after attempting service by simultaneous mailing under section (b)(1) of this rule, the court shall provide written notice of that fact to the prosecuting attorney and the complaining witness.

2. The case shall be eligible for dismissal unless within 45 days of the receipt of the written notice, the prosecuting attorney or the complaining witness provides the court with a different, updated address for the defendant, along with a postal verification or other proof satisfactory to the court that the defendant receives mail at that address.

3. Notwithstanding the provisions of this rule, nothing shall preclude the prosecuting attorney or other authorized person from attempting service in any lawful manner.
(4) If the prosecuting attorney and complaining witness do not respond to the court’s written notice within 45 days or if the defendant is not otherwise served, the court may dismiss the case pursuant to R. 7:8-5.

(d) Parking Offenses. A copy of the Uniform Traffic Ticket prepared and issued out of the presence of the defendant charging a parking offense may be served by affixing it to the vehicle involved in the violation.

(e) Corporations, Partnerships and Unincorporated Associations. A copy of the Uniform Traffic Ticket charging a corporation, partnership or unincorporated association with a violation of a statute or ordinance relating to motor vehicles may be served on the operator of the vehicle.

(f) Return. The law enforcement officer serving a summons shall make return of the summons on or before the return date to the court before whom the summons is returnable.


7:2-5. Defective Warrant or Summons; Amendment

No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any technical insufficiency or irregularity in the warrant or summons, but the warrant or summons may be amended to remedy any such technical defect.


7:2-6. [Deleted]

Note: Adopted July 28, 2004 to be effective September 1, 2004; rule deleted August 30, 2016 to be effective January 1, 2017.
RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 7:3. PROCEEDINGS BEFORE THE COMMITTING JUDGE;
PRETRIAL RELEASE

7:3-1. Procedure After Arrest

(a) First Appearance; Time; Defendants Not in Custody. Following the filing
of a complaint and service of process upon the defendant, the defendant shall be
brought, without unnecessary delay, before the court for a first appearance.

(b) First Appearance; Time; Defendants Committed to Jail. All defendants
who are in custody shall have the first appearance conducted within 48 hours of their
commitment to jail, except as provided in R. 3:4-2(a)(1). For defendants incarcerated
on an initial charge, on a Complaint-Warrant (CDR-2) for an indictable or disorderly
persons offense, the first appearance shall be conducted at a centralized location and
by a judge designated by the Chief Justice, as provided in Rule 3:26. For all other
incarcerated defendants within the jurisdiction of the municipal court who require a
first appearance, the first appearance shall be conducted by a judge authorized to set
bail or other conditions of release; this includes those charged on an initial Complaint-
Warrant (CDR-2) for a petty disorderly persons offense.

(c) Custodial Arrest Without Warrant.

(1) Preparation of a Complaint and Summons or Warrant. A law
enforcement officer making a custodial arrest without a Complaint-Warrant (CDR-2)
shall take the defendant to the police station where a complaint shall be immediately
prepared. The complaint shall be prepared on a complaint-summons form (CDR-1 or
Special Form of Complaint and Summons), unless the law enforcement officer
determines that one or more of the factors in R. 7:2-2(b) applies. Upon such
determination, the law enforcement officer may prepare a Complaint-Warrant (CDR-2)
rather than a complaint summons.

(2) Probable Cause; Issuance of Process. If a Complaint-Warrant (CDR-
2) is prepared, the law enforcement officer shall, without unnecessary delay, but in no
event later than 12 hours after arrest, present the matter to a judge, or in the absence of
a judge, to a municipal court administrator or deputy court administrator who has been
granted authority to determine whether a Complaint-Warrant (CDR-2) or summons will
issue. The judicial officer shall determine whether there is probable cause to believe
that an offense was committed and that the defendant committed an offense. If probable
cause is found, a summons or Complaint-Warrant (CDR-2) may issue. If the judicial
officer determines that the defendant will appear in response to a summons, a
summons shall be issued consistent with the standard prescribed by R. 7:2-2. If the
judicial officer determines that a warrant should issue, consistent with the standards
prescribed by R. 7:2-2 after the Complaint-Warrant (CDR-2) is issued, the defendant
charged with a disorderly persons offense shall be remanded to the county jail pending
a determination of conditions of pretrial release. If the defendant is charged on a Complaint-Warrant (CDR-2) with a petty disorderly persons offense or any other non-disorderly persons offense within the jurisdiction of the municipal court, bail shall be set without unnecessary delay, but in no event later than 12 hours after arrest. The finding of probable cause shall be noted on the face of the summons or Complaint-Warrant (CDR-2). If no probable cause is found, no process shall issue and the complaint shall be dismissed by the judge.

(3) Summons. If a complaint-summons form (CDR-1 or Special Form of Complaint and Summons) has been prepared, or if a judicial officer has determined that a summons shall issue, the summons shall be served and the defendant shall be released after completion of post-arrest identification procedures required by law and pursuant to R. 7:2-2 (i).

(d) Non-Custodial Arrest. A law enforcement officer charging any offense may personally serve a complaint-summons (Special Form of Complaint and Summons) at the scene of the arrest without taking the defendant into custody.

(e) Arrest Following Bench Warrant. If a defendant is arrested on a bench warrant on an initial summons and monetary bail was not set at warrant issuance, a bail determination or release on personal recognizance must occur without unnecessary delay and no later than 12 hours after arrest. If the defendant is unable to post bail, the court shall review that bail promptly. The defendant may file an application with the court seeking a bail reduction; such bail reduction motion shall be heard in an expedited manner.

Note: Source -- R. (1969) 7:2, 7:3-1, 3:4-1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b)(1) and (b)(2) amended July 12, 2002 to be effective September 3, 2002; paragraph (b) caption amended, paragraphs (b)(1) and (b)(2) amended, and new paragraph (c) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) caption and text amended, new paragraph (b) adopted, former paragraph (b) amended and redesignated as paragraph (c), and text amended, former paragraph (c) redesignated as paragraph (d), and new paragraph (e) adopted August 30, 2016 to be effective January 1, 2017; paragraphs (b), (c)(2) and (c)(3) amended November 14, 2016 to be effective January 1, 2017; paragraph (b) amended July 29, 2019 to be effective September 1, 2019.

7:3-2. Hearing on First Appearance; Right to Counsel

(a) Hearing on First Appearance. At the defendant's first appearance, the judge shall inform the defendant of the charges and shall furnish the defendant with a copy of the complaint or copy of the electronic ATS/ACS record of the complaint, if not previously provided to the defendant. The judge shall also inform the defendant of the range of penal consequences for each offense charged, the right to remain silent and that any statement made may be used against the defendant. The judge shall inform the defendant of the right to retain counsel or, if indigent, to have counsel assigned pursuant to paragraph (b) of this rule. The defendant shall be specifically asked whether legal representation is desired and defendant's response shall be recorded on the complaint. If the defendant is represented at the first appearance or then affirmatively
states the intention to proceed without counsel, the court may, in its discretion, immediately arraign the defendant pursuant to R. 7:6-1.

(b) **Assignment of Counsel.** If the defendant asserts indigency but does not affirmatively state an intention to proceed without counsel, the court shall order defendant to complete an appropriate application and other forms prescribed by the Administrative Director of the Courts. Pursuant to law, the judge shall either order defendant to pay any application fee or shall waive its payment. If the court is satisfied that the defendant is indigent and that the defendant faces a consequence of magnitude or is otherwise constitutionally or by law entitled to counsel, the court shall assign the municipal public defender to represent the defendant. The "Guidelines for Determining a Consequence of Magnitude" are contained in the Appendix to Part VII of the Rules of Court. The court may, however, excuse the municipal public defender for cause and assign counsel to represent the defendant, without cost to the defendant from, insofar as practicable, a list of attorneys maintained by the Assignment Judge. Assigned counsel shall promptly file an appearance pursuant to R. 7:7-9. The court shall allow the defendant a reasonable time and opportunity to consult trial defense counsel before proceeding further. Assigned counsel shall represent the defendant through trial and, in the event of a conviction, through sentencing, including advising the defendant of the right to appeal. If the defendant elects to appeal, assigned counsel or the municipal public defender shall prepare and file the notice of appeal and an application for the assignment of appellate counsel, but neither assigned counsel nor the municipal public defender shall act as appellate counsel or represent defendant on any subsequent application for post-conviction relief unless specifically so assigned by the court. Assigned counsel shall, however, be responsible for the representation of the defendant on the appeal upon failure to file either the notice of appeal or the application for the assignment of counsel on appeal.

**Note:** Source-R. (1969) 7:2, 7:3-1, 3:4-2(b). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (b) amended July 10, 1998, to be effective September 1, 1998; paragraph (b) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended July 16, 2009 to be effective September 1, 2009.
7:4-1. Right to Pretrial Release

(a) Defendants Charged on Complaint-Warrant (CDR-2) with Disorderly Persons Offenses. Except as otherwise provided by R. 3:4A (pertaining to preventative detention), defendants charged with a disorderly persons offense on an initial Complaint-Warrant (CDR-2) shall be released before conviction on the least restrictive non-monetary conditions that, in the judgment of the court, will reasonably ensure their presence in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, pursuant to R. 3:26-1(a)(1). In accordance with Part III, monetary bail may be set for a defendant arrested on a disorderly persons offense on an initial Complaint-Warrant (CDR-2) only when it is determined that no other conditions of release will reasonably assure the eligible defendant's appearance in court when required. For these defendants the court shall make a pretrial release determination no later than 48 hours after a defendant's commitment to the county jail; the court shall consider the Pretrial Services Program's risk assessment and recommendations on conditions of release before making a release decision.

(b) All Other Defendants. All defendants other than those set forth in paragraph (a) shall have a right to bail before conviction on such terms as, in the judgment of court, will insure the defendant's presence when required, having regard for the defendant's background, residence, employment and family status and, particularly, the general policy against unnecessary sureties and detention; in its discretion, the court may order defendant's release on defendant's own recognizance and may impose terms or conditions appropriate to such release. All other defendants include: (i) those charged on an initial Complaint-Warrant (CDR-2) with a petty disorderly persons offense or other non-disorderly persons offense within the jurisdiction of the municipal court, and (ii) all defendants brought before the court on a bench warrant for failure to appear or other violation, including defendants initially charged on a Complaint-Warrant (CDR-2) and those initially charged on a summons. Defendants issued a bench warrant who were charged with a disorderly persons offense on an initial Complaint-Warrant (CDR-2) may also be subject to reconsideration of conditions of release pursuant to Rule 7:4-9.

(c) Domestic Violence; Conditions of Release. When a defendant is charged with a crime or offense involving domestic violence, the court authorizing the release may, as a condition of release, prohibit the defendant from having any contact with the victim. The court may impose any additional limitations upon contact as otherwise authorized by N.J.S.A. 2C:25-26.
(d) Issuance of Restraining Orders by Electronic Communication.

(1) Temporary Domestic Violence Restraining Orders. Procedures authorizing the issuance of temporary domestic violence restraining orders by electronic communication are governed by R. 5:7A(d).

(2) N.J.S.A. 2C:35-5.7 and N.J.S.A. 2C:14-12 Restraining Orders. A judge may as a condition of release issue a restraining order pursuant to N.J.S.A. 2C:35-5.7 (“Drug Offender Restraining Order Act of 1999”) or N.J.S.A. 2C:14-12 (“Nicole’s Law”) upon sworn oral testimony of a law enforcement officer or prosecuting attorney who is not physically present. Such sworn oral testimony may be communicated to the judge by telephone, radio, or other means of electronic communication. The judge shall contemporaneously record such sworn oral testimony by means of a tape-recording device or stenographic machine if such are available; otherwise the judge shall make adequate longhand notes summarizing what is said. Subsequent to taking the oath, the law enforcement officer or prosecuting attorney must identify himself or herself, specify the purpose of the request, and disclose the basis of the application. This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of a restraining order. Upon issuance of the restraining order, the judge shall memorialize the specific terms of the order. That memorialization shall be either by means of a tape-recording device, stenographic machine, or by adequate longhand notes. Thereafter, the judge shall direct the law enforcement officer or prosecuting attorney to memorialize the specific terms authorized by the judge on a form, or other appropriate paper, designated as the restraining order. This order shall be deemed a restraining order for the purpose of N.J.S.A. 2C:35-5.7 (“Drug Offender Restraining Order Act of 1999”) and N.J.S.A. 2C:14-12 (“Nicole’s Law”). The judge shall direct the law enforcement officer or prosecuting attorney to print the judge’s name on the restraining order. A copy of the restraining order shall be served on the defendant by any officer authorized by law. Within 48 hours, the law enforcement officer or prosecuting attorney shall deliver to the judge, either in person, by facsimile transmission, or by other means of electronic communication, the signed restraining order along with a certification of service on the defendant. The certification of service shall be in a form approved by the Administrative Director of the Courts and shall include the date and time that service on the defendant was made or attempted to be made. The judge shall verify the accuracy of these documents by affixing his or her signature to the restraining order.

(3) Certification of Offense Location for Drug Offender Restraining Orders. When a restraining order is issued by electronic communication pursuant to N.J.S.A. 2C:35-5.7 (“Drug Offender Restraining Order Act of 1999”) where the law enforcement officer or prosecuting attorney is not physically present at the same location as the court, the law enforcement officer or prosecuting attorney must provide an oral statement describing the location of the offense. Within 48 hours thereafter the law enforcement officer or prosecuting attorney shall deliver to the judge, either in person, by facsimile transmission, or by other means of electronic communication, a certification describing the location of the offense.
7:4-2. Authority to Set Bail or Conditions of Pretrial Release

(a) Authority to Set Initial Conditions of Pretrial Release on Complaint-Warrants (CDR-2) – Disorderly Persons Offenses. Initial conditions of pretrial release on an initial disorderly persons charge on a Complaint-Warrant (CDR-2) may be set by a judge designated by the Chief Justice, pursuant to R. 3:26 as part of a first appearance at a centralized location, pursuant to R. 3:4-2.

(b) Authority to Set Bail for Bench Warrants and All Other Matters within the Jurisdiction of the Municipal Court. Setting bail for bench warrants or for a Complaint-Warrant (CDR-2) in which the most serious charge is a petty disorderly persons offense or other non-disorderly persons offense within the jurisdiction of the Municipal Court may be done by a judge sitting regularly in or as acting or temporary judge of the jurisdiction in which the offense was committed, or by a vicinage Presiding Judge of the Municipal Courts, or as authorized by any other rule of court. In the absence of the judge, and to the extent consistent with N.J.S.A. 2B:12-21 and R. 1:41-3(f), a duly authorized municipal court administrator or deputy court administrator may set bail on defendants issued a bench warrant or a Complaint-Warrant (CDR-2) in which the most serious charge is a petty disorderly persons offense or other non-disorderly persons offense within the jurisdiction of the Municipal Court. The authority of the municipal court administrator, deputy court administrator or other authorized persons shall, however, be exercised only in accordance with bail schedules promulgated by the Administrative Office of the Courts or the municipal court judge.

(c) Authority to Take a Recognizance. Any judge who has set bail and/or conditions of pretrial release may designate the taking of the recognizance by the municipal court administrator or any other person authorized by law to take recognizances, other than the law enforcement arresting officer.

(d) Revisions of Bail or Conditions of Pretrial Release. A municipal court judge may modify bail or any other condition of pretrial release on any non-indictable offense at any time during the course of the municipal court proceedings, consistent with R. 7:4-9, except as provided by law.
7:4-3. Form and Place of Deposit; Location of Real Estate; Record of Recognizances, Discharge and Forfeiture

(a) Deposit of Bail; Execution of Recognizance. A defendant admitted to bail, shall, together with the sureties, if any, sign and execute a recognizance before the person authorized to take monetary bail or, if the defendant is in custody, the person in charge of the place of confinement. The recognizance shall contain the terms set forth in R. 1:13-3(b) and shall be conditioned upon the defendant's appearance at all stages of the proceedings until the final determination of the matter, unless otherwise ordered by the court. The total recognizance may be satisfied by more than one surety, if necessary. Cash may be accepted, and in proper cases, within the court's discretion, the posting of security may be waived. A corporate surety shall be one approved by the Commissioner of Insurance. A corporate surety shall execute the recognizance under its duly acknowledged corporate seal, and shall attach to its bond written proof of the corporate authority and qualifications of the officers or agents executing the recognizance. Real estate offered as security for bail for non-indictable offenses shall be approved by and deposited with the clerk of the county in which the offense occurred and not with the municipal court administrator.

A defendant charged on an initial Complaint-Warrant (CDR-2) with a disorderly persons offense and released on non-monetary conditions shall be released pursuant to the release order prepared by the judge and need not complete a recognizance form.

(b) Limitation on Individual Surety. Unless the court for good cause otherwise permits, no surety, other than an approved corporate surety, shall enter into a recognizance if there remains any previous undischarged recognizance or bail that was undertaken by that surety.

(c) Real Estate in Other Counties. Real estate owned by a surety located in a county other than the one in which the bail is taken may be accepted, in which case the municipal court administrator of the court in which the bail is taken shall certify and transmit a copy of the recognizance to the clerk of the county in which the real estate is situated, and it shall be there recorded in the same manner as if taken in that county.

(d) Record of Recognizance. In municipal court proceedings, the record of the recognizance shall be entered by the municipal court administrator or designee in the manner required by the Administrative Director of the Courts to be maintained for that purpose.

(e) Record of Discharge; Forfeiture. When any recognizance shall be discharged by court order on proof of compliance with the conditions thereof or by reason of the judgment in any matter, the municipal court administrator or deputy court administrator shall enter the word "discharged" and the date of discharge at the end of the record of such recognizance. When any recognizance is forfeited, the municipal court administrator or deputy court administrator shall enter the word "forfeited" and the
date of forfeiture at the end of the record of such recognizance and shall give notice of such forfeiture by ordinary mail to the municipal attorney, the defendant and any surety or insurer, bail agent or agency whose names appear in the bail recognizance. Notice to any insurer, bail agent or agency shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. When real estate of the surety located in a county other than the one in which the bail was taken is affected, the municipal court administrator or deputy court administrator in which such recognizance is given shall immediately send notice of the discharge or forfeiture and the date thereof to the clerk of the county where such real estate is situated, who shall make the appropriate entry at the end of the record of such recognizance.

(f) Cash Deposit. When a person other than the defendant deposits cash in lieu of bond, the person making the deposit shall file an affidavit or certification explaining the lawful ownership thereof, and on discharge, such cash shall be returned to the owner named in the affidavit or certification, unless otherwise ordered by the court.

(g) Ten Percent Cash Bail. Unless otherwise specified in the order setting the bail, bail may be satisfied by the deposit in court of cash in the amount of ten percent of the amount of bail fixed together with defendant's executed recognizance for the remaining ninety percent. No surety shall be required, unless specifically ordered by the court. If a ten percent bail is made by cash owned by one other than the defendant, the owner shall charge no fee for the cash deposited, other than lawful interest, and shall submit an affidavit or certification with the deposit detailing the rate of interest, confirming that no other fee is being charged, and listing the names of any other persons for whom the owner has deposited bail. A person making the ten percent deposit who is not the owner, shall file an affidavit or certification identifying the lawful owner of the cash, and, on discharge, the cash deposit shall be returned to the owner named in the affidavit or certification, unless otherwise ordered by the court.

Note: Source - R. (1969) 7:5-1, 3:26-4. Adopted October 6, 1997 to be effective February 1, 1998; subsection (e) amended December 8, 1998 to be effective January 15, 1999; caption amended, and paragraphs (e), (f), and (g) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) caption and text amended August 30, 2016 to be effective January 1, 2017; paragraph (a) amended November 14, 2016 to be effective January 1, 2017.

7:4-4. Justification of Sureties

Every surety, except an approved corporate surety, shall justify the proposed property by affidavit, which shall include a description of the property, any encumbrances, the number and amount of other recognizances and undertakings for bail entered into by the surety and remaining undischarged, if any, and all of the surety's other liabilities. No recognizance shall be approved unless the surety thereon shall be qualified.

7:4-5. Forfeiture

(a) Declaration; Notice. On breach of a condition of a recognizance, the court may forfeit the bail on its own or on the prosecuting attorney's motion. If the court orders bail to be forfeited, the municipal court administrator or deputy court administrator shall immediately forfeit the bail pursuant to R. 7:4-3(e) and shall send notice of the forfeiture by ordinary mail to the municipal attorney, the defendant, and any non-corporate surety or insurer, bail agent, or bail agency whose names appear on the bail recognizance. Notice to any insurer, bail agent, or bail agency shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. The notice shall direct that judgment will be entered as to any outstanding bail absent a written objection seeking to set aside the forfeiture, which must be filed within 75 days of the date of the notice. The notice shall also advise the insurer that if it fails to satisfy a judgment entered pursuant to paragraph (c) of this rule, and until satisfaction is made, it shall be removed from the Bail Registry and its bail agents and agencies, guarantors, and other persons or entities authorized to administer or manage its bail bond business in this State will have no further authority to act for it, and their names, as acting for the insurer, will be removed from the Bail Registry. In addition, the bail agent or agency, guarantor, or other person or entity authorized by the insurer to administer or manage its bail bond business in this State who acted in such capacity with respect to the forfeited bond will be precluded, by removal from the Bail Registry, from so acting for any other insurer until the judgment has been satisfied. The court shall not enter judgment until the merits of any objection are determined either on the papers filed or, if the court so orders, for good cause, at a hearing. In the absence of a written objection, judgment shall be entered as provided in paragraph (c) of this rule, but the court may thereafter remit it, in whole or in part, pursuant to the court rules and/or administrative directives, including but not limited to the Revised Remission Guidelines.

(b) Setting Aside. The court may, upon such conditions as it imposes, direct that an order of forfeiture or judgment be set aside in whole or in part, pursuant to the court rules and/or administrative directives, including but not limited to the Revised Remission Guidelines.

(c) Enforcement; Remission. If a forfeiture is not set aside or satisfied, the court shall, on motion, enter a judgment of default for any outstanding bail, and execution may issue on the judgment.

The time period of 75 days provided for in paragraph (a) of this rule may be extended by the court to permit one stay by consent order of no more than 30 days. Entry of judgment shall follow, unless upon motion to the court a longer period is permitted based upon a finding of exceptional circumstances.

After entry of the judgment, the court may remit the forfeiture in whole or in part, pursuant to the court rules and/or administrative directives, including but not limited to the Revised Remission Guidelines.
If, following the court's decision on an objection pursuant to paragraph (a) of this rule, the forfeiture is not set aside or satisfied in whole or in part, the court shall enter judgment for any outstanding bail and, in the absence of satisfaction thereof, execution may issue thereon.

Judgments entered pursuant to this rule shall also advise the insurer that if it fails to satisfy a judgment, and until satisfaction is made, it shall be removed from the Bail Registry and its bail agents and agencies, guarantors, and other persons or entities authorized to administer or manage its bail bond business in this State will have no further authority to act for it, and their names, as acting for the insurer, will be removed from the Bail Registry as provided in paragraph (a) of this rule. A copy of the judgment entered pursuant to this rule is to be served by ordinary mail on the municipal attorney, and on any surety or any insurer, bail agent, or bail agency named in the judgment. Notice to any surety or insurer, bail agent, or bail agency shall be sent to the address recorded in the Bail Registry. In any contested proceeding, the municipal attorney shall appear on behalf of the government. The municipal attorney shall be responsible for the collection of forfeited amounts.

Note: Source-R. (1969) 7:5-1, 3:26-6. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) caption and text amended, and paragraphs (b) and (c) amended July 28, 2004 to be effective September 1, 2004; paragraphs (a), (b) and (c) amended July 28, 2017 to be effective September 1, 2017.

7:4-6. Exoneration

When the condition of the recognizance has been satisfied or its forfeiture has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the recognizance or by a timely surrender of the defendant into custody.


7:4-7. Place of Deposit

Bail in nonindictable matters given in the municipal court shall be deposited with the municipal court administrator or deputy court administrator. At the surety's discretion, bail may also be deposited with the person in charge of the place of confinement where the defendant is in custody, and that person shall then transmit the bail to the appropriate municipal court administrator or deputy court administrator for deposit in accordance with this rule.


7:4-8. Bail after Conviction

When a sentence has been imposed and an appeal from the judgment of conviction has been taken, the trial judge may admit the appellant to bail within 20 days
from the date of conviction or sentence, whichever occurs later. Bail after conviction may be imposed only if the trial judge has significant reservations about the appellant's willingness to appear before the appellate court. The bail or other recognizance shall be of sufficient surety to guarantee the appellant's appearance before the appellate court and compliance with the court's judgment. Once the appellant has placed bail or filed a recognizance, if the appellant is in custody, the trial court shall immediately discharge the appellant from custody. The court shall transmit to the vicinage Criminal Division Manager any cash deposit and any recognizance submitted.


7:4-9. Changes in Conditions of Release for Defendants Charged on an Initial Complaint-Warrant (CDR-2) on Disorderly Persons Offenses

(a) Monetary Bail Reductions. If a defendant is unable to post monetary bail, the defendant shall have the monetary bail reviewed promptly and may file an application with the court seeking a monetary bail reduction which shall be heard in an expedited manner by a court with jurisdiction over the matter.

(b) Review of Conditions of Release. For defendants charged with a disorderly persons offense on an initial Complaint-Warrant (CDR-2) and released pretrial, a judge with jurisdiction over the matter may review the conditions of release on his or her own motion, or upon motion by the prosecutor or the defendant, alleging that there has been a material change in circumstance that necessitates a change in conditions. Upon a finding that there has been a material change in circumstance that necessitates a change in conditions, the judge may set new conditions of release.

(c) Violations of Conditions of Release. A judge may impose new conditions of release, including monetary bail, when a defendant charged with a disorderly persons offense and released on an initial Complaint-Warrant (CDR-2) violates a restraining order or condition of release. These conditions should be the least restrictive condition or combination of conditions that the court determines will reasonably assure the eligible defendant’s appearance in court when required, protect the safety of any other person or the community, or reasonably assure that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.

(d) Motions for Pretrial Detention. All prosecutor motions for pretrial detention must be made in Superior Court, in accordance with Rule 3:4A.

Note: Adopted August 30, 2016 to be effective January 1, 2017; caption amended and paragraphs (b) and (c) amended November 14, 2016 to be effective January 1, 2017.
Rule 7:5-1. Filing

(a) By Whom; Documents to be Filed. The judge issuing a search warrant shall attach to it the return, inventory, and all other papers related to the warrant, including affidavits and a transcript or summary of any oral testimony and, if applicable, a duplicate original search warrant. The judge shall promptly deliver these documents to the municipal court administrator, who shall file them with the vicinage Criminal Division Manager of the county in which the property was seized. The municipal court administrator shall retain in a confidential file copies of all papers filed with the Criminal Division Manager. If a tape or transmitted recording has been made, the municipal court administrator shall also send them to the Criminal Division Manager, but shall not retain a copy.

(b) Providing to Defendant; Inspection. All completely executed warrants, together with the supporting papers and recordings described in paragraph (a) of this rule, shall be provided to the defendant in discovery pursuant to R. 7:7-7 and, upon notice to the county prosecutor and for good cause shown, available for inspection and copying by any other person claiming to be aggrieved by the search and seizure.

Note: Source-R. (1969) 3:5-6(a), (c). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (b) caption and text amended December 4, 2012 to be effective January 1, 2013.

Rule 7:5-2. Motion to Suppress Evidence

(a) Jurisdiction. The municipal court shall entertain motions to suppress evidence seized with a warrant issued by a municipal court judge or without a warrant in matters within its trial jurisdiction on notice to the prosecuting attorney and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor. In matters beyond the trial jurisdiction of the municipal court, and in matters where a search warrant was issued by a Superior Court judge, a motion to suppress evidence shall be made and heard in the Superior Court.

(b) Procedure. If the search was made with a warrant, a brief stating the facts and arguments in support of the motion shall be submitted with the notice of motion. The State shall submit a brief stating the facts and arguments in support of the search, within a time as determined by the judge, but no less than 10 days after submission of the motion. If the search was made without a warrant, written briefs in support of and in opposition to the motion to suppress shall be filed either voluntarily or in the discretion of the judge, who shall determine the briefing schedule. All motions to suppress shall be heard before the start of the trial. If the municipal court having jurisdiction over the motion to suppress evidence seized with a warrant has more than one municipal court judge, the motion shall
be heard by a judge other than the judge who issued the warrant, such judge to be designated by the chief judge for that municipal court. If the municipal court having jurisdiction of the motion to suppress evidence seized with a warrant has only one judge, who issued the warrant, the motion to suppress evidence shall be heard by the Municipal Court Presiding Judge for the vicinage, or such municipal court judge in the vicinage that the Assignment Judge shall designate.

(c) Order; Stay.

(1) Order Granting Suppression. An order granting a motion to suppress evidence shall be entered immediately upon decision of the motion. Within ten days after its entry, the municipal court administrator shall provide a copy of the order to all parties and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor. All further proceedings in the municipal court shall be stayed pending a timely appeal by the State, pursuant to R. 3:24. The property that is the subject of the suppression order shall, if not otherwise subject to lawful detention, be returned to the person entitled to it only after exhaustion by the State of its right to appeal.

(2) Order Denying Suppression. An order denying suppression may be reviewed on appeal from an ensuing judgment of conviction pursuant to R. 3:23 whether the judgment was entered on a guilty plea or on a finding of guilt following trial.

(d) Waiver. Unless otherwise ordered by the court for good cause, defendant's failure to make a pretrial motion to the municipal court pursuant to this rule shall constitute a waiver of any objection during trial to the admission of the evidence on the ground that the evidence was unlawfully obtained.

(e) Effect of Irregularity in Warrant. In the absence of bad faith, no search or seizure made with a search warrant shall be deemed unlawful because of technical insufficiencies or irregularities in the warrant or in the papers or proceedings to obtain it, or in its execution.

Note: Paragraphs (a), (b), (c): R. (1969) 7:4-2(f); paragraph (d): R. (1969) 3:5-7(f). Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (a) and (b) amended, new paragraph (e) caption and text adopted July 27, 2015 to be effective September 1, 2015.

Rule 7:5-3. Search and seizure without a warrant

R. 7:5 shall not be construed to make illegal a lawful search and seizure executed without a warrant.

7:5-4. Motion to Suppress Medical Records Obtained Pursuant to Rule 7:7-8(d)

The procedures set forth in Rule 7:5-2 shall apply to a motion to suppress records obtained pursuant to a subpoena issued under Rule 7:7-8(d) to produce medical records related to the presence of alcohol, narcotics, hallucinogens, habit-producing drugs or chemical inhalants in the body of an operator of a vehicle or vessel, in matters within the trial jurisdiction of the municipal court. In matters beyond the jurisdiction of the municipal court, the motion shall be made and heard in the Superior Court.

Note: Adopted July 27, 2015 to be effective September 1, 2015.
RULE 7:6. Arraignment, Pleas

7:6-1. Arraignment

- (a) Conduct of Arraignment. Except as otherwise provided by paragraph (b) of this rule, the arraignment shall be conducted in open court and shall consist of reading the complaint to the defendant or stating to the defendant the substance of the charge and calling upon the defendant, after being given a copy of the complaint, to plead thereto. The defendant may waive the reading of the complaint.

- (b) Written Statement. A defendant who is represented by an attorney and desires to plead not guilty may do so, unless the court otherwise orders, by the filing, at or before the time fixed for arraignment, of a written statement, signed by the attorney, certifying that the defendant has received a copy of the complaint and has read it or the attorney has read it and explained it to the defendant, that the defendant understands the substance of the charge, and that the defendant pleads not guilty to the charge.


7:6-2. Pleas, Plea Agreements

- (a) Pleas Allowed, Guilty Plea.
  - (1) Generally. A defendant may plead not guilty or guilty, but the court may, in its discretion, refuse to accept a guilty plea. Except as otherwise provided by Rules 7:6-2, 7:6-3, and 7:12-3, the court shall not, however, accept a guilty plea without first addressing the defendant personally and determining by inquiry of the defendant and, in the court's discretion, of others, that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea and that there is a factual basis for the plea. Prior to accepting a guilty plea when an unrepresented defendant faces a consequence of magnitude, the judge shall make a finding on the record that the court is satisfied that the defendant's waiver of the right to counsel is knowing and intelligent. On the request of the defendant, the court may, at the time of the acceptance of a guilty plea, order that the plea shall not be evidential in any civil proceeding. If a defendant refuses to plead or stands mute or if the court refuses to accept a guilty plea, the court shall enter a plea of not guilty. If a guilty plea is entered, the court may hear the witnesses in support of the complaint prior to judgment and sentence and after such hearing may, in its discretion, refuse to accept the plea.
  - (2) Corporate Defendants. A defendant that is a corporation, partnership or unincorporated association may enter a plea by an authorized officer or agent and may appear by an officer or agent provided the appearance is consented to by the named party defendant and the court finds that the interest of justice does not require the appearance of counsel. If a defendant that is a corporation, partnership, or unincorporated association fails to appear or answer, the court, if satisfied that service was duly made, shall enter an appearance and a plea of not guilty for the defendant and thereupon proceed to hear the complaint.

- (b) Withdrawal of Plea. A motion to withdraw a plea of guilty shall be made before sentencing, but the court may permit it to be made thereafter to correct a manifest injustice.

- (c) Conditional Pleas. With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty, reserving on the record the right to appeal from the adverse determination of any specified pretrial motion. A defendant who prevails on appeal shall be afforded the opportunity to withdraw the guilty plea. Nothing in this rule shall be construed as limiting the right to appeal provided by R. 7:5-2(c)(2).
(d) Plea Agreements. Plea agreements may be entered into only pursuant to the Guidelines and accompanying Comment issued by the Supreme Court, both of which are annexed as an Appendix to Part VII, provided, however, that:

- (1) the complaint is prosecuted by the municipal prosecutor, the county prosecutor, or the Attorney General; and
- (2) the defendant is either represented by counsel or knowingly waives the right to counsel on the record; and
- (3) the prosecuting attorney represents to the court that the [complaining witness and the] victim, if the victim is present at the hearing, has been consulted about the agreement; and
- (4) the plea agreement involves a matter within the jurisdiction of the municipal court and does not result in the downgrade or disposition of indictable offenses without the consent of the county prosecutor, which consent shall be noted on the record; and
- (5) the sentence recommendations, if any, do not circumvent minimum sentences required by law for the offense.

Pursuant to paragraph (a)(1) of this rule, when a plea agreement is reached, its terms and the factual basis that supports the charge(s) shall be fully set forth on the record personally by the prosecutor, except as provided in Guideline 3 for Operation of Plea Agreements. If the judge determines that the interests of justice would not be served by accepting the agreement, the judge shall so state, and the defendant shall be informed of the right to withdraw the plea if already entered.


7:6-3. Guilty Plea by Mail in Non-Traffic Offenses

(a) Entry of Guilty Plea by Mail. In all non-traffic and non-parking offenses, except as limited below, on consideration of a written application, supported by certification, with notice to the complaining witness and prosecutor, and at the time and place scheduled for trial, the judge may permit the defendant to enter a guilty plea by mail if the court is satisfied that a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial distance to travel, or incarceration. The guilty plea by mail form may also include a statement for the court to consider when determining the appropriate sentence. A guilty plea by mail shall not be available for the following:

- (1) cases involving the imposition of a mandatory term of incarceration on conviction, unless defendant is currently incarcerated and the mandatory term of incarceration would be served concurrently and would not extend the period of incarceration;
- (2) cases involving an issue of the identity of the defendant;
- (3) cases involving acts of domestic violence;
- (4) cases where the prosecution intends to seek the imposition of a custodial term in the event of a conviction, unless defendant is currently incarcerated and the proposed term of incarceration would not extend the period of incarceration and would be served concurrently; and
- (5) any other case where excusing the defendant's appearance in municipal court would not be in the interest of justice.

(b) Plea Form-Certification. The Guilty Plea by Mail shall be submitted on a form approved by the Administrative Director of the Courts.
(c) Judgment. The court shall send the defendant and complaining witness a copy of its decision by ordinary mail.

Note: Adopted June 15, 2007 to be effective September 1, 2007.
Rule 7:7-1. Pleadings; objections

Pleadings in municipal court actions shall consist only of the complaint. A defense or objection capable of determination without trial of the general issue shall be raised before trial by motion to dismiss or for other appropriate relief, except that a motion to dismiss based upon lack of jurisdiction or the unconstitutionality of a municipal ordinance may be made at any time.


Rule 7:7-2. Motions

(a) How Made. Except as otherwise provided by R. 7:5-2 (motion to suppress), motions in the municipal court and answers to motions, if any, shall be made orally, unless the court directs that the motion and answer be in writing. Oral testimony or affidavits in support of or in opposition to the motion may be required by the court in its discretion.

(b) Hearings. A motion made before trial shall be determined before trial unless the court, in the interest of justice, directs that it be heard during or after trial.

(c) Effect of Determination of Motion. Except as otherwise provided by R. 7:6-2(c) (conditional pleas), if a motion is determined adversely to the defendant, the defendant shall be permitted to plead, if a plea has not already been entered. If a plea has been entered, the defendant may be permitted to stand trial as soon as the adverse determination on the motion is made. If an objection or defense specified in R. 7:7-1 is sustained and is not otherwise remediable, the court shall order the complaint dismissed. If the court dismisses the complaint and the defendant is held in custody on that complaint, the court shall order the defendant released.

(d) Relief Requested by Certain Incarcerated Persons. An incarcerated, unrepresented defendant who seeks relief from the municipal court either before or after the entry of a guilty plea or trial, on a matter within the court’s jurisdiction, must set forth the relief requested in writing on a form approved by the Administrative Director of the Courts and submit the form to the Municipal Court and send a copy to the Municipal Prosecutor. The court must respond to the request on the record within 45 days of receipt of the form. If the court does not respond to the request on the record within 45 days, the inmate may seek immediate relief from the vicinage Presiding Judge.

Rule 7:7-3. Notice of alibi; failure to furnish

(a) Alibi. A defendant who intends to rely on an alibi shall, within 10 days after a written demand by the prosecuting attorney, furnish the prosecuting attorney with a signed statement of alibi, specifying the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendant intends to rely to establish the alibi. Within 10 days after receipt of the statement of alibi, the prosecuting attorney shall, on written demand, furnish the defendant or defendant's attorney with the names and addresses of the witnesses upon whom the State intends to rely to establish defendant's presence at the scene of the alleged offense. The court may order any amendment to or amplification of the alibi statement as required in the interest of justice.

(b) Failure to Furnish. If the information required by paragraph (a) of this rule is not furnished, the court may refuse to permit the party in default to present witnesses at trial as to defendant's presence at or absence from the scene of the alleged offense or may make any other order or grant any adjournment or continuance as may be required in the interest of justice.


Rule 7:7-4. Notice of Defense of Insanity; Evidence of Mental Disease or Defect

(a) Insanity as a Defense. A defendant who intends to claim insanity as a defense, pursuant to N.J.S.A. 2C:4-1, or a lack of the requisite state of mind, pursuant to N.J.S.A. 2C:4-2, shall serve a written notice of that intention upon the prosecuting attorney prior to trial. For good cause shown, the court may extend the time for service of the notice or make such other order as the interest of justice requires. If the defendant fails to comply with this rule, the court may take such action as the interest of justice requires.

(b) Acquittal by Reason of Insanity. If a defendant interposes the defense of insanity and is acquitted after trial on that ground, the decision and judgment shall include a statement of those facts and the procedure for referral of the defendant as provided by N.J.S.A. 2C:4-8 and 2C:4-9 and R. 4:74-7 shall apply.

(c) Involuntary Civil Commitments. Rule 4:74-7 shall govern the practice and procedure in the municipal court for the disposition of involuntary civil commitment matters, pursuant to N.J.S.A. 30:4-27.1 et seq.

Rule 7:7-5. Pretrial Procedure

(a) Pretrial Conference. At any time after the filing of the complaint, the court may order one or more conferences with the parties to consider the results of negotiations between them relating to a proposed plea, discovery, or to other matters that will promote a fair and expeditious disposition or trial. With the consent of the parties or counsel for the parties, the court may permit any pretrial conference to be conducted by means of telephone or video link.

(b) Pretrial Hearings. The court may conduct hearings to resolve issues relating to the admissibility of statements by defendant, pretrial identifications of defendant, and sound recordings at any time prior to trial. Upon a showing of good cause, hearings as to the admissibility of other evidence may also be conducted at any time prior to trial.

Note: Source-Paragraph (a): new; paragraph (b): R. (1969) 7:4-2(d), 3:9-1(d). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) amended July 16, 2009 to be effective September 1, 2009; paragraph (a) amended December 4, 2012 to be effective January 1, 2013.

Rule 7:7-6. Depositions

(a) When Authorized. If it appears to the judge of the court in which a complaint is pending that a witness is likely to be unable to testify at trial because of impending death or physical or mental incapacity, the court, upon motion and notice to the parties, and after a showing that such action is necessary to prevent manifest injustice, may order that a deposition of the testimony of that witness be taken and that any designated books, papers, documents or tangible objects that are not privileged, including, but not limited to, writings, drawings, graphs, charts, photographs, sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form, be produced at the same time and place.

(b) Procedure. The deposition shall be videotaped, unless the court otherwise orders. The deposition shall be taken before the judge at a location convenient to all parties. If the judge is unable to preside because the deposition is to be taken outside of the State, the deposition shall be taken before a person designated by the judge. All parties and counsel shall have a right to be present at the deposition. Examination, cross-examination, and determination of admissibility of evidence shall proceed in the same manner as at trial. Videotaping shall be done by a person chosen by the judge who is independent of both prosecution and defense.

(c) Use. Depositions taken pursuant to paragraph (a) of this rule may be used at trial instead of the testimony of the witness if the witness is unable to testify in court because of impending death or physical or mental incapacity, or if the judge finds that the party offering the deposition has been unable to procure the attendance of the witness by subpoena or otherwise, the deposition shall be admissible pursuant to the Rules of
Evidence applied as though the witness were then present and testifying. The deposition shall not be admissible, however, unless the court finds that the circumstances surrounding its taking allowed adequate preparation and cross-examination by all parties. A record of the videotaped testimony, which shall be part of the official record of the court proceedings, shall be made in the same manner as if the witness were present and testifying. On conclusion of the trial, the videotape shall be retained by the court.


Rule 7:7-7. Discovery and Inspection

(a) Scope. If the government is represented by the municipal prosecutor or a private prosecutor in a cross complaint case, discovery shall be available to the parties only as provided by this rule, unless the court otherwise orders. All discovery requests by defendant shall be served on the municipal prosecutor, who shall be responsible for making government discovery available to the defendant. If the matter is, however, not being prosecuted by the municipal prosecutor, the municipal prosecutor shall transmit defendant's discovery requests to the private prosecutor in a cross complaint case, pursuant to R. 7:8-7(b).

(b) Discovery by Defendant. Unless the defendant agrees to more limited discovery, in all cases, the defendant, on written notice to the municipal prosecutor or private prosecutor in a cross complaint case, shall be provided with copies of all relevant material, including, but not limited to, the following:

1. books, tangible objects, papers or documents obtained from or belonging to the defendant, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

2. records of statements or confessions, signed or unsigned, by the defendant or copies thereof, and a summary of any admissions or declarations against penal interest made by the defendant that are known to the prosecution but not recorded;

3. grand jury proceedings recorded pursuant to R. 3:6-6;

4. results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies of these results or reports, that are within the possession, custody or control of the prosecuting attorney;

5. reports or records of defendant's prior convictions;

6. books, originals or copies of papers and documents, or tangible objects, buildings or places that are within the possession, custody or control of the government,
including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(7) names, addresses, and birthdates of any persons whom the prosecuting attorney knows to have relevant evidence or information, including a designation by the prosecuting attorney as to which of those persons the prosecuting attorney may call as witnesses;

(8) record of statements, signed or unsigned, by the persons described by subsection (7) of this rule or by co-defendants within the possession, custody or control of the prosecuting attorney, and any relevant record of prior conviction of those persons;

(9) police reports that are within the possession, custody or control of the prosecuting attorney;

(10) warrants, that have been completely executed, and any papers accompanying them, as described by R. 7:5-1(a).

(11) the names and addresses of each person whom the prosecuting attorney expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of the expert witness, or if no report was prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is requested and not furnished, the expert witness may, upon application by the defendant, be barred from testifying at trial.

(c) Discovery by the State. In all cases, the municipal prosecutor or the private prosecutor in a cross complaint case, on written notice to the defendant, shall be provided with copies of all relevant material, including, but not limited to, the following:

(1) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies of these results or reports within the possession, custody or control of the defendant or defense counsel;

(2) any relevant books, originals or copies of papers and other documents or tangible objects, buildings or places within the possession, custody or control of the defendant or defense counsel, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(3) the names, addresses, and birthdates of those persons known to defendant who may be called as witnesses at trial and their written statements, if any, including memoranda reporting or summarizing their oral statements;
(4) written statements, if any, including any memoranda reporting or summarizing the oral statements, made by any witnesses whom the government may call as a witness at trial; and

(5) the names and addresses of each person whom the defense expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, and a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is requested and not furnished, the expert may, upon application by the prosecuting attorney, be barred from testifying at trial.

(d) Documents Not Subject to Discovery. This rule does not require discovery of a party's work product, consisting of internal reports, memoranda or documents made by that party or by that party's attorney or agents, in connection with the investigation, prosecution or defense of the matter. Nor does it require discovery by the government of records or statements, signed or unsigned, by defendant made to defendant's attorney or agents.

(e) Reasonableness of Cost. Upon motion of any party, the court may consider the reasonableness of the cost of discovery ordered by the court to be disseminated to the parties. If the court finds that the cost charged for discovery is unreasonable, the court may order the cost reduced or make such other order as is appropriate.

(f) Protective Orders.

(1) Grounds. Upon motion and for good cause shown, the court may at any time order that the discovery sought pursuant to this rule be denied, restricted, or deferred or make such other order as is appropriate. In determining the motion, the court may consider the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; confidential information recognized by law, including protection of confidential relationships and privileges recognized by law; and any other relevant considerations.

(2) Procedures. The court may permit the showing of good cause to be made, in whole or in part, in the form of a written statement to be inspected by the court alone. If the court enters a protective order, the entire text of the statement shall be sealed and preserved in the court's records, to be made available only to the appellate court in the event of an appeal.

(g) Time and Procedure. A defense request for discovery shall be made contemporaneously with the entry of appearance by the defendant's attorney, who shall submit a copy of the appearance and demand for discovery directly to the municipal prosecutor. If the defendant is not represented, any requests for discovery shall be made in writing and submitted by the defendant directly to the municipal prosecutor. The municipal prosecutor shall respond to the discovery request in accordance with paragraph
(b) of this rule within 10 days after receiving the request. Unless otherwise ordered by the judge, the defendant shall provide the prosecutor with discovery, as provided by paragraph (c) of this rule, within 20 days of the prosecuting attorney's compliance with the defendant's discovery request. If any discoverable materials known to a party have not been supplied, the party obligated with providing that discovery shall also provide the opposing party with a listing of the materials that are missing and explain why they have not been supplied. Unless otherwise ordered by the judge, the parties may provide discovery pursuant to paragraphs (a), (b), (c), and (h) of this rule through the use of CD, DVD, e-mail, internet or other electronic means. Documents provided through electronic means shall be in PDF format. All other discovery shall be provided in an open, publicly available (non-proprietary) format that is compatible with any standard operating computer. If discovery is not provided in a PDF or open, publicly available format, the transmitting party shall include a self-extracting computer program that will enable the recipient to access and view the files that have been provided. Upon motion of the recipient, and for good cause shown, the court shall order that discovery be provided in the format in which the transmitting party originally received it. In all cases in which an Alcotest device is used, any Alcotest data shall, upon request, be provided for any Alcotest 7110 relevant to a particular defendant's case in a readable digital database format generally available to consumers in the open market. In all cases in which discovery is provided through electronic means, the transmitting party shall also include a list of the materials that were provided and, in the case of multiple disks, the specific disk on which they can be located.

(h) Motions for Discovery. No motion for discovery shall be made unless the prosecutor and defendant have conferred and attempted to reach agreement on any discovery issues, including any issues pertaining to discovery provided through the use of CD, DVD, e-mail, internet or other electronic means.

(i) Discovery Fees.

(1) Standard Fees. The municipal prosecutor, or a private prosecutor in a cross-complaint case, may charge a fee for a copy or copies of discovery. The fee assessed for discovery embodied in the form of printed matter shall be $ 0.05 per letter size page or smaller, and $ 0.07 per legal size page or larger. From time to time, as necessary, these rates may be revised pursuant to a schedule promulgated by the Administrative Director of the Courts. If the prosecutor can demonstrate that the actual costs for copying discovery exceed the foregoing rates, the prosecutor shall be permitted to charge a reasonable amount equal to the actual costs of copying. The actual copying costs shall be the costs of materials and supplies used to copy the discovery, but shall not include the costs of labor or other overhead expenses associated with making the copies, except as provided for in paragraph (i)(2) of this rule. Electronic records and non-printed materials shall be provided free of charge, but the prosecutor may charge for the actual costs of any needed supplies such as computer discs.

(2) Special Service Charge for Printed Copies. Whenever the nature, format, manner of collation, or volume of discovery embodied in the form of printed matter to be copied is such that the discovery cannot be reproduced by ordinary document
copying equipment in ordinary business size, or is such that it would involve an extraordinary expenditure of time and effort to copy, the prosecutor may charge, in addition to the actual copying costs, a special service charge that shall be reasonable and shall be based upon the actual direct costs of providing the copy or copies. Pursuant to R. 7:7-1, the defendant shall have the opportunity to review and object to the charge prior to it being incurred.

(3) Special Service Charge for Electronic Records. If the defendant requests an electronic record: (1) in a medium or format not routinely used by the prosecutor; (2) not routinely developed or maintained by the prosecutor; or (3) requiring a substantial amount of manipulation or programming of information technology, the prosecutor may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on (1) the cost for any extensive use of information technology, or (2) the labor cost of personnel providing the service that is actually incurred by the prosecutor or attributable to the prosecutor for the programming, clerical, and supervisory assistance required, or (3) both. Pursuant to R. 7:7-1, the defendant shall have the opportunity to review and object to the charge prior to it being incurred.

(j) Continuing Duty to Disclose; Failure to Comply. There shall be a continuing duty to provide discovery pursuant to this rule. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order that party to provide the discovery of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed or enter such other order as it deems appropriate.

Note: Source - Paragraph (a): new; paragraph (b): R. (1969) 7:4-2(h), 3:13-3(c); paragraph (c): R. (1969) 7:4-2(h), 3:13-3(d); paragraph (d): R. (1969) 7:4-2(h), 3:13-3(e); paragraph (e): R. (1969) 7:4-2(h), 3:13-3(f); paragraph (f) new; paragraph (g): R. (1969) 7:4-2(h), 3:13-3(g). Adopted October 6, 1997 effective February 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraph (f) amended July 16, 2009 to be effective September 1, 2009; paragraphs (a), (b), and (c) amended, new paragraph (e) caption and text adopted, former paragraphs (e), (f), and (g) redesignated as paragraphs (f), (g), and (h) July 21, 2011 to be effective September 1, 2011; paragraphs (b), (c), (f), and (g) amended, new paragraphs (h) and (i) adopted, paragraph (h) redesignated as paragraph (j) and amended December 4, 2012 to be effective January 1, 2013; subparagraphs (b)(7), (c)(3), and (f)(1) amended July 9, 2013 to be effective September 1, 2013.

Rule 7:7-8. Subpoenas

(a) Issuance. Except as otherwise provided in paragraph (d), upon the issuance of process on a complaint within the trial jurisdiction of the municipal court, a subpoena may be issued by a judicial officer, by an attorney in the name of the court administrator, or, in cases involving a non-indictable offense, by a law enforcement officer or other authorized person. The subpoena shall be in the form approved by the Administrative Director of the Courts. In cases involving non-indictable offenses, the law enforcement officer may issue subpoenas to testify in the form prescribed by the Administrative Director of the Courts.
Courts having jurisdiction over such offenses, the Division of State Police, the Motor Vehicle Commission, and any other agency so authorized by the Administrative Director of the Courts may supply subpoena forms to law enforcement officers.

(b) Subpoena to Testify. A subpoena to testify shall state the name of the municipal court and the title of the action. It shall contain the appropriate case docket number and shall command each natural person or authorized agent of an entity to whom it is directed to attend and give testimony at a specific time and date when the court will be in session. The subpoena may also specify that the specific time and date to attend court will be established at a later time by the court. If the witness is to testify in an action for the State or for an indigent defendant, the subpoena shall so note and shall contain an order to appear without the prepayment of any witness fee as otherwise required under N.J.S.A. 22A:1-4.

(c) Subpoena to Produce Documents or Electronically Stored Information. A subpoena may require the production of books, papers, documents, electronically stored information or other items on the date of the scheduled court appearance. The court may enter a supplemental order directing that the items designated in the subpoena be produced in court at a time prior to the scheduled court appearance or at another location. The order of the court may also specify that the designated items may, upon their production, be inspected by the parties and their attorneys.

(d) Investigative Subpoenas in Operating While Under the Influence Cases. When the State demonstrates to the court through sworn testimony and/or supporting documentation that there is a reasonable basis to believe that a person has operated a motor vehicle in violation of N.J.S.A. 39:4-50 or N.J.S.A. 39:3-10.13, a vessel in violation of N.J.S.A. 12:7-46, or an aircraft in violation of N.J.S.A. 6:1-18, a municipal court judge with jurisdiction over the municipality where the alleged offense occurred may issue an investigative subpoena directing an authorized agent of a medical facility located in New Jersey to produce medical records related to the presence of alcohol, narcotics, hallucinogens, habit-producing drugs or chemical inhalants in the operator's body. If no case is pending, the subpoena may be captioned "In the Matter" under investigation.

(e) Personal Service. A subpoena may be served at any place within the State of New Jersey by any person 18 or more years of age. Service of a subpoena shall be made by personally delivering a copy to the person named, together with the fee allowed by law, except that if the person is a witness in an action for the State or an indigent defendant, the fee shall be paid before leaving the court at the conclusion of the trial by the municipal court administrator as otherwise required by N.J.S.A. 22A:1-4. After service of a subpoena, the person serving the subpoena shall promptly file a copy of the subpoena and proof of service with the court.

(f) Continuing Duty to Appear. A witness who has been personally served with a subpoena shall remain under a continuing obligation to appear until released by the court.

(g) Failure to Appear. In the absence of an adequate excuse, any person who fails to obey a personally served subpoena, as evidenced by an executed return of service, is
subject to punishment for contempt of court. The court may issue a warrant for the arrest of the person subject to contempt as authorized by N.J.S.A. 2A:10-8.

(h) Motion to Quash. The court, on motion made prior to the scheduled court date, may quash or modify a subpoena to testify or a subpoena to produce writings or electronically stored information if compliance would be unreasonable, oppressive or not in compliance with the procedures required under this rule.

Note: Source-R. (1969) 7:3-3. Adopted October 6, 1997 to be effective February 1, 1998; caption amended, former text deleted, captions and text for new paragraphs (a) through (h) adopted July 16, 2009 to be effective September 1, 2009.

Rule 7:7-9. Filing appearance

The attorney for the defendant in an action before the municipal court shall immediately file an appearance with the municipal court administrator of the court having jurisdiction over the matter and shall serve a copy on the appropriate prosecuting attorney or other involved party, as identified by the municipal court administrator.


Rule 7:7-10. Joint representation

No attorney or law firm shall enter an appearance for or represent more than one defendant in a multi-defendant trial or enter a plea for any defendant without first securing the court’s permission by motion made in the presence of the defendants who seek joint representation. The motion shall be made as early as practicable in the proceedings in order to avoid delay of the trial. For good cause shown, the court may allow the motion to be brought at any time.


Rule 7:7-11. Use of Acting Judges Pursuant to Standing Assignment Judge Order

(a) As to any pretrial application made when court is not in session for the issuance of a Complaint-Warrant (CDR-2), R. 7:2-1; for the issuance of a Temporary Restraining Order (TRO), R. 5:7A; for the issuance of a search warrant, R. 3:5-3(a) or R. 7:5-1(a); or for the setting of bail, R. 7:4-2(b), if no judge of that court is able to hear the application, an acting judge may be contacted pursuant to a standing order entered by the Assignment Judge that prescribes the sequence in which resort is made to any such acting judges.

(b) An acting judge handling an application pursuant to paragraph (a) of this rule should make a record of the reason the application is not being handled by the court to which the application was first submitted.

Note: Adopted July 21, 2011 to be effective September 1, 2011; paragraph (a) amended July 29, 2019 to be effective September 1, 2019.
7:8-1. Mediation of Minor Disputes in Municipal Court Actions

If a person seeks to file or has filed a complaint charging an offense that may constitute a minor dispute, the court may issue a notice to the person making the charge and the person charged, requiring their appearance before the court or before a person or program designated by the court and approved by the Assignment Judge pursuant to R. 1:40-8 (Mediation of Minor Disputes in Municipal Court Actions). If on the return date of a summons, it appears to the court that the offense charged may constitute a minor dispute, the court may order the persons involved to participate in mediation in accordance with R. 1:40-8. No referral to mediation shall be made, however, if the complaint involves (1) serious injury, (2) repeated acts of violence between the parties, (3) clearly demonstrated psychological or emotional disability of a party, (4) incidents involving the same persons who are already parties to a Superior Court action between them, (5) matters arising under the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.), (6) a violation of the New Jersey Motor Vehicle Code (Title 39), or (7) matters involving penalty enforcement actions.


7:8-2. Place of Trial; Disqualification

(a) Generally. Except as otherwise provided by law, the prosecution for an offense shall take place in the jurisdiction in which the offense was committed.

(b) Disqualification of Judge. In the event of the judge's disqualification or inability for any reason to hear a pending matter, the judge, in addition to the provisions of R. 1:12-3(a), may either refer the matter to the Assignment Judge for designation of an acting judge pursuant to N.J.S.A. 2B:12-6 or transfer the matter to a judge sitting in another municipality within the vicinage. The transferee judge may, however, accept the transfer only if:

(1) the transferee judge has been designated as an acting judge of the court of origin by the Assignment Judge of the vicinage, pursuant to N.J.S.A. 2B:12-6 and R. 1:12-3(a); and

(2) the transferring judge has found that transfer of the matter will not substantially inconvenience any party.

Upon completion of the trial, the transferee court shall immediately advise the court of origin of the disposition made and shall remit to it the complaint, judgment, all records, and any fines and costs collected. The court of origin shall retain jurisdiction and shall maintain all necessary records as though the matter had been tried in the court of origin,
which shall be responsible for effecting final disposition of the matter. The municipality of
the court of origin shall bear the costs of prosecution of the matter.


7:8-3. Adjournment

On or before the first scheduled trial date, the court may adjourn the trial for not
more than fourteen days, except that an adjournment for a longer period or additional
adjournments may be granted if the court deems postponement of the trial to be
reasonably necessary in the interest of justice. In contested matters, the court shall
specify the new trial date in granting the adjournment and shall cause the complaining
witness, all defendants, and all other known witnesses to be notified of the adjournment
and of the new trial date.


7:8-4. Trial of Complaints Together

The court may order two or more complaints to be tried together if the offenses
arose out of the same facts and circumstances, regardless of the number of defendants.
In all other matters, the court may consolidate complaints for trial with the consent of the
persons charged. Complaints originating in two or more municipalities may be
consolidated for trial only with the approval of the appropriate Assignment Judge, who
shall designate the municipal court in which trial is to proceed. A party seeking
consolidation of complaints originating in different municipalities shall file a written motion
for that relief directly with the Assignment Judge.

Note: Source-R. (1969) 7:4-2(g) Adopted October 6, 1997 to be effective February 1, 1998.

7:8-5. Dismissal

If the complaint is not moved on the day for trial, the court may direct that it be
heard on a specified return date and a notice thereof be served on the complaining
witness, all defendants and all other known witnesses. If the complaint is not moved on
that date, the court may order the complaint dismissed. A complaint may also be
dismissed by the court for good cause at any time on its own motion, on the motion of the
State, county or municipality or on defendant's motion. On dismissal, any warrant issued
shall be recalled, and the matter shall not be reopened on the same complaint except to
correct a manifest injustice.

Note: Source-R. (1969) 7:4-2(i). Adopted October 6, 1997 to be effective February 1, 1998; amended July
28, 2004 to be effective September 1, 2004.
7:8-6. Transfer to the Chancery Division, Family Part

An action pending in a municipal court may be transferred to the Superior Court, Chancery Division, Family Part pursuant to R. 5:1-2(c)(3) and R. 5:1-3(b)(2).


7:8-7. Appearances; Exclusion of the Public

(a) Presence of Defendant. Except as otherwise provided by Rules 7:6-1(b), 7:6-3, or 7:12-3, the defendant shall be present, either in person, or by means of a video link as approved by the Administrative Office of the Courts, at every stage of the proceeding and at the imposition of sentence. If, however, defendant is voluntarily absent after the proceeding has begun in the defendant's presence or the defendant fails to appear at the proceeding after having been informed in open court of the time and place of the proceeding, the proceeding may continue to and including entry of judgment. A corporation, partnership or unincorporated association shall appear by its attorney unless an appearance on its behalf by an officer or agent has been permitted pursuant to R. 7:6-2(a)(2). The defendant's presence is not, however, required at a hearing on a motion for reduction of sentence.

(b) Appearance for the Prosecution. The municipal prosecutor, municipal attorney, Attorney General, county prosecutor, or county counsel, as the case may be, may appear in any municipal court in any action on behalf of the State and conduct the prosecution either on the court's request or on the request of the respective public official. The court may also, in its discretion and in the interest of justice, direct the municipal prosecutor to represent the State. The court may permit an attorney to appear as a private prosecutor to represent the State in cases involving cross-complaints. Such private prosecutors may be permitted to appear on behalf of the State only if the court has first reviewed the private prosecutor's motion to so appear and an accompanying certification submitted on a form approved by the Administrative Director of the Courts. The court may grant the private prosecutor's application to appear if it is satisfied that a potential for conflict exists for the municipal prosecutor due to the nature of the charges set forth in the cross-complaints. The court shall place such a finding on the record.

(c) Exclusion of the Public. In matters involving domestic relations, sex offenses, school truancy, parental neglect, and as may be otherwise provided by law, the court, in its discretion and with defendant's consent, may exclude from the courtroom any person not directly interested in the matter during the conduct of the trial or hearing.

Note: Source-R. (1969) 7:4-4(a),(b),(c). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended June 15, 2007 to be effective September 1, 2007.
7:8-8. Record of Proceedings; Transcripts

(a) Record. If required by order of the Supreme Court, the municipal court shall cause all proceedings to be recorded by sound recording equipment approved by the Administrative Office of the Courts. If not so required, the court may, at its own expense, cause proceedings to be recorded either by sound recording equipment or by a court reporter. If sound recording equipment is used, or if the proceedings are not otherwise recorded, the court shall permit a record of the proceedings to be made by a certified shorthand reporter at the request and expense of any party. Every sound recording and stenographic record of proceedings made pursuant to this rule shall be retained by the municipal court administrator or by the reporter, as the case may be, for 5 years.

(b) Transcript. If the proceedings have been sound recorded, any person may order a transcript from the municipal court administrator, and if the proceedings have been recorded stenographically, any person may order a transcript from the court reporter. The charge shall not exceed the rates as provided by law. The person preparing the transcript shall certify to its accuracy.

(c) Supervision. The recording of proceedings and the preparation of transcripts thereof, whether by sound recording or reporters, shall be subject to the supervision and control of the Administrative Director of the Courts.


7:8-9. Non-Monetary Procedures on Failure to Appear

(a) Warrant or Notice.

(1) Non-Parking Motor Vehicle Cases. If a defendant in any non-parking case before the court fails to appear or answer a complaint, the court may either issue a bench warrant for the defendant's arrest in accordance with R. 7:2-2(c) or issue and mail a failure to appear notice to the defendant on a form approved by the Administrative Director of the Courts. If a failure to appear notice is mailed to the defendant and the defendant fails to comply with its provisions, a bench warrant may be issued in accordance with R. 7:2-2(c).

(2) Parking Cases. If a defendant in any parking case before the court fails to appear or answer a complaint, the court shall mail a failure to appear notice to the defendant on a form approved by the Administrative Director of the Courts. Where a defendant has not appeared or otherwise responded to failure to appear notices associated with two or more pending parking tickets within the court's jurisdiction, the court may issue a bench warrant in accordance with R. 7:2-2(c). Such a bench warrant shall not issue when the pending tickets have been issued on the same day or otherwise within the same 24-hour period.
(b) Driving Privileges; Report to Motor Vehicle Commission.

(1) Non-Parking Motor Vehicle Cases. If the court has not issued a bench warrant upon the failure of the defendant to comply with the court’s failure to appear notice, the court shall report the failure to appear or answer to the Chief Administrator of the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts within 30 days of the defendant’s failure to appear or answer. The court shall then mark the case as closed on its records, subject to being reopened pursuant to subparagraph (e) of this rule. If the court elects, however, to issue a bench warrant, it may simultaneously report the failure to appear or answer to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts. If the court does not simultaneously notify the Motor Vehicle Commission and the warrant has not been executed within 30 days, the court shall report the failure to appear or answer to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts. Upon the notification to the Motor Vehicle Commission, the court shall then mark the case as closed on its records subject to being reopened pursuant to subparagraph (e) of this rule.

(2) All Other Cases. In all other cases, whether or not a bench warrant is issued, the court may order the suspension of the defendant’s driving privileges or of defendant’s nonresident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges until the pending matter is adjudicated or otherwise disposed of. The court shall then mark the case as closed on its records, subject to being reopened pursuant to subparagraph (e) of this rule.

c) Unexecuted Bench Warrant. If a bench warrant is not executed, it shall remain open and active until the court either recalls, withdraws or discharges it. If bail has been posted after the issuance of the bench warrant and the defendant fails to appear or answer, the court may declare a forfeiture of the bail, report a motor vehicle bail forfeiture to the Motor Vehicle Commission and mark the case as closed on its records subject to being reopened pursuant to subparagraph (e) of this rule. The court may set aside any bail forfeiture in the interest of justice.

d) Parking Cases; Unserved Notice. In parking cases, no bench warrant may be issued if the initial failure to appear notice is returned to the court by the Postal Service marked to indicate that the defendant cannot be located. The court then may order a suspension of the registration of the motor vehicle or of the defendant’s driving privileges or defendant’s nonresident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges until the pending matter is adjudicated or otherwise disposed of. The court shall forward the order to suspend to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts. The court shall then mark the case as closed on its records, subject to being reopened pursuant to subparagraph (e) of this rule.

e) Reopening. A case marked closed shall be reopened upon the request of the defendant, the prosecuting attorney or on the court’s own motion.
(f) **Dismissal of Parking Tickets.** In any parking case, if the municipal court fails, within three years of the date of the violation, to either issue a bench warrant for the defendant's arrest or to order a suspension of the registration of the vehicle or the defendant's driving privileges or the defendant's non-resident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges, the matter shall be dismissed and shall not be reopened.

(g) **Monetary Sanctions for Failure to Appear.** Monetary sanctions on defendants for failure to appear are addressed in R. 7:8-9A.

**Note:** Source – Paragraphs (a), (b), (c), (d), (e): R. (1969) 7:6-3; paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) text deleted, and new paragraphs (a)(1) and (a)(2) adopted July 28, 2004 to be effective September 1, 2004; paragraph (b) caption amended, paragraphs (b)(1), (c), (d) and (f) amended July 16, 2009 to be effective September 1, 2009; paragraphs (a)(1), (a)(2), (b)(1), (b)(2) amended, paragraph (c) caption and text amended, and paragraphs (d) and (f) amended August 30, 2016 to be effective January 1, 2017; caption amended and new paragraph (g) adopted July 17, 2018 to be effective September 1, 2018.

### 7:8-9A. Monetary Sanctions for Defendant’s Failure to Appear

(a) **In General.** If without just cause or excuse, a defendant, who is required to appear at a trial, hearing or other scheduled municipal court proceeding fails to appear, the municipal court judge may order that defendant to pay a monetary sanction based on the following factors: (1) defendant’s history of failure to appear; (2) defendant’s criminal and offense history; (3) the seriousness of the offense; and (4) the resulting inconvenience to the defendant’s adversary and to witnesses called by the parties. The judge shall state the reasons for the sanction on the record.

(b) **Maximum Sanction.** For consequence of magnitude cases, the aggregate sanction per case shall not exceed $100. For other than consequence of magnitude cases, the aggregate sanction per case shall not exceed $25 for parking offenses and $50 for all other matters.

(c) **Contempt of Court.** A judge may impose a higher sanction on a defendant for failure to appear only in accordance with the provisions of R. 1:10.

(d) **Calculation of Sanction.** When a case includes multiple offenses, the maximum sanction shall be calculated solely on the most serious offense charged. Only one sanction may be imposed per case.

(e) **Payment of Sanction.** The defendant shall pay the assessed sanction to the municipal court to be disbursed to the municipality where the offense occurred.

(f) **Non-monetary procedures on Failure to Appear.** Non-monetary procedures on failure to appear are addressed in R. 7:8-9.

**Note:** Adopted July 17, 2018 to be effective September 1, 2018.
7:8-10. Waiver of Right to Counsel at Trial

In all cases other than parking cases, a request by a defendant to proceed to trial without an attorney shall not be granted until the judge is satisfied from an inquiry on the record that the defendant has knowingly and voluntarily waived the right to counsel following an explanation by the judge of the range of penal consequences and an advisement that the defendant may have defenses and that there are dangers and disadvantages inherent in defending oneself.

Note: Adopted July 16, 2009 to be effective September 1, 2009.

7:8-11. Limitations on Pretrial Incarceration

(a) Defendants Subject to Limitations on Pretrial Incarceration. This rule applies to a defendant for whom a Complaint-Warrant (CDR-2) has been issued and who: (1) has been charged with a disorderly persons offense involving domestic violence and is detained pursuant to R. 3:4A, or (2) is detained in jail due to an inability to post monetary bail on the initial disorderly persons offense charged on a Complaint-Warrant (CDR-2). This rule only applies to a defendant who is arrested on or after January 1, 2017, regardless of when the offense giving rise to the arrest was allegedly committed.

(b) Limitation on Pretrial Incarceration. A defendant as described in subsection (a) above may not be incarcerated for a time period longer than the maximum period of incarceration for which the defendant could be sentenced for the initial offense charged on the Complaint-Warrant (CDR-2).

(c) Time Period of Pretrial Incarceration. This time period of incarceration starts on the day the defendant was initially taken into custody.

(d) Release. If a defendant is detained pursuant to subsection (a) of this rule and the maximum period of incarceration is reached pursuant to subsection (b) of this rule, the court shall establish conditions of pretrial release pursuant to R. 3:26 and release the defendant. For matters in which the defendant was issued a Complaint-Warrant (CDR-2), was charged with any offense involving domestic violence, and was detained pursuant to R. 3:4A, a judge of the Superior Court shall conduct a release hearing and make the release decision. In matters in which the defendant has been issued a Complaint-Warrant (CDR-2) and detained in jail due to an inability to post monetary bail on the initial offense charged, a judge with authority to modify the conditions of release shall make the release decision.

Note: Adopted August 30, 2016 to be effective January 1, 2017; paragraph (a) amended November 14, 2016 to be effective January 1, 2017.
RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
Rule 7:12. TRIAL OF TRAFFIC OFFENSES

7:12-1. Trial Date; Adjournment

The date fixed for the trial of any traffic offense shall be not less than five days from the date of its commission unless the defendant, having been informed of the right to such trial date, waives it and the court in its discretion fixes an earlier date. If a hearing is adjourned, the court shall inform the defendant of the adjourned date and of the consequences of failure to appear on that adjourned date.


7:12-2. Calendar Parts; Sessions

Insofar as practicable, traffic offenses shall be tried separate and apart from other offenses. Except for good cause shown, if a court sits in parts and one part sits in daily session and has been designated as a traffic court, traffic offenses shall be tried in that part only, or if a court has designated a particular session, which may be an evening session, as the traffic session, traffic offenses shall be tried in that session. If there is neither a special part nor a special session, the court shall designate the time for a trial of traffic offenses. The Administrative Director of the Courts may, where necessary, direct a court to hold more frequent traffic sessions or to coordinate the sessions held by the court with those regularly scheduled by any other municipal court judges in the county.


7:12-3. Pleas of Not Guilty and Pleas of Guilty by Mail in Certain Traffic or Parking Offenses

(a) Use of Pleas by Mail; Limitations. Use of Pleas by Mail; Limitations. In all traffic or parking offenses, except as limited below, the judge may permit the defendant to enter a guilty plea by mail, or to plead not guilty by mail and submit a written defense for use at trial, if a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial distance to travel, or incarceration. The Administrative Director of the Courts may designate certain traffic or parking offenses as exempt from the hardship requirement. This procedure shall not be available in the following types of cases:
(1) traffic offenses or parking offenses that require the imposition of a mandatory loss of driving privileges on conviction;

(2) traffic offenses or parking offenses involving an accident that resulted in personal injury to anyone other than the defendant;

(3) traffic offenses or parking offenses that are related to non-traffic matters that are not resolved;

(4) any other traffic offense or parking offense when excusing the Defendant's appearance in municipal court would not be in the interest of justice.

(b) Plea of Guilty by Mail.

(1) In those cases where a defendant may enter a plea of guilty to a traffic offense or parking offense by mail, such plea shall include:

   (A) an acknowledgement that defendant committed the traffic violation or parking offense set forth in the complaint(s);

   (B) a waiver of the defendant's right to contest the case at a trial, the right to appear personally in court and, if unrepresented by an attorney, the right to be represented by an attorney;

   (C) an acknowledgement by the defendant that the plea of guilty is being entered voluntarily;

(2) A plea of guilty to a traffic offense or parking offense by mail may also include a statement for the court to consider when determining the appropriate sentence.

(c) Plea of Not Guilty by Mail

(1) In those cases where a defendant may enter a plea of not guilty to a traffic offense or parking offense and submit any defense to the charge(s) by mail, such not guilty plea and defense shall include the following:

   (A) A waiver of the defendant's right to appear personally in court to contest the charge(s) and, if unrepresented by an attorney, a waiver of the right to be represented by an attorney;

   (B) Any factual or legal defenses that the defendant would like the court to consider;
(2) A defense to a traffic offense or parking offense submitted by mail may also include a statement for the court to consider when deciding on the appropriate sentence in the event of a finding of guilty.

(d) Forms. Any forms necessary to implement the provisions of this rule shall be approved by the Administrative Director of the Courts.

(e) Judgment. If a defendant elects to enter a plea of guilty or to enter a plea of not guilty under the procedures set forth in this rule, the court shall send the defendant a copy of the judgment by ordinary mail.

Note: Source - R. (1969) 7:6-6. Adopted October 6, 1997 to be effective February 1, 1998; caption amended, paragraph (a) caption and text amended, former paragraph (b) amended and redesignated as paragraph (c), and new paragraph (b) adopted July 28, 2004 to be effective September 1, 2004; caption of rule amended, captions and text of former paragraphs (a) and (b) deleted, former paragraph (c) redesignated as paragraph (e) and amended, and new paragraphs (a), (b), (c), and (d) adopted June 15, 2007 to be effective September 1, 2007; paragraph (a) amended July 16, 2009 to be effective September 1, 2009; paragraph (a) amended July 9, 2013 to be effective September 1, 2013.

7:12-4. Violations Bureau; Designation; Functions

(a) Establishment. If the court determines that the efficient disposition of its business and the convenience of defendants so requires, it may establish a violations bureau and designate the violations clerk. The violations clerk may be the municipal court administrator, the deputy court administrator, other employee of the court, or, with the prior approval of the Supreme Court, any other appropriate official or employee of the municipality, except any elected official or any officer or employee of a police department in the municipality in which the court is held. If no municipal official or employee of the municipality is available, any other suitable and responsible person may be appointed subject to the prior approval of the Supreme Court. The judge designated to preside over a joint or central municipal court may establish a violations bureau. The violations clerk may be the municipal court administrator, the deputy court administrator, other employee of the joint or central municipal court, or, with the prior approval of the Supreme Court, any other appropriate official or employee of the municipality in the instance of a central municipal court or of any of the municipalities comprising the joint municipal court, except any elected official or any officer or employee of a police department in the municipality in which the court is held. If no such municipal official or employee is available, any other suitable and responsible person may be appointed subject to the prior approval of the Supreme Court. The violations clerk shall accept appearances, waiver of trial, pleas of guilty and payments of fines and costs in nonindictable offenses, subject to the limitations as provided by law or Part VII of the Rules of Court or the Statewide Violations Bureau Schedule approved by the
Administrative Director of the Courts. The violations clerk shall serve under the direction and control of the designating court.

(b) Location. Whenever practical, the violations bureau shall be in a public building. The location shall be designated by the court subject to the approval of the Administrative Director of the Courts, and the violations clerk shall take pleas and accept payment of fines and costs only at such location. An appropriate sign reading "Violations Bureau, _________ Municipal Court" shall be posted at the entrance to the violations bureau.

(c) Designated Offenses; Schedule of Penalties. The court shall establish by order a "Local Supplemental Violations Bureau Schedule", which may from time to time be amended, supplemented or repealed, designating the non-indictable offenses within the authority of the violations clerk, provided that such offenses shall not include:

1. non-parking traffic offenses requiring an increased penalty for a subsequent violation;
2. offenses involving traffic accidents resulting in personal injury;
3. operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit-producing drug or permitting another person who is under such influence to operate a motor vehicle owned by the defendant or in his or her custody or control;
4. reckless driving;
5. careless driving where there has been an accident resulting in personal injury;
6. leaving the scene of an accident;
7. driving while on the revoked list; or
8. driving without a valid driver's license.

The Local Supplemental Violations Bureau Schedule shall be submitted to and approved by the Assignment Judge of the county in which the court is located. It shall specify the amount of fines, costs and statutory penalties to be imposed for each offense within the authority of the violations clerk, including, in the discretion of the court, higher fines, costs and penalties for second and subsequent offenses, provided such fines, costs and penalties are within the limits declared by statute or ordinance.
The Statewide Violations Bureau Schedule and the Local Supplemental Violations Bureau Schedule shall be posted for public view at the violations bureau.

(d) Plea and Payment of Fines, Costs and Penalties. A person charged with an offense within the authority of the violations clerk, may, upon ascertaining the fines, costs and penalties established by the Statewide Violations Bureau Schedule or Local Supplemental Violations Bureau Schedule for the offense charged, pay the same, either by mail or in person, to the violations clerk on or before the return date of the summons, provided that when the summons is marked to indicate that a court appearance is required, payment may not be made to the violations clerk even though the offense is on the Statewide Violations Bureau Schedule or Local Supplemental Violations Bureau Schedule. The tender of payment for an offense to the Violations Bureau, without a signed guilty plea and waiver, may be accepted by the clerk, and shall have the effect of a guilty plea. The court may process the payment and enter a guilty finding to the offense on its records. That finding shall be subject to being reopened subject to R. 7:10-1, in the court's discretion, on motion by either the court or the defendant. If the defendant is a corporation, partnership or unincorporated association, the plea and waiver may be signed or payment may be made on its behalf by any of its agents or employees. The court in its discretion may authorize the violations clerk to accept such plea and payment after the return date of the summons.

Note: Source-Paragraph (a): R. (1969) 7:7-1; paragraph (b): R. (1969) 7:7-2; paragraph (c): R. (1969) 7:7-3; paragraph (d): R. (1969) 7:7-4. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (d) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended June 15, 2007 to be effective September 1, 2007; paragraph (a) amended July 16, 2019 to be effective immediately.
**RULE 7:13. Appeals**

**7:13-1. Appeals**

Appeals shall be taken in accordance with R. 3:23, 3:24, and 4:74-3, and in extraordinary cases and in the interest of justice, in accordance with R. 2:2-3(b).


**7:13-2. Stay**

Notwithstanding R. 3:23-5, a sentence or a portion of a sentence may be stayed by the court in which the conviction was had or to which the appeal is taken on such terms as the court deems appropriate.


**7:13-3. Reversal; Remission of Fine and Costs**

A fine or a fine and costs paid pursuant to a judgment of conviction and disbursed by the court in accordance with R. 7:14-4(a) shall be remitted by the recipient of that money to the defendant or defendant's attorney upon service on the recipient of a copy of the order reversing the judgment.

RULE 7:14. General Provisions; Administration

7:14-1. Opening Statement

- **(a) Required Opening Statement.** The judge shall give an opening statement prior to the commencement of the court session concerning court procedures and rights of defendants. This statement shall not, however, be a substitute for the judge advising individual defendants of their rights prior to their respective hearings.

- **(b) Notice to Defendant on Guilty Plea.** Before accepting a plea of guilty to a traffic offense, other than a parking offense, and as part of the opening statement, the court shall inform the defendant that a record of the conviction will be sent to the Director of the Division of Motor Vehicles of this State or the Commissioner of Motor Vehicles of the state issuing defendant's license to drive, to become a part of the defendant's driving record.

- **(c) Notification of Right to Appeal.** Regardless of whether the defendant pleads guilty or is found guilty after a trial, the court, as part of the opening statement, shall advise each defendant of the right to appeal and, if indigent, of the right to appeal as an indigent.


7:14-2. Amendment of Process or Pleading

The court may amend any process or pleading for any omission or defect therein or for any variance between the complaint and the evidence adduced at the trial, but no such amendment shall be permitted which charges a different substantive offense, other than a lesser included offense. If the defendant is surprised as a result of such amendment, the court shall adjourn the hearing to a future date, upon such terms as the court deems appropriate.


7:14-3. Court Calendar

- **(a) Court Calendar.** At each court session, to the extent possible the court shall give priority to attorney matters that are summary in nature. Other cases should be called in the following order, subject to the court’s discretion:
  - (1) requests for adjournments;
  - (2) guilty pleas and first appearances;
  - (3) pretrial conferences;
  - (4) uncontested motions;
  - (5) contested matters with attorneys;
  - (6) noncompliance with time payment issues;
  - (7) contested matters without attorneys;
  - (8) matters to be placed on the record.

- **(b) Scheduling of Cases.** Courts shall stagger the scheduling of cases, where necessary, in order to limit inconvenience to all parties.

Note: Source-R.R. (1969) 7:10-3. Adopted October 6, 1997 to be effective February 1, 1998; caption amended, paragraph (a) amended, former paragraph (b) deleted, and new paragraph (b) adopted July 21, 2011 to be effective September 1, 2011.

7:14-4. Financial Control
- **(a) Fines and Forfeitures.** Moneys received by a court as fines or forfeitures, together with the financial reports covering such funds, shall be forwarded by the court on or before the fifteenth day of each month as follows:
  - (1) To the custodian of the funds of the municipality where such moneys were received in the course of enforcing municipal ordinances or local regulations, if assessed and collected by the municipal court or to the custodian of the funds of the municipality in which the violation occurred, if assessed and collected by the Special Civil Part of the Superior Court.
  - (2) To the custodian of the funds of the municipality or of the county, or to such state agency or officer, as the case may be, where the money was collected in the course of enforcing state laws and regulations, as provided by law.

- **(b) Receipts and Disbursements.** The court shall keep an accurate account of all fees, costs and moneys received, as well as of any money disbursed and to whom disbursed. Receipts shall be turned over to the appropriate municipal, county or state finance officer, or deposited as soon after receipt as practical, in a bank or banks authorized to do business in this State. No disbursement shall be made except by check drawn on such bank. The court shall issue or cause to be issued and shall obtain a receipt in the form and manner prescribed by the Administrative Director of the Courts in every instance where money is received or disbursed.

- **(c) Electronic Payments of Court Fees and Financial Obligations.** The various municipal, central and joint municipal courts may accept electronic payments for fees, costs, fines, penalties, service charges or other judicially imposed financial obligations pursuant to conditions and administrative procedures established by the Administrative Director of the Courts.

- **(d) Payment of Moneys Due.** No moneys due the court, its employees, or any persons attending upon it, for salaries, fees, costs or other charges shall be deducted from receipts, but shall be paid only on a voucher submitted by the court to the appropriate finance officer.

- **(e) Docket: Fiscal Forms and Procedures: Record-Keeping.** The court shall maintain such separate dockets in such form as the Administrative Director of the Courts prescribes. All fiscal forms, procedures and record-keeping shall conform to the requirements of the Administrative Director of the Courts.


### 7:14-5. Oath of Municipal Court Judge

Before entering upon the duties of the office, the oath of office of a municipal court judge shall be taken before a judge of the Superior Court. The original shall be filed with the municipal court administrator and a copy of the original filed with the Administrative Director of the Courts.

NEW JERSEY LANDLORD-TENANT LAW BASICS: CLE OUTLINE

No self-help residential evictions in New Jersey: all evictions are through the courts, by getting a judgment of possession, and are effectuated by a court officer ("constable"); self-help eviction expose landlord to liability

In NJ, eviction is of the entire unit or household: cannot evict isolated members, though they can voluntarily agree to leave.

Eviction of main tenant also evicts subtenants (if any)

I. THERE ARE TWO DIFFERENT LANDLORD-TENANT LAWS IN NEW JERSEY

A. N.J.S.A. 2A:18-53 – applies to commercial tenancies & owner-occupied premises with not more than two rental units (three units total, maximum)

B. N.J.S.A. 2A:18-61.1 – the "Anti-eviction Act": applies to all residential tenancies other than owner occupied, three units or less

C. Removal of owners from condos or co-ops is NOT a landlord-tenant matter

D. EJECTMENT: Removal of non-tenants (e.g. guests and family members)
   1. Brought in special civil, not landlord-tenant part
   2. Not a summary proceeding, like L-T matters

II. GROUNDS FOR EVICTION UNDER 53:¹

A. Expiration of lease term
B. Failure to pay rent
C. Disorderly conduct
D. Willfully damaging the landlord’s property
E. Violating the lease

III. GROUNDS FOR EVICTION UNDER 61—NOTICES THAT MAY BE REQUIRED

A. All grounds for eviction other than nonpayment of rent require notice(s).

B. Notice to Cease (NTC)² warns the tenant that his/her behavior may be grounds for eviction; gives the tenant a chance and some reasonable (for this issue) time to remedy the behavior. Not all causes require this warning or chance to cure.

¹ Handout: relevant portions of 2A:18-53
² Handout: Notice to Cease
C. Notice to Quit/Termination Notice/Demand for Possession (NTQ)\(^3\): terminates the tenant’s tenancy, either for failure to cure after a Notice to Cease, for one of the causes not requiring a warning.

1. The Notice to Quit will have a termination date. This is any date on or after the earliest date allowed by the applicable notice period (see below). The landlord cannot accept rent after the termination date: doing so waives the right to evict. (This case must be dismissed; landlord can start over, if applicable.)

D. Specificity of Notices: in New Jersey law, the Notice must be specific enough as to where, when, what, was done, why that allows eviction, etc. as to 1) for a Notice to Cease, give the tenant a meaningful chance to correct the behavior; or 2) for a Notice to Quit, to let the tenant prepare a meaningful defense, especially in light of the lack of discovery (due process)

1. The landlord will be limited to the grounds in the notice (legal and factual) and cannot raise other issues at trial.

E. Adequate notice is *jurisdictional*: failure to provide adequate notice deprives the court of jurisdiction to hear the case and results in dismissal without prejudice.

F. Service of Notices: must be by regular and certified mail; hand delivery as well is recommended, by landlord/prop. mgr. can testify to delivery (*jurisdictional*: no delivery = no jurisdiction).

G. Notice Periods—Notices to Quit minimum periods set by N.J.S.A. 2A:18-61.2.\(^4\) the common causes of action all have three-day or one-month periods. 

*WARNING!* A one-month period is at least one full month, so it’s next month plus whatever is left in the current month. See below for specific periods.

\(^3\) Handout: NTQ

\(^4\) Handout: relevant portions 2A:18-61.2
IV. GROUNDS FOR EVICTION UNDER 61—SPECIFIC CAUSES OF ACTION\(^5\)

N.J.S.A. 2A:18-61.1: “No lessee or tenant ... may be removed ... except upon establishment of one of the following grounds as good cause....” No evictions without good cause, and expiration of a lease is not good cause for eviction in NJ. On expiration, a tenancy converts to a month-to-month tenancy, which means the tenant can give one-month notice terminating tenancy...but the landlord can only evict for good cause.

A. Non-payment of rent (61.1a): no notices required; may evict for failure to pay rent or additional rent (designated as such in written lease); if amount paid in full at any time pre-trial, case must be dismissed.
   1. No money judgments: even though rent is owed and the court will find a minimum amount owed in granting the judgment, the landlord only gets a judgment for possession; the tenant is not compelled to pay the past-due rent, just to leave the unit.
   2. Complaint automatically updated to include amounts due through trial date (e.g. rent for months since complaint filed)

B. Disorderly Conduct (61.1b): NTC, one month NTQ; only conduct disturbing tenants is disorderly; generally requires tenant witnesses

C. “Willful or Grossly Negligent Damage to Premises” (61.1c): 3-day NTQ only; “simple negligence” not enough for eviction

D. Violation of written rules and regulation (e.g. House Rules) (61.1d): NTC, one-month NTQ; only of written rules

E. 1. Violation of written lease (61.e(1)): NTC, one-month NTQ; only of written lease. Practice tip: the lease must contain a reservation of the right to evict (right of re-entry) for violations.

\(^5\) Handout: relevant portions of 2A:18-61.1
2. **Violation of written lease provisions relating to criminal activity** (especially drug-related)—*Public housing only*: 3-day NTQ only; allows eviction of “innocent” household members, though courts disfavor that and expect the landlord to explore other options. Main Federal case: *Rucker*\(^6\)

F. **Failure to pay rent after a reasonable increase**: Two NTQs required (first, a NTQ to terminate existing tenancy at expiration or on 30-days notice; then a NTQ if increase not accepted) (61.1f); reasonable judged in context (no bright line rules)

G. **Refusal of reasonable lease changes at end of lease term**: Two NTQs required, as for increasing rent (see above) (61.1i)—court will evaluate whether changes are reasonable. **Banning pets**: generally, existing pets prior to the change are grandfathered

H. **Habitual late payment of rent** (61.1j)\(^7\): Initial Notice to Cease, followed by at least two separate “late payment letters” when accepting rent late twice more, then a one-month NTQ.

I. **Tenancy as consideration for employment** (61.1m): three-day NTQ only, after or with notice of termination of employment; for on-site staff (e.g. supers)

J. **Drug offenses—requires conviction or plea** (61.1n): three-day NTQ only

K. **Assaults or threats against landlord** (including family & staff) (61.1o): three-day NTQ only

L. **“Civil violations [of certain criminal laws],” including assault or terroristic threat vs. landlord (& family and staff), drug offenses, or theft from landlord, other tenants, or premises** (61.1p)—three-day NTQ only; no conviction required, civil standard of proof

M. **Theft from landlord, tenants, or premises—requires conviction or plea** (61.1q): not clear whether NTQ required, but three-day NTQ is the best practice

---

\(^6\) Handout: Rucker
\(^7\) Handout: HABLA letter
N. **Other grounds** (Notices vary; have some longer notice periods)
   1. Abating Housing or health code violations (61.1g)—*note that an illegal rental can result in having to pay the tenant relocation expenses* (see below)
   2. Permanently retiring building from residential use (61.1h)
   3. Conversion to condominium or co-operative ownership (61.1k)
   4. Personal occupancy by owner or purchaser of unit (61.1l)
   5. Prostitution (N.J.S.A. 46:8-8)

V. **PUTTING TOGETHER A CASE: LEGAL ISSUES TO CONSIDER/ADDRESS**

A. **Registration requirement**: all residential rentals must be registered with the DCA or municipality. If not registered, there can be no eviction until the unit is registered.

B. **Illegal unit and relocation**: If unit is not merely unregistered but is illegal because it does not and cannot meet criteria for occupancy (e.g. below-grade basement unit with insufficient egress), then the tenant must move (under 2A:18-61.1g) but is entitled to six-months rent for relocation, even if actual relocation costs are lower and even if the tenant owes the landlord money (no offsets) pursuant to statute (2A:18-61.1H) and caselaw (Miah v. Ahmed, 179 N.J. 511 (2004)).

C. **Removal to Law Division**: very rare, but could happen if there are important or novel questions, and/or if discovery is required—*landlord-tenant court does not have discovery (or motion practice)*
   1. **Removal to Federal District Court** if there is a federal law issue

D. **Tenant bankruptcy**: If a tenant files for bankruptcy, the bankruptcy filing will stay the eviction. The landlord can ask the bankruptcy to lift the stay, which will often be granted for holdover (not non-payment of rent) evictions, since holdover evictions do not represent a collections effort the way nonpayment evictions are deemed to. However, nonpayment evictions will typically remain stayed, though the bankruptcy court has the power to order the tenant to pay front rent (not the arrears) as it comes due as a condition of not being evicted.

---

8 Handout: relevant portion of 2A:18-61.1H; Miah v. Ahmed.
E. No formal discovery in L/T court, but (practice tip) informational conferences can provide informal discovery; in public housing, tenants or their attorneys have the right to review the landlord’s file for that tenant

VI. PUBLIC HOUSING ISSUES

A. No eviction for “additional rent” only for base rent plus filing fee (other amounts still owed, and in theory, landlord could sue for)

B. Only eviction for non-payment for tenant’s failure to pay: if the agency fails to pay or is late (but subsidy not terminated), must seek funds from agency

C. 10-day notice must be provided, even for non-payment cases

D. Opportunity for informal conference (recommended for non-public cases, too)

E. Re-certification: tenant rent must be determined annually or when there is a change in income or household (generally: rent = 30% of monthly income). Notices (120-, 90-, 60-, and 30-day) must be provided for annual re-certification. Failure to re-certify causes rent to go to market rent (subsidy lost) and can also provide grounds to evict as a lease violation.

F. Additional ground for eviction [e(2)] available: criminal activity in violation of lease

G. File review by tenants or their counsel

VII. PREPARING FOR TRIAL:

A. Additional ground for eviction [e(2)] available: criminal activity in violation of lease

---

9 Handout: 10-day notice
10 Handout: re-certification notices; form 50059.
B. Some judges require the registration statement: good to bring a copy

C. If there is a written lease, have a copy for the court; in public housing, also have a copy of the form 50059 if rent or household composition is an issue

D. Have printouts of all photographs (e.g. for property damage cases)—**practice tip:** color photos are more impactful

E. Copies of all notices sent to tenant; copies of proof of receipt/delivery, as applicable

VIII. **WHAT HAPPENS IN COURT**

A. *Harris* announcement: tenants are told their rights\(^\text{11}\)

B. Calendar call

C. Mediation—depending on county, may be private or with court mediator

D. Trial if no resolution via mediation

   1. **Practice tip:** Many problem tenants, especially public housing tenants, are very experienced and savvy *pro se* tenancy litigants: do not underestimate

   2. Tenancy trials are summary proceedings with no jury. Judges often take a more directive/active role than in other proceedings

IX. **HOW CASES MAY BE RESOLVED**

1. **Remember:** no money judgments in tenancy court

2. **Default:** the landlord appears but the tenant does not; landlord gets a *default judgment of possession* and may file for a Warrant of Removal within 30 dayss

\(^{11}\) Handout: *Harris* printout; *Harris*. 
3. **Dismissal without prejudice** if the tenant appears and the landlord does not, or if the landlord voluntarily dismisses. Case may be refiled.

4. **Stipulation of Settlement**:\(^{12}\) an agreement resolving the matter with the tenant remaining in possession; typically involves either payment plan to repay rent arrears, or an agreement to cease certain lease violations or otherwise improper behavior. Most common way non-default, non-dismissed cases resolve. **Practice tip:** stipulations are enforced according to plain language—if something is omitted or is incorrect, the court will still enforce the stipulation as written.

5. **Consent to Enter Judgment (Tenant Required to Vacate)**, sometimes called a “**Consent Default**”: An agreement by which the tenant agrees to move out by a date certain.
   
a. **“Don’t pay and go”**: tenant does not have to pay money for the time he/she receives prior to moving out; subject to less scrutiny than a—
   
b. **“Pay and go”**: tenant agrees to pay money in exchange for being allowed to remain for some period of time; less favored, more heavily scrutinized

6. **Trial**, resulting in:
   
a. **Judgment of possession** if the landlord proves its case; or
   
b. **Dismissal**, if the landlord fails to prove its case.

7. **The landlord cannot accept payment after getting a judgment of possession without waiving the right to evict.**

X. **HABITABILITY (Marini) DEFENSE**: if the landlord does not provide a habitable space, there may be a violation of the implied warranty of habitability: this can entitle tenants to withhold rent until the problem abated/correction. Many tenants try tor raise this to delay or avoid eviction even when there are no real problems. The leading NJ case on is *Marini vs. Ireland.*\(^{13}\)

---

\(^{12}\) Handout: both the Essex *Stipulation of Settlement* form and the *Consent to Enter Judgment (Tenant Remains)* used by many other Vicinages.

\(^{13}\) Handout: *Marini; C.F. Seabrook*
A. **Practice tip:** tenants must deposit money (the uncontested amount of rent, at a minimum) to present this defense; make sure you make the tenant aware of this, as it may prompt them to settle otherwise, if they cannot make the deposit.

B. **Practice tip:** if/when there is a *Marini* defense raised, the landlord should take pictures of the unit to document either no damage or repairs made. (Conversely, tenants should have pictures of any issues/conditions.)

**XI. WARRANTS OF REMOVAL:** The warrant of the removal is the document which instructs the court officer ("constable") to lock out the tenant. If the eviction is under 61.1, it cannot be issued to the constable until at least three business days after the judgment of possession (in cases under 53, may be issued immediately). Cannot be executed (no lock-out) until three business days after the court officer serves it on the tenant or posts it on the tenant’s door.

A. Applied for a [Landlord Certification](#) and [Attorney Certification](#).$^{14}$

B. **30-day time frame to request a warrant:** must be applied for within thirty (30) days of (1) the judgment for possession; (2) first breach of a Stipulation of Settlement; or (3) breach of Consent to Enter Judgment (Tenant Required to Vacate) (i.e. must be applied for within no more than 30 days of when the tenant failed to move out when they promised they would). **Practice tip:** in regards to Consent to Enter Judgment (Tenant Required to Vacate), the warrant may be applied for pre-breach, as long as the application does not request it until the day the tenant should be gone—pre-applying lets you avoid a further paperwork delay after the breach. **Practice tip:** follow-up with court if warrant not issued within 2 weeks of application, so you can re-apply if necessary.

1. **The Landlord cannot accept payment after requesting a Warrant without waiving the right to evict.**

C. **30-day time limit after issuance to execute the warrant:** the tenant must be locked out within 30 days of the warrant being issued by the court. **Practice tip:** This time can be extended by mutual consent—put the consent in writing and file with the court. **Practice tip:** follow-up with court officer if the lockout is not scheduled within 7 – 10 days of warrant being issued: leave yourself time to resolve any problems.

$^{14}$ Handouts: Landlord and Attorney Certification(s)
XII. **POST-JUDGMENT RELIEF:** all but D, below, can only be applied for after the Warrant of Removal is served on the tenant (*i.e.* in the 3-day window between service and lock-out); D can applied for during the regular rules for appeals.

A. **Order to Show Cause:** a request for relief under Court Rule 4:50 (Relief from Judgment or Order); liberally given; court may—but often doesn’t—require a deposit of rent; will stay the lock-out pending a hearing; the hearing can result in the Order being vacated if there are no grounds to relieve the tenant from the order (lock-out proceeds); in the case being dismissed (if the tenant prevails); or in a court order being granted, often on consent (*e.g.* to make payment by a certain date)

B. **Order for Orderly Removal:** the court may on its own authority and over landlord opposition grant the tenant seven (7) extra days to move out; often, the court will also provide in the Order that any property left behind is deemed abandoned, freeing the landlord from the requirements of the Abandoned Property Act.

C. **Hardship Stay:** the court can stay the eviction for up to six months, IF the tenant (1) pays all arrears; (2) pays front rent as it comes due; (3) does not damage the premises or commit other good cause for eviction. Tenant needs to show a hardship, above and beyond the “standard” hardship of being evicted. Rarely granted, since usually a tenant being evicted does not have the money for the back- and front-rent.

D. **Appeals:** rarely sought, since they do not automatically stay eviction, and even rarely stay it when a stay is specifically applied for—*i.e.* does not help tenants in any meaningful way in most cases.

---

15 Handouts: OSC form; tenant certification applying for OSC; R.4:50.

16 Handout: OOR
XIII. **SECURITY DEPOSITS UNDER THE SECURITY DEPOSIT ACT**: units which are under 61.1 (residential buildings other than owner-occupied with not more than 2 residential units) are also subject to the Security Deposit Act (SDA), N.J.S.A. 46:8-19 et seq.\(^{17}\)

A. No more than 150% of one month’s rent (month-and-half)

B. Must be deposited in interest bearing account

C. Tenant must be notified of account, interest rate, and interest earned when deposited and annually—failure to do so can let the tenant apply the security deposit to rent

D. Except as per C, cannot be applied to rent or otherwise used while tenancy is still ongoing—tenants may not “live out” their security or use it to pay arrears

E. On termination of tenancy, may be applied against unpaid rent, other amounts due the landlord, and damage to the property. If not all used, balance must be returned; if arrears and damage exceeds S-D, landlord could sue for balance due

F. When tenancy terminates, landlord must send tenant a letter within 30 days detailing how S-D applied, plus any portion of the S-D tenant is getting back. A failure to send the letter exposes the landlord to enhanced damages if any amounts were wrongfully withheld from the deposit.

XIV. **SECURITY DEPOSITS IF SDA NOT APPLICABLE (COMMERCIAL; OWNER-OCCUPIED RESIDENTIAL, NOT MORE THAN TWO RENTAL UNITS)**: governed by the lease

---

\(^{17}\) Handout: relevant portions of N.J.S.A. 46:8-19 et seq.
XV. **ABANDONED PROPERTY** The Abandoned Property Act (N.J.S.A. 2A:18-72 et seq)\(^{18}\) applies to all residential tenancies and commercial tenancies if the lease does not contain provisions relating to the disposal of property the tenancy’s end. (**PRACTICE TIP:** make sure commercial leases contain a clause addressing the tenant’s property.) If the Act applies:

A. The landlord must send the tenant a letter regarding the disposition of the property. Failure to send the letter exposes the landlord to more liability for wrongful disposal of the property.

B. The landlord must keep the property safe until the earlier of 33 days after mailing of the letter or 30 days after delivery.

C. Tenant has the 33/30 days to arrange to collect the property; the landlord may charge reasonable storage costs but **may not** make the tenant pay any arrears in order to get their property.

D. **PRACTICE TIP:** send the letter right away, to reduce how long the property must be stored.

---

\(^{18}\) Handout: N.J.S.A. 2A:18-72 et seq
2A:18-53. Removal of tenant in certain cases; jurisdiction

Except for residential lessees and tenants included in section 2 of this act, any lessee or tenant at will or at sufferance, or for a part of a year, or for one or more years, of any houses, buildings, lands or tenements, and the assigns, under tenants or legal representatives of such tenant or lessee, may be removed from such premises by the Superior Court, Law Division, Special Civil Part in an action in the following cases:

a. Where such person holds over and continues in possession of all or any part of the demised premises after the expiration of his term, and after demand made and written notice given by the landlord or his agent, for delivery of possession thereof. The notice shall be served either personally upon the tenant or such person in possession by giving him a copy thereof or by leaving a copy of the same at his usual place of abode with a member of his family above the age of 14 years.

b. Where such person shall hold over after a default in the payment of rent, pursuant to the agreement under which the premises are held.

c. Where such person (1) shall be so disorderly as to destroy the peace and quiet of the landlord or the other tenants or occupants living in said house or the neighborhood, or (2) shall willfully destroy, damage or injure the premises, or (3) shall constantly violate the landlord's rules and regulations governing said premises, provided, such rules have been accepted in writing by the tenant or are made a part of the lease; or (4) shall commit any breach or violation of any of the covenants or agreements in the nature thereof contained in the lease for the premises where a right of re-entry is reserved in the lease for a violation of such covenants or agreements, and shall hold over and continue in possession of the demised premises or any part thereof, after the landlord or his agent for that purpose has caused a written notice of the termination of said tenancy to be served upon said tenant, and a demand that said tenant remove from said premises within three days from the service of such notice. The notice shall specify the cause of the termination of the tenancy, and shall be served either personally upon the tenant or such person in possession by giving him a copy thereof, or by leaving a copy thereof at his usual place of abode with some member of his family above the age of 14 years.
NOTICE TO CEASE

Via Hand Delivery, Regular Mail, and Certified Mail Return Receipt Requested

To: Tenant Smith
123 Main Street
Anywhere, NJ 00123

You are a tenant leasing the above captioned apartment from ABC CORP. pursuant to the terms of a written lease. ABC CORP. is your Landlord.

This notice is a warning to you that you are in violation of lease in that you have engaged in disorderly conduct and you have failed to maintain active utilities. If you do not restore active utilities in your unit or you engage in another act of disorderly conduct, your tenancy will be terminated and you may be evicted. PLEASE READ THIS NOTICE CAREFULLY.

REASON FOR NOTICE

DISORDERLY CONDUCT

1. New Jersey law allows your landlord to terminate your tenancy if, after being served with this Notice to Cease, you continue to engage in disorderly conduct. Disorderly conduct is conduct that disturbs the peace and quiet enjoyment of other tenants.

2. Paragraph 9 of your lease permits your landlord to terminate your tenancy for violations of the lease and other causes permitted by statute.

3. You have engaged in the following acts of disorderly conduct:

   a. On January 12, 2016 at approximately 2:30 a.m. you were playing your music loudly. Management received several complaints from other tenants.

   b. On February 1, 2016 at 2:30 p.m. you were observed in the common area of the building yelling into your phone at an unknown person. Other tenants complained about the disturbance.

   c. On March 15, 2016 at 12:30 p.m. police responded to the building as a result of several noise complaints lodged by your neighbors. You were throwing a raucous party. Several of your guests or other persons under your control
were observed passed out in various common areas of the building including the stairwells, lobby, and front steps.

4. You must not play music during quiet hours. You must not engage in any disputes with other individuals in the common areas of the building. You must not host raucous parties, cause police to respond to the building, or cause or allow yourself, your household members, your guests, or other persons under your control to sleep in or around the common areas of the building.

5. If, in the future, there is another incident of disorderly conduct, your tenancy will be terminated and you will be evicted.

**LEASE VIOLATION—FAILURE TO MAINTAIN ACTIVE UTILITIES**

1. New Jersey law allows your landlord to terminate your tenancy if you continue to violate the terms of your lease after being served with this Notice to Cease.

2. Paragraph 6 of your lease provides: “The Landlord will pay for the following utilities: [cold water]. The Tenant will pay for the following utilities [hot water, electricity, heat, air conditioning]. Tenant must ensure that all utilities for which tenant is responsible are paid and active during the entire term of the tenancy”

3. Paragraph 9 of your lease permits your landlord to terminate your tenancy for violations of the lease and other causes permitted by statute.

4. Despite this requirement, you have failed to maintain active utilities in your unit. On April 1, 2016 PSE&G reported to management that it was disconnecting your utilities.

5. **You must immediately arrange to resume active electric and/or gas utilities in your unit and ensure that utilities are not shut off at any point during the term of your tenancy.**

6. On or after **April 12, 2016**, your landlord will inspect your unit. If, at that time, or at any time in the future, your utilities are shut off, your tenancy will be terminated and you may be evicted.

If you have any questions regarding this notice you should call the Management office. Please do not call my office.

Dated: April 2, 2016

_____________________________
Attorney Name, Esq.
Attorney for Landlord

cc: ABC Corp.—via email
NOTICE TO QUIT/TERMINATION NOTICE/DEMAND FOR POSSESSION

Via Hand Delivery, Regular Mail, and Certified Mail Return Receipt Requested

To: Tenant Smith
    123 Main Street
    Anywhere, NJ 00123

You are a tenant leasing the above captioned apartment from ABC CORP. pursuant to the terms of a written lease. ABC CORP. is your Landlord.

This is a Notice to Quit/Termination Notice. The purpose of this Notice is to terminate your tenancy and demand that you quit and vacate the premises.

TAKE NOTICE that on the 1st day of June 2016 your tenancy is terminated. At that time you must quit and vacate the premises and must return possession of the premises to the Landlord.

TAKE FURTHER NOTICE that if you remain in possession of the leased unit on or after June 1, 2016 then the landlord may seek to enforce this termination only by bringing a judicial action. At the time that a judicial action is brought you may present a defense.

TAKE FURTHER NOTICE that the judicial eviction process required by the landlord and tenant law of New Jersey, as amended provides an opportunity for a hearing in court that contains the basic elements of due process as defined by HUD regulations.

TAKE FURTHER NOTICE that you have the right to examine documents in the Landlord’s possession that are directly relevant to the termination of your tenancy and eviction.

TAKE FURTHER NOTICE that the Landlord shall afford you with an opportunity to discuss the proposed termination of your tenancy, as set forth below.

TAKE FURTHER NOTICE that persons with disabilities have the right to request reasonable accommodations to participate in the hearing process.
REASON FOR TERMINATION

LEASE VIOLATION—FAILURE TO MAINTAIN ACTIVE UTILITIES

1. New Jersey law allows your landlord to terminate your tenancy if you continue to violate the terms of your lease after being served with this Notice to Cease.

2. Paragraph 6 of your lease provides: "The Landlord will pay for the following utilities: [cold water]. The Tenant will pay for the following utilities [hot water, electricity, heat, air conditioning]. Tenant must ensure that all utilities for which tenant is responsible are paid and active during the entire term of the tenancy."

3. Paragraph 9 of your lease permits your landlord to terminate your tenancy for violations of the lease and other causes permitted by statute.

4. On or about April 2, 2016, you were served with a Notice to Cease warning you that if you failed to restore electric and/or gas utilities to your unit, your tenancy would be terminated and you would be evicted. A copy of the Notice to Cease is attached hereto as Exhibit A and incorporated herein by reference.

5. Notwithstanding service of the Notice to Cease, you have failed to restore active utilities to your unit. A scheduled inspection of your unit on April 11, 2016 revealed that your electric and gas utilities were still turned off.

For these reasons your tenancy is terminated.

TAKE NOTICE that the Landlord shall afford you with an opportunity to discuss the proposed termination of your tenancy as set forth herein. You have ten (10) days within which to discuss the proposed termination of tenancy with the management. Contact your Landlord’s management office if you wish to discuss the proposed termination.

The landlord has instructed its representatives not to accept your rent on and after the date your tenancy is terminated. If rent is paid and accepted after the termination, such an action shall be without prejudice to the landlord’s right to evict you. Acceptance of rent after the termination date shall not be deemed a waiver of any of the landlord’s rights.

If you have any questions regarding this notice you should call the Management office. Please do not call my office.

Dated: April 15, 2016

________________________________________
Attorney Name, Esq.
Attorney for Landlord

cc: ABC Corp.—via email
2A:18-61.1 and 61.2 (Relevant portions of 61.2 in bold italics)

a. Failure to Pay Rent

If a tenant fails to pay rent, the landlord may immediately take legal action to have the tenant evicted. The landlord is not required to give the tenant notice before filing an eviction suit, except if the tenant resides in federally subsidized housing. If the tenant resides in federally subsidized housing a 14-day notice must be given before filing a suit for eviction.

b. Disorderly Conduct

If after given written Notice to Cease disorderly conduct, the tenant continues to engage in disorderly (conduct that disturbs the peace and quiet enjoyment of other tenants or people residing in the immediate vicinity of the building). A Notice to Quit must be served on the tenant at least three days prior to filing a suit for eviction.

c. Damage or Destruction to the Property

Tenant has intentionally or by reason of gross negligence caused or allowed destruction, damage or injury to the property. A Notice to Quit must be served on the tenant at least three days prior to filing a suit for eviction.

d. Substantial Violation or Breach of the Landlord's Rules and Regulations

Tenant continues to violate the landlord's reasonable rules and regulations contained in the lease or accepted in writing by the tenant after service of a Notice to Cease. A Notice to Quit must be served on the tenant at least one month prior to filing the suit for eviction. In addition, any notices must be given on or before the start of a new month.

e. Violation or Breach of Covenants or Agreements Contained in the Lease

1) Tenant continues to substantially violate the reasonable terms of the lease, after having been given a written Notice to Cease, but only if the landlord has reserved a right of re-entry in the lease. A Notice to Quit must be served on the tenant at least one month prior to filing the suit for eviction.

2) In public housing, the Tenant has substantially violated or breached any of the terms of the lease pertaining to illegal uses of controlled dangerous substances or other illegal activities. The term in the lease must conform to federal guidelines and must have been in effect at the beginning of the lease term. The landlord does not have to give Notice to Cease the illegal activity before filing for a Notice to Quit. A Notice to Quit must be served on the tenant in accordance with federal regulations pertaining to public housing.
f. Failure to Pay Rent Increase

Tenant fails to pay a rent increase after having been given notice of a rent increase and a Notice to Quit. The rent increase must not be unconscionable and must comply with all other laws or municipal ordinances, including rent control. A Notice to Quit must be served on the tenant at least one month prior to filing the suit for eviction.


g. Health and Safety Violation or Removal from the Rental Market

A tenant may be evicted if the following conditions apply:

1. The landlord has been cited by an inspector and needs to board up or demolish the property because of substantial health and safety violations and because it is financially difficult to fix the violations.
2. The landlord needs to fix health and safety violations and it is not possible to do so, while the tenant resides at the property. When the landlord serves the eviction notice he must also notify the Department of Community Affairs, Landlord-Tenant Information Service, P.O. Box 805, Trenton, New Jersey 08635-0805. In addition, upon request, the landlord must provide the Department of Community Affairs with information as required under the law, so that the Department may prepare a report informing all parties and the court of the feasibility of the landlord to fix the violations without removing the tenants from the property.
3. The landlord needs to correct an illegal occupancy and it is not possible to correct this violation without removing the tenant.
4. A governmental agency wants to permanently take the property off the rental market, so that it can redevelop or clear land in a blighted area.

A Notice to Quit must be served on the tenant at least three months before filing a suit for eviction. The tenant can't be evicted until relocation assistance is provided.

Any tenant evicted under g. 3) (illegal occupancy) is entitled to relocation assistance in an amount equal to six times the tenant's monthly rent. The landlord is responsible for paying the tenant's relocation expenses.

h. The Landlord Wants to Permanently Retire the Property from Residential Use

The landlord wants to permanently retire a building from residential use. A Notice to Quit must be served on the tenant at least 18 months prior to filing the suit for eviction. No legal action may be taken until the lease expires.

i. Refusal to Accept Reasonable Changes in the Terms and Conditions of the Lease

When the lease expires, the landlord may propose reasonable but substantial changes to the terms and conditions of the lease. If after written Notice to Quit and an offer to continue the tenancy on new terms, the tenant refuses to accept those changes the landlord may file suit for eviction and
the court will determine if the proposed changes are reasonable. A Notice to Quit must be served on the tenant at least one month before filing suit for eviction.

j. Tenant Continuously Fails to Pay Rent or Habitually Pays Late

The tenant continuously fails to pay rent or habitually pays late after written Notice to Cease. A Notice to Quit must be served on the tenant at least one month before filing a suit for eviction.

Note: The Courts have ruled that habitual late payments means more than one (1) late payment following the Notice to Cease. Also the N.J. Supreme Court ruled that a landlord after giving a tenant a notice to cease late payments, must continue to give the tenant reasonable and sufficient notice when accepting further late payments, that continued late payments from the tenant would result in an eviction action. If the landlord does not give this continued notice, the original Notice to Cease given to the tenant may be considered waived by the Court.

k. Conversion to Condominium, Cooperative or Fee Simple Ownership

If the landlord or owner of a building is converting the property from the rental market to a condominium, cooperative or fee simple ownership of two or more dwelling units, the landlord may file a suit for eviction. A Notice to Quit must be served on the tenant at least three years before filing a suit for eviction. No legal action may be taken until the lease expires.

l. Personal Occupancy by Owner or purchaser of unit

The landlord may file for eviction if he or she is the owner of three or less units in that building and he or she either: (1) seeks to personally occupy the unit or (2) has contracted to sell the unit to a buyer who seeks to personally occupy the unit and the contract of sale calls for the unit to be vacant at the time of closing. A Notice to Quit must be served on the tenant at least two months prior to filing suit for eviction. No legal

m. Tenancy Based on Employment

The tenant resides in the property on the condition that he is employed by the landlord as a superintendent, janitor or in some other job and that employment has been terminated. A Notice to Quit must be served on the tenant three days prior to filing a suit for eviction.

n. Conviction of a Drug Offense Committed on the Property

The tenant has been convicted of or pleaded guilty to drug offenses that took place on the property and has not in connection with his sentence either (1) successfully completed or (2) been admitted to and continues during probation participation toward completion of a drug rehabilitation program. No eviction suit may be brought more than two years after the conviction or release from incarceration whichever is later. A Notice to Quit must be served on the tenant at least three days prior to filing suit for eviction.
o. Conviction of Assaulting or Threatening the Landlord, His Family or Employees

The tenant has been convicted of or pleaded guilty to an offense involving assault or terrorist threats against the landlord, a member of the landlord’s family or an employee of the landlord. No eviction suit may be brought more than two years after the conviction or the release from incarceration whichever is later. A Notice to Quit must be served on the tenant at least three days prior to filing a suit for eviction.

p. Civil Court Action that Holds Tenant Liable for Involvement in Criminal Activities

The tenant is found liable in a civil court proceeding for (1) theft of property located on the premises, (2) assault or terrorist threats against the landlord, a member of the landlord’s family or an employee of the landlord, or (3) illegal drug activities that take place on the premises. A Notice to Quit must be served on the tenant at least three days prior to filing suit for eviction.

q. Conviction for Theft of Property

The tenant has been convicted of or pleaded guilty to an offense involving theft of property from the landlord or from tenants residing in the same building or complex. A Notice to Quit must be served on the tenant at least three days prior to filing suit for eviction.
Relevant Case Law

**Department of Housing and Urban Development v. Rucker et al., 535 U.S. 125 (2002):** Landlord, the Oakland Housing Authority sought to evict four tenants whose relatives or guests were linked to drug activity pursuant to a provision of their leases that provided, "that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in any drug-related criminal activity on or near the premises." The Anti-Drug Abuse Act of 1988, as amended, provides that each "public housing agency shall utilize leases...providing that...any drug-related criminal activity on or off [federally assisted low-income housing] premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy." The tenants filed an action, arguing that the Act does not require lease terms authorizing the eviction of the "innocent" tenants, regardless of whether the tenants knew or should have known of the activity. The District Court's issuance of a preliminary injunction against OHA was affirmed by an en banc Court of Appeals.

**Holding:** In an 8-0 opinion delivered by Chief Justice William H. Rehnquist, the Court held that the Anti-Drug Abuse Act of 1988 unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity. Chief Justice Rehnquist wrote, "Congress' decision not to impose any qualification in the statute, combined with its use of the term 'any' to modify 'drug-related criminal activity,' precludes any knowledge requirement." The Chief Justice also noted that it was reasonable for Congress to permit no-fault evictions in order to provide public housing that was decent, safe, and free from illegal drugs. Justice Stephen G. Breyer did not participate in the case.

**Miah v. Ahmed,** 179 N.J. 511 (2004): Landlord evicted his tenant from an attic apartment after the municipality in which the apartment was located determined that the unit violated a local zoning ordinance. Because the eviction resulted from zoning-ordinance enforcement for an illegal apartment, N.J.S.A. 2A:18-61.1h required the landlord to provide the displaced tenant with relocation-assistance benefits five days prior to removal. The court granted certification to determine how the amount of relocation assistance should be calculated and whether that amount is subject to setoff for unpaid rent and other that the landlord might have against the tenant.

**Holding:** The Court that N.J.S.A. 2A:18-61.1h entitles displaced tenants to relocation assistance in an amount equal to six times the tenant's monthly rent. The court also held that the public-policy objectives reflected in N.J.S.A. 2A:18-61.1h preclude reductions or setoffs for unpaid rent or other damages.

**Community Realty Management v. Harris,** 155 N.J. 212 (1998): Landlord evicted a subsidized tenant for non-payment of rent and various late fees, legal fees, and damage charges. After judgment for possession entered, tenant paid all the rent and fees demanded in full and signed a document consenting to a Hardship Stay for 6 months. When the 6 months expired, tenant sought to be restored to her tenancy and landlord objected. The trial court affirmed the judgment for possession and the Appellate Division affirmed. The court granted
certification to explore whether the trial court should have vacated the judgment for possession pursuant to *Morristown v. Little*, 135 *NJ* 274 (1994) and whether the Burlington County court’s summary dispossession procedures sufficiently protect the rights of *pro se* litigants.

**Holding:** 1) the trial court should have vacated the judgment for possession pursuant to *Morristown v. Little*, 135 *NJ* 274 (1994) and Rule 4:50-1(f) because of the tenant’s exceptional circumstances (poverty, small children, welfare recipient). 2) A subsidized tenant is not required to pay attorney’s fees or late fees in order to avoid a judgment for possession. 3) The Landlord-Tenant courts must sufficiently apprise *pro se* litigants of their rights (see Harris Announcement).

*Marini v. Ireland*, 56 *NJ* 130 (1970) Tenant paid to repair a toilet after repeated notices to the landlord went unanswered and deducted the cost of repair from the rent. Landlord sought a judgment for possession for that unpaid rent.

**Holding:** There is an implied covenant that the landlord will make repairs. If a landlord failed to make repairs and replacements of vital facilities that are necessary to maintain the premises in a livable condition for a period of time adequate to accomplish such repair and replacements, the tenant can cause the same to be done and deduct the cost from future rents. The tenant’s recourse to such self-help had to be preceded by timely and adequate notice to the landlord of the faulty condition in order to accord him the opportunity to make necessary replacement or repair.
HABITUAL LATE PAYMENT ACCEPTANCE LETTER

[DATE]

[NAME OF TENANT]
[ADDRESS OF TENANT]

Re: Habitual Late Payment of Rent Letter for the Month of [MONTH/YEAR]

Dear Tenant:

Your rent for the month of [MONTH/YEAR] was paid late. It is due no later than the [1st] day of the month in advance and it is considered late if paid after the [10th] day of the month. Your rent was paid on [MONTH/DAY/YEAR OF PAYMENT].

You were served with a Notice to Cease for Habitual Late Payment of Rent on or about [MONTH/DAY/YEAR OF NTC]. If, after you are served with a Notice to Cease, you continue to pay your rent late without legal justification you may be evicted.

PLEASE TAKE NOTICE that by accepting your late rent payment, the landlord is not excusing you from paying your rent on time. Your late payment is made in breach of your lease. Acceptance of the late payment is not a cure of the breach. And, acceptance does not waive the landlord’s right to evict you for the breach.

If you have any questions regarding this letter, please contact management.

Very truly yours,

[MANAGER'S SIGNATURE]
By: [MANAGER'S NAME AND TITLE]

cc: Attorney
VIA REGULAR MAIL, CERTIFIED MAIL AND HAND-DELIVERY

Notice of Termination for Non-Payment of Rent

To:

You are a tenant leasing the above captioned apartment from _______________. _______________ is your landlord.

This Notice of Termination is being served on you in accord with the terms of your lease and the HUD Occupancy Handbook

1. Date of Termination:

Your tenancy will be terminated on ____________________________
(Termination Date).

2. Reason for Action:

Failure to pay rent for your apartment in accord with the terms of your lease. The dollar amount of the balance due is $ ____________. The date your balance due was computed was ____________ and this amount represents rent due and owing as per attached ledger. Note that as of ____________, your rent for the month of ______________ will also be due and owing. Please contact the property manager to review your account.

3. Enforcement:

Be advised that if you do not pay the rent due of $ ____________ on or before the Termination Date then remaining in possession of the apartment on and after the Termination Date will result in the landlord seeking to enforce the termination in court at which time you may present a defense.
4. Right to Discuss Termination:

You or your legal representative have fourteen (14) days within which to discuss this termination of tenancy with the landlord. The fourteen (14) day period begins on the day that this Notice is served on you as set forth below. If you wish to discuss this termination please contact the management office. Persons with disabilities have the right to request reasonable accommodations to participate in the hearing process.

5. Service of Notice:

This Notice will be served on you by mailing it to you at the address set forth above and by delivering a copy to any adult person answering the door at this address. If no adult person answers the door then it will be placed under or through the door or affixed to the door.

6. Date of Receipt:

This Notice is deemed received by you on the later of the date the first class letter is mailed or hand delivered.

7. Effective Date:

Service of this Notice is deemed effective once the Notice has been mailed and hand-delivered.

Date: ______________

MANAGER'S SIGNATURE: ______________

PRINT NAME: ______________

For: ____________________________

PRINT NAME OF LANDLORD

cc: Attorney
1. I am the attorney for the landlord in this eviction action and make this certification pursuant to R. 6:6-3(b).

2. My client, the landlord, has asserted that the tenant has failed to pay rent now due and owing in this eviction action.

3. A. I have reviewed the written lease between the parties and the applicable federal, state, and local laws and regulations and certify that, in my opinion, the charges and fees claimed to be due as rent, other than the base rent, are permitted to be charged as rent by the lease and the applicable federal, state and local laws and regulations for purposes of this eviction action.

3. B. I have been advised by my client, and I have no reason to believe to the contrary, that there is no written lease between the parties. I have reviewed the applicable federal, state, and local laws and regulations and certify that, in my opinion, the charges and fees claimed to be due as rent, other than the base rent, are permitted to be charged as rent by the lease and the applicable federal, state and local laws and regulations for purposes of this eviction action.

3. C. I have been advised by my client, and I have no reason to believe to the contrary, that my client has not sought, in this action for eviction, any charges or fees other than the base rent, and that the base rent claimed to be due and owing is permitted to be charged as rent by the applicable federal, state and local laws and regulations for purposes of this eviction action.

3. D. This is not an action for rent.

I CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILFULLY FALSE, I AM SUBJECT TO PUNISHMENT.

DATE: October 30, 2012

JEFFREY R. KUSCHNER, ESQ.
Attorney for Landlord
CERTIFICATION BY LANDLORD

NAME OF LANDLORD OR ATTORNEY:
ADDRESS & PHONE:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
SPECIAL CIVIL PART
LANDLORD-TENANT DIVISION

Plaintiff:

Docket No.:

-CIVIL ACTION-
CERTIFICATION BY LANDLORD

-TENANT NAME-
TENANT ADDRESS:

Defendant:

THE LANDLORD SHOULD COMPLETE PART A OR PART B OR BOTH (IF BOTH APPLY). CROSS OUT ANY PARAGRAPHS IN THOSE PARTS THAT DO NOT APPLY IN THIS CASE. PART C APPLIES TO ALL CASES AND MUST BE COMPLETED.

A. [WHEN THE EVICTION IS BASED ON UNPAID RENT]
   1. The tenant ___________ in court on ___________. The tenant has failed to pay rent now due and owing in the amount of $_________. That amount consists of basic rent of $_________ for _________. Damage Charges of $_________, Late Charges of __________, and Legal fees relating to this action for eviction of __________. Filing fees and costs of $_________.
   2. All of the items listed above are included in the lease agreement as rent.
   3. All of those items are permitted by applicable federal, state and local laws (including rent control or rent leveling, if applicable) to be included in the rent for the purposes of this action.

B. [WHEN THE EVICTION IS BASED ON OTHER GROUNDS]
   1. Eviction is sought because _________________________________.

C. IN ALL CASES:
   1. I have attached a copy of all notices that have been served on the defendant.
   2. These notices were served on the tenant: ___ by ordinary mail, ___ by certified mail, ___ personally on the ___ day of _______.
   3. All of the facts stated in the notices are true.
   4. If I proceed without an attorney, I certify that I own the property in my own name or in the name of a general partnership of which I am a partner.
   5. I have complied with the Registration requirements of N.J.S.A. 46:8-27 et seq.
   6. The tenant did not transfer ownership to me, and I have not given the Tenant an option to buy the property.
   7. The tenant is not in the military service of the United States nor any of its allies, nor is the premises used for dwelling purposes of the spouse/statutory partner, a child or other dependent of a person in the military service of the United States.

I, THE LANDLORD, CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILFULLY FALSE, I AM SUBJECT TO PUNISHMENT.

Dated:

PROPERTY MANAGER’S NAME

For:

LANDLORD
N.J.S.A. 46:8-21.1 Return of deposit; displaced tenant; termination of lease; civil penalties, certain. Within 30 days after the termination of the tenant's lease or licensee's agreement, the owner or lessee shall return by personal delivery, registered or certified mail the sum so deposited plus the tenant's portion of the interest or earnings accumulated thereon, less any charges expended in accordance with the terms of a contract, lease, or agreement, to the tenant or licensee, or, in the case of a lease terminated pursuant to P.L.1971, c.318 (C.46:8-9.1), the executor or administrator of the estate of the tenant or licensee or the surviving spouse of the tenant or licensee so terminating the lease. The interest or earnings and any such deductions shall be itemized and the tenant, licensee, executor, administrator or surviving spouse notified thereof by personal delivery, registered or certified mail. Notwithstanding the provisions of this or any other section of law to the contrary, no deductions shall be made from a security deposit of a tenant who remains in possession of the rental premises.

In any action by a tenant, licensee, executor, administrator or surviving spouse, or other person acting on behalf of a tenant, licensee, executor, administrator or surviving spouse, for the return of moneys due under this section, the court upon finding for the tenant, licensee, executor, administrator or surviving spouse shall award recovery of double the amount of said moneys, together with full costs of any action and, in the court's discretion, reasonable attorney's fees.

2A: 18-73. Notice to tenant prior to disposition To dispose of a tenant's property under this act, a landlord shall first give written notice to the tenant, which shall be sent by certified mail, return receipt requested or by receipted first class mail addressed to the tenant, at the tenant's last known address (which may be the address of the premises) and at any alternate address or addresses known to the landlord, in an envelope endorsed "Please Forward."

2A:18-74. Contents of notice The notice required shall state as follows:

a. That the property is considered abandoned and must be removed from the premises or from the place of safekeeping within 33 days from the date of mailing (exclusion for mobile homes)

b. That if the abandoned property is not removed:

   (i) The landlord may sell the property at a public or private sale; or

   (ii) The landlord may destroy or otherwise dispose of the property if the landlord reasonably determines that the value of the property is so low that the cost of storage and conducting a public sale would probably exceed the amount that would be realized from the sale; or

   (iii) The landlord may sell items of value and destroy or otherwise dispose of the remaining property.

c. That in the case of a residential tenant, if the tenant claims the property within the time provided in the notice, the landlord must make the property available for removal by the tenant without payment by the tenant of any unpaid rent.
Exhibit 7-2: **Sample** Annual Recertification
First Reminder Notice

(Tenant's Name)  (Date, at least 120 days prior to the upcoming recertification anniversary date)

(Address)

Dear __________________:

It will soon be time for your annual recertification. You received a notice of your upcoming annual recertification at an interview just less than a year ago.

Paragraph [15, 10, or 9—indicate the paragraph number that corresponds to the paragraph of the model lease being used for the tenant] of your lease states that the Department of Housing and Urban Development (HUD) requires that we review your income and family composition every year to determine if you are still eligible to receive assistance paying your rent.

To complete our review of your income and family composition, you must meet with (Resident Manager, Occupancy Clerk, etc.) at (place of interview) and supply the required information. (Resident Manager, Occupancy Clerk, etc.) will be available for recertification interviews (dates and times available). Please contact (Resident Manager, Occupancy Clerk, etc.) (by phone, at the office) as soon as possible to schedule an appointment for an interview.

Cooperation with the recertification requirement is a condition of continued program participation. **You must report the required information and provide the required signatures to enable the owner to process your recertification.** If you respond to this notice after (insert the 10th day of the 11th month after the last annual recertification), paragraph 15 of your lease (if applicable) gives us the right to implement any rent increase resulting from the recertification without providing you a 30-day written notice.

**(NOTE: For tenants of all projects, except PRAC projects, add the following sentence.)** If you do not respond before (insert recertification anniversary date), paragraph [15 **or **14] of your lease gives us the right to terminate your assistance and charge you the (**insert type of rent, either** market rent, contract rent or 110% of BMIR rent) effective (insert the recertification anniversary date).

**(NOTE: For tenants in PRAC projects add the following sentence.)** If you do not respond before (insert the recertification anniversary date), your tenancy may be terminated.

When you attend the interview, you must bring the following information:

(List all required information.)

Sincerely,

(Managing Agent, Resident Manager, etc.)
Exhibit 7-3: **Sample** Annual Recertification
Second Reminder Notice

(Tenant's Name)  
(Address)  

(Date, 90 days prior to the upcoming recertification anniversary date)

Dear _________:

On (date of First Reminder Notice) you received a notice requesting that you contact (Resident Manager, Occupancy Clerk, etc.) to schedule your periodic recertification interview. So far you have not scheduled your interview.

Cooperation in the recertification process is a condition for receiving assistance. Paragraph [15, 10, or 9]—indicate the paragraph number that corresponds to the paragraph of the model lease being used for the tenant] of your lease states that the Department of Housing and Urban Development (HUD) requires that we review your income and family composition every year to re-determine rent and assistance levels.

To complete our review of your income and family composition, you must meet with (Resident Manager, Occupancy Clerk, etc.) at (place of interview) and supply the required information. (Resident Manager, Occupancy Clerk, etc.) will be available for recertification interviews (dates and times available). Please contact (Resident Manager, Occupancy Clerk, etc.) (by phone, at the office) as soon as possible to schedule an appointment for an interview.

Cooperation with the recertification requirement is a condition of continued program participation. **You must report the required information and provide the required signatures to enable the owner to process your recertification.** If you contact (Resident Manager, Occupancy Clerk, etc.) after (insert the 10th day of the 11th month after the last annual recertification), we will process your recertification but you will not receive 30 days notice of any resulting rent increase.

**(NOTE: For tenants of all projects, except PRAC projects, add the following sentence.) If you do not respond before (insert recertification anniversary date), paragraph [15 **or** 14] of your lease gives us the right to terminate your assistance and charge you the (**insert type of rent, either** market rent, contract rent or 110% of BMIR rent) effective (insert the recertification anniversary date).

**(NOTE: For tenants in PRAC projects add the following sentence.) If you do not respond before (insert the recertification anniversary date), your tenancy may be terminated.

To help us process your recertification, you must bring the following information to your interview: 
(List all required information.)

Please do not make us increase your rent. Go to the Rental Office today to set up your interview and to discuss your recertification and any possible change in rent. Thank you for your cooperation.

Sincerely,

(Managing Agent, Resident Manager, etc.)
Exhibit 7-4: **Sample** Annual Recertification
Third Reminder Notice/Notice of Termination

(Tenant's Name) (Address) (Date at least 60 days prior to the upcoming recertification anniversary date)

Dear ________:

On (date of First Reminder Notice) and (date of Second Reminder Notice) we sent you notices requesting you to set up your recertification interview. You still have not scheduled your interview. Paragraph [15, 10, or 9—indicate the paragraph number that corresponds to the paragraph of the model lease being used for the tenant] of your lease states that the Department of Housing and Urban Development (HUD) requires that we review your income and family composition every year to redetermine rent and assistance levels.

To complete our review of your income and family composition, you must meet with (Resident Manager, Occupancy Clerk, etc.) at (place of interview) and provide the required information **and signatures to enable the owner to process your recertification. Your cooperation with the recertification requirement is a condition of continued program participation.** (Resident Manager, Occupancy Clerk, etc.) will be available for recertification interviews (dates and times available). Please contact (Resident Manager, Occupancy Clerk, etc.) (by phone, at the office) as soon as possible to schedule an appointment for an interview.

If you meet with (Resident Manager, Occupancy Clerk, etc.) and provide all of the required information **and signatures**, we will not terminate your assistance unless your income shows you are no longer eligible for assistance. If you report to the Rental Office after (insert the cutoff date, the 10th day of the 11th month after the last annual recertification), we will process your recertification but will not provide you 30 days notice of any resulting rent increase.

**To help us process your recertification, you must bring the following information to your interview.**
(List all required information.)**

(NOTE: For tenants of all projects, except PRAC projects, add the following.) If you do not respond before (insert recertification anniversary date), paragraph [15 **or** 14] of your lease gives us the right to terminate your assistance and charge you the (**insert type of rent, either** market rent, contract rent or **110% of BMIR rent**) of $______(insert the rent the tenant will be required to pay)** effective (insert the recertification anniversary date). **This increase in rent will be made without providing you additional notice. If you fail to pay the increased rent, we may terminate your tenancy and seek to enforce the termination in court.**

(NOTE: For tenants in PRAC projects add the following sentence.) If you do not respond before (insert the recertification anniversary date), your tenancy may be terminated.

Please do not make us increase your rent. Go to the Rental Office today to set up your interview and to discuss your recertification and any possible change in rent.

Thank you for your cooperation.

Sincerely,

(Managing Agent, Resident, Manager etc)
Section A. Acknowledgements

Read this before you complete and sign this form HUD-50059

Public Reporting Burden. The reporting burden for this collection of information is estimated to average 55 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (2502-0204), Washington, DC 20503. The information is being collected by HUD to determine an applicant's eligibility, the recommended unit size, and the amount the tenant(s) must pay toward rent and utilities. HUD uses this information to assist in managing certain HUD properties, to protect the Government's financial interest, and to verify the accuracy of the information furnished. HUD or a Public Housing Authority (PHA) may conduct a computer match to verify the information you provide. This information may be released in accordance with HUD's Computer Matching Agreement (CMA) between the Social Security Administration and the Department of Health and Human Services. You must provide all of the information requested, including the Social Security Numbers (SSNs), unless exempted by 24 CFR 5.216, you, and all other household members, have and use. Giving the SSNs of all household members, unless exempted by 24 CFR 5.216, is mandatory; not providing the SSNs will affect your eligibility approval. Failure to provide any information may result in a delay or rejection of your eligibility approval.

Privacy Act Statement. The Department of Housing and Urban Development (HUD) is authorized to collect this information by the U.S. Housing Act of 1937, as amended (42 U.S.C. 1437 et. seq.); the Housing and Urban-Rural Recovery Act of 1983 (P.L. 98-181); the Housing and Community Development Technical Amendments of 1984 (P.L. 98-479); and by the Housing and Community Development Act of 1987 (42 U.S.C. 3543).

Tenant(s)' Certification - I/We certify that the information in Sections C, D, and E of this form are true and complete to the best of my/our knowledge and belief. I/We understand that I/We can be fined up to $10,000, or imprisoned up to five years, or lose the subsidy HUD pays and have my/our rent increased, if I/We furnish false or incomplete information.

Owner's Certification - I certify that this Tenant's eligibility, rent and assistance payments have been computed in accordance with HUD's regulations and administrative procedures and that all required verifications were obtained.

Warning to Owners and Tenants. By signing this form, you are indicating that you have read the above Privacy Act Statement and are agreeing with the applicable Certification.

False Claim Statement. Warning: U.S. Code, Title 31, Section 3729, False Claims, provides a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages for any person who knowingly presents, or causes to be presented, a false or fraudulent claim; or who knowingly makes, or caused to be used, a false record or statement; or conspires to defraud the Government by getting a false or fraudulent claim allowed or paid.

Certification Summary from Page 2

<table>
<thead>
<tr>
<th>Name of Project</th>
<th>Effective Date</th>
<th>Certification Type</th>
<th>Anticipated Voucher Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Head of Household</td>
<td>Total Tenant Payment</td>
<td>Assistance Payment</td>
<td>Tenant Rent</td>
</tr>
<tr>
<td>Unit Number</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Tenant Signatures

<table>
<thead>
<tr>
<th>Head of Household</th>
<th>Date</th>
<th>Other Adult</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spouse / Co-Head</td>
<td>Date</td>
<td>Other Adult</td>
<td>Date</td>
</tr>
<tr>
<td>Other Adult</td>
<td>Date</td>
<td>Other Adult</td>
<td>Date</td>
</tr>
<tr>
<td>Other Adult</td>
<td>Date</td>
<td>Other Adult</td>
<td>Date</td>
</tr>
<tr>
<td>Other Adult</td>
<td>Date</td>
<td>Other Adult</td>
<td>Date</td>
</tr>
<tr>
<td>Other Adult</td>
<td>Date</td>
<td>Other Adult</td>
<td>Date</td>
</tr>
<tr>
<td>Other Adult</td>
<td>Date</td>
<td>Other Adult</td>
<td>Date</td>
</tr>
</tbody>
</table>

Owner/Agent Signature

Date
### Section B. Summary Information

<table>
<thead>
<tr>
<th>1. Project Name</th>
<th>12. Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Subsidy Type</td>
<td>13. Anticipated Voucher Date</td>
</tr>
<tr>
<td>3. Secondary Subsidy Type</td>
<td>14. Next Recertification Date</td>
</tr>
<tr>
<td>4. Property ID</td>
<td>15. Project Move-In Date</td>
</tr>
<tr>
<td>5. Project Number</td>
<td>16. Certification Type</td>
</tr>
<tr>
<td>6. Contract Number</td>
<td>17. Action Processed</td>
</tr>
<tr>
<td>7. Project IMAX ID</td>
<td>18. Correction Type</td>
</tr>
<tr>
<td>10. Previous Housing Code</td>
<td></td>
</tr>
<tr>
<td>11. Displacement Status Code</td>
<td></td>
</tr>
<tr>
<td>21. Unit Number</td>
<td></td>
</tr>
<tr>
<td>22. No. of Bedrooms</td>
<td></td>
</tr>
<tr>
<td>23. Building ID</td>
<td></td>
</tr>
<tr>
<td>24. Unit Transfer Code</td>
<td></td>
</tr>
<tr>
<td>25. Previous Unit No.</td>
<td></td>
</tr>
<tr>
<td>26. Security Deposit</td>
<td></td>
</tr>
<tr>
<td>27. 236 Basic/BMIIR Rent</td>
<td></td>
</tr>
<tr>
<td>28. Market Rent</td>
<td></td>
</tr>
<tr>
<td>29. Contract Rent</td>
<td></td>
</tr>
<tr>
<td>30. Utility Allowance</td>
<td></td>
</tr>
<tr>
<td>31. Gross Rent</td>
<td></td>
</tr>
<tr>
<td>32. TFP at RAD Conversion</td>
<td></td>
</tr>
</tbody>
</table>

### Section C. Household Information

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>02</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>03</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>04</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>05</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>06</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>07</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>08</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

50. Family has Mobility Disability?
51. Family has Hearing Disability?
52. Family has Visual Disability?
53. Number of Family Members
54. Number of Non-Family Members
55. Number of Dependents
56. Number of Eligible Members
57. Expected Family Addition - Adoption
58. Expected Family Addition - Pregnancy
59. Expected Family Addition - Foster Children
60. Previous Head Last Name
61. Previous Head First Name
62. Previous Head Middle Initial
63. Active Full Cert. Effective Date
64. Previous Head ID
65. Previous Head Birth Date

### Section D. Income Information

<table>
<thead>
<tr>
<th>65. Mbr. No.</th>
<th>66. Income Type Code</th>
<th>68. Amount</th>
<th>69. SSN Benefits Claim No.</th>
<th>70. Total Employment Income</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Section E. Asset Information

<table>
<thead>
<tr>
<th>70. Mbr. No.</th>
<th>71. Total Pension Income</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>70. Mbr. No.</th>
<th>72. Total Public Assistance Income</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>70. Mbr. No.</th>
<th>73. Total Other Income</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>70. Mbr. No.</th>
<th>74. Total Non-Asset Income</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>70. Mbr. No.</th>
<th>75. Total Cash Value of Assets</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>70. Mbr. No.</th>
<th>76. Actual Income from Assets</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>70. Mbr. No.</th>
<th>77. HUP Passbook Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Section F. Allowances & Rent Calculations

<table>
<thead>
<tr>
<th>70. Mbr. No.</th>
<th>78. Imputed Income from Assets</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>70. Mbr. No.</th>
<th>79. Asset Income</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

86. Total Annual Income
87. Low Income Limit
88. Very Low Income Limit
89. Extremely Low Income Limit
90. Current Income Status
91. Eligibility Universe Code
92. Sec. 8 Assist. 1864 Indicator
93. Income Exception Code
94. Police / Security Tenant?
95. Survivor of Qualifier?
96. Household Citizenship Eligibility

97. Deduction for Dependents
98. Child Care Expense (school)
99. Child Care Expense (work)
100. 3% of Income
101. Disability Expense
102. Disability Deduction
103. Medical Expense
104. Medical Deduction
105. Elderly Family Deduction
106. Total Deductions
107. Adjusted Annual Income
108. Total Tenant Payment
109. TFP Before Override
110. Tenant Rent
111. Utility Reimbursement
112. Assistance Payment
113. Welfare Rent
114. Rent Override
115. Hardship Exemption
116. Waiver Type Code
117. Eligibility Check Not Required
118. Extenuating Circumstances Code
<table>
<thead>
<tr>
<th>Name of Project</th>
<th>Unit Number</th>
<th>Effective Date</th>
<th>Certification Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Head of Household</td>
<td>Total Tenant Payment</td>
<td>Assistance Payment</td>
<td>Tenant Rent</td>
</tr>
</tbody>
</table>

Continuation Page: Use only when household members, income or asset items exceed the space allowed on page 2

### Section C. Household Information

|---------|---------------|---------------|--------|---------|---------|---------|--------|--------------|------------------|----------------|-------------------|-------------|-----------|-------------------|--------|-------------|

### Section D. Income Information

|--------------|----------------------|-----------|---------------------------|-------------|----------------|----------|--------------|---------------------|-----------------|

### Section E. Asset Information

|--------------|----------------------|-----------|---------------------------|-------------|----------------|----------|--------------|---------------------|-----------------|
Preamble

The judge presiding at the call of the landlord/tenant trial list on the day of the trial will provide instructions to the tenants and landlords who have come to court for a trial. The instructions are set forth below. A written copy of the instructions provided by the judge will be made available to you at the calendar call. These instructions need not be recited verbatim. However, what is said must contain and explain in plain language all of the points set forth in these instructions and may be supplemented by local information. A Spanish version of these instructions will be given via a videocassette recording and in writing in those counties with a significant Spanish speaking population.

Instructions

Si usted necesita un interprete porque usted habla solamente Espanol, por favor, ponga se de pie.

We are about to call a list of cases where the landlord is suing to evict, that is, lock out, a tenant. After the list has been called, you will have a chance to ask questions. Written copies of the instructions I am about to give are available.

1. The Calendar Call

A. When we call each case, please identify yourself. We will mark a case "READY" when both the landlord and the tenant are here. We will mark a case "DEFAULT" when the landlord is here but the tenant isn’t. If a default is entered, then the landlord must file an affidavit or certification, which must include the facts necessary to get a judgment for possession and a statement that all charges and fees are permitted by law and the lease. The landlord’s attorney, if there is one, must also file a certification that the charges and fees, including attorney fees, are permitted by law and the lease. The judgment for possession allows the landlord to have a tenant evicted by a Special Civil Part Officer. We will mark a case "DISMISSED" if the landlord is not here. Tenants should identify themselves even if the landlord is not here.

B. Everyone must stay here until you get additional instructions and permission to leave.

2. Settlements

Now I want to talk to you about settlements. After we have called the list of cases, we suggest that landlords and tenants talk to each other to try to settle your cases. Here are some important points. You do not have to settle your case, and you have the right to a trial. You should settle only if the terms are agreeable to you. A settlement must be voluntary to both parties. If you are able to agree on a settlement, please let the staff in this courtroom know and you will be given a settlement agreement form, the landlord’s certification and the certification for the landlord’s attorney. I advise the parties that they are not limited to the contents of the settlement forms. You may change them as desired. Complete the forms, date and sign them, and give them back to your staff. You will receive a copy for your own records. Make sure that you understand the words in the settlement because if you agree to entry of a judgment for possession and don’t comply with the terms of the settlement, you will be evicted. Any agreement that says a judgment for possession will or may be entered must be approved by me or another judge.

3. Waiting for Trial

If you are not able to settle your case, you will have to wait until a judge is available to hear your case. We expect to reach all cases today. However, if your case cannot be completed today, then the tenant may have to deposit with the clerk of the court the amount of rent to be determined by the court, no later than 4:30 p.m. today, in cash or money order or bank cashier’s check made payable to the Treasurer, State of New Jersey, rather than to the landlord. If it is deposited, the Clerk will reschedule the case with a new trial date. If the rent is not deposited today, a Judgment for Possession will be entered in favor of the landlord. That means that a landlord will be able to have a tenant evicted by a Special Civil Part Officer. A landlord cannot lock out a tenant by himself or herself; a Special Civil Part Officer must be used to evict a tenant.

4. Non-Payment Cases Introduction

The following points relate to a landlord’s claim that a tenant owes rent:

A. Dismissal Upon Payment or Deposit.

First, if the landlord claims that the tenant owes rent, it is still not too late to pay the rent that is due and have the case dismissed. If the tenant pays the rent that is due plus costs of court by 4:30 p.m. today, the case will be dismissed. The tenant may pay the rent plus costs to the landlord, or to the clerk of the court by cash, money order, or bank cashier’s check. If a tenant disagrees with the landlord on the amount of the rent that is owed, a tenant has the right to a trial so that a judge can decide how much rent is owed. After the judge decides how much rent is owed, the tenant can pay the rent and the case will be dismissed.

B. Items Constituting Rent.

A tenant does not have to pay for attorney’s fees, late fees or other charges to avoid eviction unless there is a written lease that calls for itemized "additional rent." Even if the lease does say that, the amount really due as rent may be limited by rent control, or if there is public assistance, the rent may be limited by federal law. For example, if the tenant gets Section 8 assistance, the landlord cannot include a late charge to determine the amount that the tenant owes.

C. Limitation on Court’s Powers.

If the only issue is that a tenant who owes rent wants more time to pay it, or to pay it in installments but the landlord does not agree, then I will have to enter a judgment for possession; I have no right to make a landlord wait for the rent or to take it in installments. A judgment for possession is the court order giving the landlord the right to possession of the premises. However, the landlord cannot actually evict the tenant until the warrant of removal is issued.

5. Eviction Procedures

A. Issuance of Warrant.

A judgment for possession gives the landlord the right to request a warrant to have a tenant evicted by a Special Civil Part Officer. That warrant may be issued no sooner that three business days after entry of the judgment for possession.

B. Service of the Warrant.

The warrant will have to be served by the Officer on the tenant, and a residential tenant may be evicted no sooner than three business days after it has been served, but not on a weekend or holiday. To put it very simply, a residential tenant may not be evicted any earlier than 8 days plus holidays, after a judgment for possession has been entered.

6. Stopping an Eviction After a Judgment for Possession

A. By Agreement.

After a judgment for possession has been entered, a tenant may still try to make an agreement with a landlord to stop an eviction. If the landlord does agree, make sure that the agreement is in writing and that a copy is filed with the court.

B. By Going to the Court.

If the landlord does not agree, then, even after a warrant of removal has been served on a tenant or after the tenant has been removed, the tenant may apply to the court, as soon as possible, for relief to stop the eviction or put the tenant back, including: (1) An Order to Show Cause [based on Court Rule 4:50-1] requesting that the judgment for possession be reversed and the complaint dismissed, if the tenant can show good reasons. (2) A delay [stay] of the eviction based on the availability of other dwelling accommodations [based on New Jersey Statute 2A:42-10.1 or 2A:42-10.8], that delay cannot be for more than 6 months and must be applied for no later than 10 days after the eviction, but the tenant will have to pay all rent and other costs. (3) An application for orderly removal requiring more time to move out if there is a good reason. A court may grant or deny these applications, and if one of these applications is granted, the court may also establish certain conditions.

7. Jurisdictional Instruction

Landlords who want to evict a tenant whom they either got title from the tenant or gave the tenant an option to purchase, must stay here to testify in court even if the tenant isn’t here. This does not apply to most eviction cases.

8. Services/Facilities Available

We have a list of agencies that may assist you with rent, temporary shelter or legal services. A list of these agencies or legal services programs, and a copy of this announcement, is available, and you should get a copy if you do not have one. [Identify any welfare representatives who are present in court.]
1. It is hereby stipulated and agreed by and between the parties as follows:

2. The tenant/s in the above captioned matter agree/s to the entry of a judgment for possession and further agree/s to the issuance of a WARRANT OF REMOVAL upon notice if and when there is a default (or breach) of this agreement.

3. Tenant/s acknowledge/s an indebtedness of $ ___________ which is due and owing to the landlord, including costs, and agree/s to pay the same as follows*:

   ___________________________________________________________________

   ___________________________________________________________________

   ___________________________________________________________________

   ___________________________________________________________________

   ___________________________________________________________________

Tenant/s further agree to pay the weekly/monthly rental of $ ___________ on the ______ day of each month/week, in addition to the above payment on account of the balance due and owing.

4. If there is a default (breach) by the tenant/s for a period of five (5) days in the payment hereunder, then the WARRANT OF REMOVAL may issue on an affidavit of the landlord, with further notice to the tenant, provided that the landlord makes an application for the warrant within 30 days of the earliest breach of this stipulation.

5. Upon payment of the arrears hereunder (Par. 2), the judgment for possession shall be deemed void and the Complaint dismissed.

   TENANT/S                                      LANDLORD

   L/T MASTER                                      J.S.C.

   DATED: ___________                            ___________

* Different terms of payment may be provided on a separate page, if there is not enough space on this page.
APPENDIX XI-V — CONSENT TO ENTER JUDGMENT (TENANT REMAINS)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SPECIAL CIVIL PART
LANDLORD-TENANT DIVISION

DOCKET #LT
CONSENT TO ENTER JUDGMENT
(TENANT TO STAY IN PREMISES)

THE TENANT AND LANDLORD HEREBY AGREE THAT:

1. The Tenant shall pay to the Landlord $_______, which the Tenant admits is now due and owing and AGREES TO THE IMMEDIATE ENTRY OF A JUDGMENT FOR POSSESSION.

2. The Tenant shall pay the amount shown in paragraph 1 as follows:
   a. $____________ immediately, which the Landlord admits receiving.
   b. The Tenant shall pay the rest of the amount shown in paragraph 1 as follows:

3. The Tenant also agrees to pay $____________ each month as required by the rental agreement, in addition to the payment required in paragraph 1, until this settlement agreement is over.

4. All payments made during the term of this agreement shall be applied first to the rents that become due after today, and then they shall be applied to pay the balance of the arrears stated in paragraph 1. If the Tenant makes all payments required in paragraph 2b of this agreement, the Landlord agrees not to request a warrant of removal. If the Tenant does not make all payments required in paragraph 2b of this agreement, the Tenant agrees that the Landlord, with notice to the tenant, may file a certification stating when and what the breach was and that a warrant of removal may then be issued by the clerk. THIS MEANS THAT IF THE TENANT FAILS TO MAKE ANY PAYMENT THAT IS REQUIRED IN PARAGRAPH 2b OF THIS AGREEMENT, THE TENANT MAY BE EVICTED AS PERMITTED BY LAW AFTER THE SERVICE OF THE WARRANT OF REMOVAL.

5. This agreement shall end when the Tenant has paid the full amount of rent stated in paragraph 1 and then the judgment shall be vacated and the complaint shall be dismissed.

DATE: ____________________________

_________________________  ____________________________
Landlord's Attorney          Tenant's Attorney

_________________________  ____________________________
Landlord                    Tenant

NOTE: THE CERTIFICATION BY LANDLORD AND THE CERTIFICATION OF LANDLORD'S ATTORNEY (IF THE LANDLORD HAS AN ATTORNEY) ARE ATTACHED HERETO.

[Note: Appendix XI-V adopted July 18, 2001 to be effective November 1, 2001]
CONSENT TO ENTER JUDGMENT FOR POSSESSION (TENANT VACATES)

<table>
<thead>
<tr>
<th>Plaintiff</th>
<th>SUPERIOR COURT OF NEW JERSEY</th>
</tr>
</thead>
<tbody>
<tr>
<td>v.</td>
<td>LAW DIVISION: SPECIAL CIVIL PART</td>
</tr>
<tr>
<td>Defendant</td>
<td>COUNTY</td>
</tr>
</tbody>
</table>

LANDLORD-TENANT DIVISION
DOCKET # LT -

CONSENT TO ENTER JUDGMENT (TENANT REQUIRED TO VACATE)

THE TENANT AND LANDLORD HEREBY AGREE THAT:


2. Check one of the following:
   
   A. _____ The Tenant shall pay no money, or
   
   B. _____ The Tenant shall pay $__________ as follows:

3. A. If the Tenant does not make all payments required in paragraph 2(B) of this Agreement, the Tenant agrees that the Landlord, with notice to the Tenant, can file a certification stating when and what the breach was and that the warrant of removal can then be executed upon, as permitted by law, prior to the agreed upon MOVE OUT DATE.

   B. EVEN IF THE TENANT DOES MAKE ALL PAYMENTS REQUIRED IN PARAGRAPH 2(B), TENANT STILL AGREES TO MOVE NO LATER THAN ______. IF THE TENANT DOES NOT MOVE BY THAT DATE, LANDLORD CAN HAVE THE TENANT EVICTED, AS PERMITTED BY LAW. THE 30 DAY PERIOD TO EXECUTE UPON A WARRANT OF REMOVAL IS AGREED BETWEEN THE LANDLORD AND TENANT TO BE EXTENDED TO INCORPORATE THE MOVE OUT DATE.

   DATE: ______________________

_________________________________ Landlord's Attorney ___________________________ Tenant's Attorney

_________________________________ Landlord ___________________________ Tenant

NOTE: THE CERTIFICATION BY LANDLORD AND THE CERTIFICATION OF LANDLORD'S ATTORNEY (IF THE LANDLORD HAS AN ATTORNEY) ARE ATTACHED HERETO.

Revised 09/04/2012, CN 10515-English (Appendix XI-W)
THE TENANT AND LANDLORD HEREBY AGREE THAT:

1. The Tenant AGREES TO THE IMMEDIATE ENTRY OF A JUDGMENT FOR POSSESSION AND THAT THE WARRANT OF REMOVAL MAY ISSUE AND BE SERVED UPON THE TENANT AT THE LANDLORD'S REQUEST, AS PERMITTED BY LAW. THE LANDLORD AGREES THAT THE WARRANT OF REMOVAL CANNOT BE EXECUTED (NO EVICTION) UNTIL ________________ ("THE MOVE OUT DATE").

2. The Tenant shall pay no money as part of this landlord tenant action.

__________________________________________
Landlord's Attorney

__________________________________________
Tenant's Attorney

__________________________________________
Landlord

__________________________________________
Tenant

__________________________________________
Mediator

DATE: ____________________

NOTE: THE CERTIFICATION BY LANDLORD AND THE CERTIFICATION OF LANDLORD'S ATTORNEY (IF THE LANDLORD HAS AN ATTORNEY) ARE ATTACHED HERETO.

Revised 9/4/2012 CN 10515-English (Appendix XL-W) (as modified)
Bridge the Gap:

NJ Basic Estate Planning

Presented at Fordham Law School
January 11, 2020

By Joseph C. Mahon, Esq.
Cooper Levenson, P.A.

Contents

I. The Estate Planning Process
II. Where to Find the Law
III. Ethical Aspects of Estate Planning
IV. Starting the Process: Collecting Information
V. Outlining the Plan, including non-probate property
VI. Estate and Income Tax Planning
VII. Preparing the Will
VIII. Ancillary Documents: Powers of Attorney and Living Wills
IX. Execution of Documents
X. Completing the Estate Planning Project

Attachments:

1. Retainer letter language re waiver of conflict
2. Estate Planning Questionnaire
3. Bergen County Surrogate’s Information Sheet re intestacy
4. N.J. Div. of Taxation Information Sheet re Inheritance Tax
5. Sample will
6. Sample Power of Attorney
7. Sample Living Will

This Session will describe the process of estate planning. The process includes: i) identification of intended beneficiaries and assets to be transferred; ii) outline of the plan, including tax considerations; iii) preparation of the documents for the client; iv) execution of the documents; and v) completing the estate planning project. The goal of the estate planning process is to confirm the client’s intention to achieve the result obtained.
I. **Introduction**

Trusts and Estate is one of the most interesting practice areas that exists. As a lawyer, you get to deal with all sorts of clients, discussing with them their most personal and intimate issues, while addressing matters concerning their assets, and legal issues involving the body of law unique to wills and trusts, as well as tax issues.

Estate planning is a process of identifying the client’s assets and intended beneficiaries, outlining a plan to achieve the desired result, and preparing and executing the documents to achieve the result. The purpose of the process is to create a record, i.e. an estate planning file that confirms the result. The role of attorney is to follow the process and to create a file that confirming that the client intended the result achieved.

As a legal matter, estate planning may be tested by three types of litigation: 1) a will contest; 2) a construction proceeding; or 3) a malpractice claim. All of these types of litigation become reference points for structuring the estate planning process and our discussion today.

Will contests are based on three different claims:
- Lack of capacity to make a Will
- Exercise of Undue Influence in making a Will
- Lack of Due Execution

Construction of a Will involves the resolution of an ambiguity to avoid a result asserted to be contrary to the client’s intent. In New Jersey, the Courts apply the Doctrine of Probable Intent, which is the strongest legal doctrine in the country for considering evidence outside the four corners of the Will or Trust Agreement to determine its meaning. The Probable Intent Doctrine was first articulated by the N.J. Supreme Court in *Fidelity Union Trust Co. v. Robert*, 36 N.J. 561 (1962), and has been recognized by statute at NJSA 3B:3-33.1. To determine Probable Intent, the Courts apply a three prong analysis: 1) the terms and provisions of the governing document taken as a whole; 2) the surrounding facts and circumstances; and 3) the impulse common to human nature. The estate planner’s file are evidence of the surrounding facts and circumstances.

Malpractice claims can arise when matters go awry in an unusual way.

Practical advice: **Man plans, and God laughs** (old Jewish saying).

It should be remembered that an estate plan is only a plan: it is a projection for what is desired to happen in the future; it is not a guarantee. Inevitably, every plan is aimed at a moving target, because of the changes that occur over time. In the area of estate planning, assets may change, either increasing or decreasing, human relationships can change, which can be as simple as beneficiaries maturing or as dramatic as changes in family members, and the applicable law can change, including moving from one state to another.

Because of these changes, a standard recommendation is for clients to review and reconsider their estate planning every five years.
II. Where to Find the Law

Statutes:
- Title 3B, Administration of Estates, Decedents and Others (Gann single volume available)
- N.J.S.A. 26:2H-53 Advance Directives for Health Care
- N.J.S.A. 26:2H-102 et seq. Advance Directives for Mental Health Care
- Title 54, Taxation, Subtitle 5, Transfer Inheritance and Estate Taxes
- IRC, Subtitle B, Estate and Gift Taxes, Sec. 2001 et seq.

Rules:
- Generally, Part IV of the New Jersey Court Rules, and specifically Chapter IX, Probate Matters, R. 4:80 to R. 4:96 (Gann single volume available)

Treatises
- New Jersey Practice Series, Estate Planning and Probate (Clapp)
III. Ethical Aspects of Estate Administration

A. Competence: RPC 1.1. 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.

B. Who is your client? The person for whom you are rendering the estate planning services. It is not the referral source, either a friend a business colleague. It is not the family member who send the client to you. It is not the person who pays the legal fee.

C. Documenting the Client-Attorney relationship:

1. Retainer Letter Rule:

   - R.P.C. 1.5(b): “When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation.”

   - As a business practice, always best to have a separate fee letter for each estate administration which identifies the client and the scope of representation.

D. Conflicts of Interest:

1. R.P.C. 1.7 provides:

   (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

   (1) the representation of one client will be directly adverse to another client; or

   (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

   (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

   (1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved;
(2) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(3) the representation is not prohibited by law; and

(4) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

2. Conflict Checks:

- Usually, in an estate planning matter, there are no adverse parties, or potentially adverse parties. However, if the client expresses an intention to favor some beneficiaries over other similarly situated beneficiaries, consideration should be given to potential conflicts of interest with regard to all of the beneficiaries.

- Estate planning clients should be added to the conflict check data base in the usual course.

E. Conflicts of Interest: Spouses: What if there is more than one client, such as spouses married to one another? A potential conflict of interest arises, requiring disclosure and waiver to proceed. In estate planning, two disclosures are common: 1) if one client transfers assets to the other client, the other client can transfer those assets to whomever they wish; and 2) information that becomes available to the lawyer with regard to one client will become available to the other client. A v. B., 158 N.J. 51 (1999) (Court authorized disclosure of the existence, but not the identity, of an out of wedlock child on the grounds that husband had committed a fraud on his wife).

F. Conflicts of Interest: Beneficiaries: What if lawyer represents both the person making a Will and one of several beneficiaries, such as a parent and one of the children? Haynes v. First Nat’l State Bank, 87 N.J. 163 (1981) (Grandmother’s use of daughter’s estate planning attorney created a presumption of undue influence required to be overcome by clear and convincing evidence).

G. Conflict Waiver letter:

- if you represent two or more clients, advise of potential conflicts, confirm that information that becomes available in the representation becomes equally available to each client, and request in advance consent to continue to represent one if the other wishes to withdraw as a client

H. Legal Fees: Usual practice is to charge for time and disbursements, either estimating a fee, or placing a cap on the fee, are setting a fixed fee.
Standards are set forth at R.P.C. 1.5(a): time and labor, novelty and difficulty, skill requisite, preclusion of other employment, fee customarily charged in locality, amount involved and results obtained, time limitations imposed, nature and length of relationship with client, experience, reputation and ability of lawyers, whether fee is fixed or continent.

General rule of thumb: fees should be proportional to the subject matter. Clearly, more substantial matters, involving blended families or tax planning require more extensive services. Client pressure to limit the costs of estate planning can be addressed by adopting certain efficiencies in the estate planning process. At the same time, the revenue obtained has to support the basic steps necessary to compliance with ethical obligations of competence.

I. Confidentiality:

RPC 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b), (c), and (d).

(b) A lawyer shall reveal such information to the proper authorities, as soon as, and to the extent the lawyer reasonably believes necessary, to prevent the client or another person:

(1) from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm or substantial injury to the financial interest or property of another;

(2) from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to perpetrate a fraud upon a tribunal.

(c) If a lawyer reveals information pursuant to RPC 1.6(b), the lawyer also may reveal the information to the person threatened to the extent the lawyer reasonably believes is necessary to protect that person from death, substantial bodily harm, substantial financial injury, or substantial property loss.

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

(1) to rectify the consequences of a client's criminal, illegal or fraudulent act in the furtherance of which the lawyer's services had been used;

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, or to establish a defense to a criminal charge, civil claim or
disciplinary complaint against the lawyer based upon the conduct in which the client
was involved; or

(3) to prevent the client from causing death or substantial bodily harm to himself or
herself; or

(4) to comply with other law.

(e) Reasonable belief for purposes of RPC 1.6 is the belief or conclusion of a reasonable
lawyer that is based upon information that has some foundation in fact and constitutes prima facie evidence of the matters referred to in subsections (b), (c), or (d).


Rule 26. (1) General rule. Subject to Rule 37 and except as otherwise provided by paragraph 2 of this rule communications between a lawyer and his client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege (a) to refuse to disclose any such communication, and (b) to prevent his lawyer from disclosing it, and (c) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness (i) in the course of its transmittal between the client and the lawyer, or (ii) in a manner not reasonably to be anticipated, or (iii) as a result of a breach of the lawyer-client relationship, or (iv) in the course of a recognized confidential or privileged communication between the client and such witness. The privilege shall be claimed by the lawyer unless otherwise instructed by the client or his representative; the privilege may be claimed by the client in person, or if the client is incapacitated or deceased, by his guardian or personal representative. Where a corporation or association is the client having the privilege and it has been dissolved, the privilege may be claimed by its successors, assigns, or trustees in dissolution.

(2) Exceptions. Such privilege shall not extend (a) to a communication in the course of legal service sought or obtained in aid of the commission of a crime or a fraud, or (b) to a communication relevant to an issue between parties all of whom claim through the client, regardless of whether the respective claims are by testate or intestate succession or by inter vivos transaction, or (c) to a communication relevant to an issue of breach of duty by the lawyer to his client, or by the client to his lawyer. Where 2 or more persons have employed a lawyer to act for them in common, none of them can assert such privilege as against the others as to communications with respect to that matter.

(3) Definitions. As used in this rule (a) “client” means a person or corporation or other association that, directly or through an authorized representative, consults a lawyer or the lawyer’s representative for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity; and includes a person who is incapacitated whose guardian so consults the lawyer or the lawyer’s
representative on behalf of the person who is incapacitated, (b) “lawyer” means a person authorized, or reasonably believed by the client to be authorized to practice law in any State or nation the law of which recognizes a privilege against disclosure of confidential communications between client and lawyer. A communication made in the course of the relationship between lawyer and client shall be presumed to have been made in professional confidence unless knowingly made within the hearing of some person whose presence nullified the privilege.

There is no evidentiary privilege for estate planning services rendered to a client after the client has died. As a matter of public policy, the law presumes that the decedent wants the information known either to overcome any claims to void a Will or to resolve any ambiguity regarding the meaning of a Will. In the event of a dispute over the disposition of a trust or an estate, the estate planners client file becomes fair game for discovery.

J. Duty of Care runs to third parties, including intended beneficiaries of a client in their estate planning. Privity with the client is not necessary to create a duty of care:

“Privity between an attorney and a non-client is not necessary for a duty to attach "where the attorney had reason to foresee the specific harm which occurred." Albright v. Burns, 206 N.J. Super. 625, 633 (App. Div. 1986); see also Petrillo, supra, 139 N.J. at 478. Further, "attorneys may owe a duty of care to non-clients when the attorneys know, or should know, that non-clients will rely on the attorney's representations and the non-clients are not too remote from the attorneys to be entitled to protection." Petrillo, supra, 139 N.J. at 483-84, see also Stewart, supra, 142 N.J. Super. at 593. To determine if that duty exists, a court conducts an "inquiry [that] involves a weighing of the relationship of the parties, the nature of the risk, and the public interest in the proposed solution." Barner, supra, 292 N.J. Super. at 261 (quoting Goldberg v. Hous. Auth. of Newark, 38 N.J. 578, 583 (1962)). The primary question in this inquiry is one of fairness. Id.; see also Estate of Fitzgerald, supra, 336 N.J. Super. at 468.

IV. **Starting the Process: Collecting Information**

The estate planning file needs to confirm that the client was competent to make a Will, that the client was not under any undue influence, and that the estate planning documents were duly executed to comply with the legal requirements to dispose of assets at death.

**Standard of Competence to Make Will**

To identifying information to collect requires an understanding of competence to make a Will.

N.J.S.A. § 3B:3-1. Individuals competent to make a will and appoint a testamentary guardian: Any individual 18 or more years of age who is of sound mind may make a will and may appoint a testamentary guardian.

The test for "testamentary capacity" in New Jersey has a relatively low threshold.

“If the testator is capable of recollecting of what his property consists, and who, either in consequence of ties of blood or friendship, should be objects of his bounty and has a mind sufficiently sound to enable him to know and understand what disposition he wants to make of his property after his death, he is competent to make a valid will. In re Phillips, 139 N.J.Eq. 257 (1947).” In re Estate of Frisch, 250 N.J. Super. 438, 447-8 (Law Div. 1991).

The test for competence to make a Will is traditionally thought of as knowing the natural objects of one’s bounty and the nature and extent of one’s assets.

**ESTATE PLANNING QUESTIONNAIRE - SEE ATTACHMENT**

**A. Next of Kin**

While the case law uses the phrase “ties of blood or friendship,” persons that the estate planning needs to ask about include the client’s “next of kin” or intestate heirs. The intestate heirs are the persons who are entitled to take the clients estate if there is no Will. When the Will is filed for probate, the next of kin are required to be given notice so that they can, if they wish, file a lawsuit objecting to the probate of the Will. Ct. R. 4:80-6.

The intestate heirs are: i) the surviving spouse; ii) the children, if either the decedent or the spouse has a child who is not the child of the other, or if the spouse does not survive, iii) the parents, if either the children do not survive, or if children and spouse do not survive; iv) the descendants of the parents (siblings and issue of any deceased siblings), if no spouse, children or parents survive, and v) the descendants of the grandparents (aunts, uncles and cousins) if none of the others survive.

INTESTACY - SEE ATTACHMENT from Bergen County Surrogate’s Court
What happens in intestacy is also important to understanding the benefits of a Will. Typically, intestacy will give property to persons or in shares that are not desired, it will not provide the protections of a trust for spouses or for children, and it will require a fiduciary bond increasing the cost and burdens of the estate administration.

Stated more simply, the client needs to be asked about his or her family, whoever they may be. The information is important to obtain even if the client does not want to benefit those persons. Of, any other persons or charities the client wants to benefit should also be identified.

**B. Nature and Extent of Bounty: Probate and Non-Probate Assets**

The client also needs to be asked to provide information about all assets passing as a result of his or her death. Common categories of include:

- Real Estate
- Cash and Bank Accounts
- Securities Accounts
- Retirement Accounts
- Business Interests
- Life Insurance
- Tangibles, including vehicles or collections
- Other, including deferred compensation

Values should be reasonably estimated, both for purposes of projecting the distribution of the estate and any estate or inheritance tax liabilities.

The assets need to be divided into probate assets and non-probate assets.

Probate assets are owned by the client in his or her own name and pass under the Will.

Non-probate assets do not pass under the Will but rather pass by operation of law or by beneficiary designation. Non-probate assets include real estate owned as tenants by the entirety and joint bank accounts, passing to the surviving owner, and life insurance and retirement accounts passing by beneficiary designation, or bank or securities accounts having a payable on death designation.

CAVEAT: sometimes a joint bank account with a specific family member is for convenience purposes so that family member can help pay bills and manage finances. When a client identifies a joint bank account is a child or other relative, the client should be asked whether the account is a so-called “convenience account.”

**C. Other Information**

Other information to be obtained includes:
- Liabilities, including any claims in lawsuits
  o Marital history
  o Any divorce obligations?
  o Any prenuptial obligations?
  o Contract to make a Will is valid, N.J.S.A. 3B:1-4.

- Trusts
  o Did client create any trusts?
  o Is client beneficiary of any trusts?
  o Is client trustee of any trusts?
  o Does client have a power of appointment over any trusts?

- Copies of existing documents, including Wills, trusts, marital agreements, business agreements.

  CAVEAT: never prepare a codicil or a trust amendment without reviewing the documents that are being changed.

D. **Maintaining the Estate Planning File**

What does the Estate Planning file look like? What happens to the information and the documents that you collect?

Traditionally, paper files would be kept with folders:

- Attorney Notes, including Questionnaire
- Correspondence, including Retainer Agreement
- Emails
- Drafts Documents
- Signed documents
- Client documents
- Third party documents

In current practice, the same folders can be maintained electronically, with original signed documents separately preserved.

E. **Meeting with the client**

Meeting with the client is an important part of the estate planning process. It provides the opportunity to confirm that 1) the client knows his or her next of kin, and the nature and extent of his or her assets; 2) that the client is not subject to undue influence; and 3) that the client understands the results of the documents to be signed.

**Standard of Care.** A malpractice case decided in 2019 highlights the importance of meeting with the client as a standard of care.
38-2-2137 Varelli v. White, N.J. Super. App. Div. (per curiam) (56 pp.) Defendants Donald Kingett, Rabil, Ropka, Kingett and Stewart, LLC, and Rabil, Kingett and Stewart, LLC appealed and plaintiffs, Brenda Varelli, Kyle Bradford, and Lyle Bradford cross-appealed from a jury verdict that found Kingett deviated from the standard of care required of an attorney which was a proximate cause of losses sustained by plaintiffs in the estate and negligence case. . . . Plaintiffs filed a complaint in connection with the estate of their mother that alleged that the decedent had diminished capacity and was unduly influenced to change her estate plan by her granddaughter, Jennifer White. Jacqueline McGlinchey was an estate planner affiliated with Fidelity Estate Planning, LLC who met with the decedent and had her execute an estate planning services contract. After that meeting, McGlinchey provided attorney Kingett with the client workbook and Kingett prepared a retainer agreement for his legal services. . . . The court further rejected defendant's argument that because they owed no duty to plaintiffs, the trial judge erred when he denied their motion for judgment on that issue. The court reasoned that the record supported a finding that defendant failed to meet the standards of the legal profession inasmuch as he never met with the decedent, did not ascertain that she had capacity to change her estate plan and was not unduly influenced, was not sure that the person he spoke with on the phone was her, and did not supervise the execution of testamentary documents or explain to the decedent the nature of those documents. Finally, as to the issue of counsel fees, the court found that because they were remanding the matter for a new trial, the counsel fee award was reversed and the trial judge should consider the issue of fees after the new trial.

Avoiding Undue Influence. “Undue influence is "defined as 'mental, moral or physical' exertion which has destroyed the 'free agency of a testator' by preventing the testator 'from following the dictates of his own mind and will and accepting instead the domination and influence of another."" Haynes v. First Nat'l State Bank, supra, 87 N.J. at 176, (quoting In re Neuman, 133 N.J. Eq. 532, 534 (E. & A.1943)). Where the will benefits one who enjoyed a confidential relationship with the testator, and where there are suspicious circumstances surrounding the will, the law presumes undue influence and the burden is upon the proponent of the will to disprove the presumption. In re Rittenhouse's Will, 19 N.J. 376, 378-79 (1955).” In re Will of Catelli, 361 N.J. Super. 478, 486 (App. Div. 2003).

Number of Client Meetings. How many times should the estate planning attorney meet with the client? Two or three meetings are usually necessary to confirm competence and lack of undue influence.

- Initial meeting to review EPQ, and ask follow up questions, and to confirm and clarify the plan.
- After draft documents are sent out, a second meeting is usually appropriate to review the drafts, and to answer any questions the client has. A telephone conference is often adequate to address these issues.
- Once the client is satisfied with the draft documents, then a meeting should be scheduled to execute the documents. Execution of the documents is addressed below.
CAVEAT: If the client presents circumstances that may result in allegations of undue influence, avoid any meetings with both the client and any persons who may be accused of participating in the undue influence. Advise the client to travel to the meeting alone or at least without the assistance of the person who may be accused of undue influence. Exclude the person who may be accused of undue influence from any meetings with the client.

F. Client Types: issue spotting

Social background. People from all social backgrounds will need estate planning. Not much point to talking about different social backgrounds, whether they be religion, ethnicity, gender, or wealth based. Death and taxation do not discriminate. They apply across the board. Every client is not appropriate for every lawyer, and vice versa. Nonetheless, the need for estate planning services is sufficiently broad that a compatible clientele should exist for every lawyer.

Wealth Profiles. Whatever the social background, the more the wealth the greater the need for estate planning services. I segment high net worth clients in one of three categories:

- Entrepreneurial, where wealth has been created in founding a company or in developing real estate;
- Highly compensated executives, where the assets include retirement accounts, deferred compensation, and life insurance; and
- Inherited Wealth, where assets are subject to trusts and other estate planning vehicles designed to avoid taxes sometime in the past, as long as 50 or 60 years ago.

Personality Types. My partner Steven Scherzer does trust and estate litigation and he has his own set of profiles for clients whose estates become subject to litigation, particularly in blended families. Each will present challenges in providing them with services and getting them through the estate planning process.

- I want attention
- I want to please everyone so they will be happy and get along
- Old and feeble

Specific Planning Issues.

- Estate subject to taxes: Federal estate tax; State estate or inheritance taxes
- Assets located in more than one jurisdiction
- Blended families
- Disinheritance of a family member
- No next of kin
V. **Outlining the plan**

A. What Does the Will Provide: Basic Questions who gets what property? who is responsible for administering the estate?

B. Disposing of the Estate
   a. Tangibles
   b. Real estate
   c. Bequests: specific and general (cash)
   d. Residue: percentages or shares
   e. Survivorship: what if a beneficiary dies? who gets the property?
      - Is bequest contingent on beneficiary surviving?
      - If no, then state that bequest is to the person and heir and assigns
      - If yes, state that survivorship is required, and make provision if no survivorship. Name successor or say that bequest lapses.
   f. Class gifts
   g. Trusts for beneficiaries
   h. Remote Contingency: what if all the beneficiaries die?
      - parents, siblings, nieces and nephews, charities

C. Naming Fiduciaries: family, friends, professionals
   a. Executor: get will admitted to probate, collects and liquidates assets, including house and contents, pay bills and taxes, distributes balance to beneficiaries
   b. Trustee: receives property as a beneficiary, invests the property, makes decisions about distributions, and does compliance tasks including record keeping and filing tax returns
   c. Guardian: makes decisions about the care and education of minors

D. Non-Probate Property: disposition needs to be coordinated with the Will.

E. **Right of Election:** In most states, a spouse cannot be disinherited. To avoid disinheriance, a spouse is given a statutory right to elect to take a share of an estate contrary to the terms of the Will.

The New Jersey Right of Election is set forth at N.J.S.A. 3B:8-1 et seq. The spouse is entitled to claim the excess of one-third the “augmented” estate, which includes transfers during the marriage and non-testamentary assets passing at death, and excludes transfers the surviving spouse consented to and life insurance. New Jersey has two unusual provisions in its Right of Election statute, reflecting the public policy of the statute assuring support for a surviving spouse. First, assets held in to pay income to the spouse count towards the right of election at a rate of $.50 per $1.00 of
value. Second, the surviving spouses own assets count towards the right of election, so that a spouse with assets may not have any right of election.

F. **Attorney as Executor or Beneficiary.** N.J.S.A. § 3B:18-6, Ethic Opinions 487 (1981) and 1551 (1994) address these issues. Service of an attorney as a fiduciary is generally viewed as not raising issues of over-reaching or undue influence, particularly when the attorney has had a long standing relationship with the client. When an attorney executor intends to retain his or her own law firm to provide the legal services, disclosure should be made to the client when the estate planning is done. A bequest to an attorney draftsman raises an issue of undue influence, indicating the Will project should be referred to another lawyer.

N.J.S.A. § 3B:18-6. Legal fees for attorney also serving as fiduciary: If the fiduciary is a duly licensed attorney of this State and shall have performed professional services in addition to his fiduciary duties, the court shall, in addition to the commissions provided by this chapter, allow him a just counsel fee. If more than one fiduciary shall have performed the professional services, the court shall apportion the fee among them according to the services rendered by them respectively. L. 1981, c. 405, 3B:18-6, eff. May 1, 1982.

G. **Public Policy Limitations.** Public policy limitations do exist on what may be provided in a Will. By way of example, a penalty or “In Terrorem” clause is not enforceable to disinheret a beneficiary who has reasonable cause to challenge the validity of a Will. N.J.S.A. 3B:3-47. Also, executors and trustees cannot be excused from liability for serving as a fiduciary. Rather, the Courts retain their supervisory power over executors and trustees. Courts also may decline to enforce provisions offensive to public policy.
VI. Tax planning issues

A. Estate and Inheritance Taxes are imposed on two different premises

a. Estate Tax: a tax on the privilege of transferring wealth: add up the assets, allow some deductions, and impose a tax on the decedent’s net estate.

i. In 2019, Federal Estate tax applies to estate in excess of $11,400,000 at a top rate of 40%.

ii. Federal Deceased Spousal Unused Exclusion (DSUE) amount is portable between spouses, which requires timely filing of Federal estate tax return. IRC 2010(c)(4) and (5).

New Jersey Estate Tax Repealed as of 2018

iii. Prior to 2017, the New Jersey estate tax applied to decedents leaving net estate in excess of $675,000, at rates beginning at 5.6% and increasing to 16% on assets in excess of $10,100,000. When an estate exceeded the $675,000 threshold, the tax on the first $675,000 was collected at a rate of 37% on assets in excess of $615,000 until fully paid.

iv. In 2017, the New Jersey estate tax applies to decedents leaving net estate in excess of $2,000,000, at rates beginning at 7.2% and increasing to 16% on assets in excess of $10,100,000. Once the $2,000,000 threshold is crossed, the initial exemption of $2,000,000 is lost.

v. The New Jersey taxable estate is defined by the Federal taxable estate under the Internal Revenue Code as in effect in 2001. The New Jersey Estate tax does not apply to non-residents of New Jersey.

b. Inheritance Tax: a tax on the privilege of receiving wealth: identify the recipient, total how much that recipient inherits, and impose a tax based upon the relationship between the recipient and the decedent.

i. New Jersey inheritance tax allocates heirs to different classes:

- Class A: spouse, ancestors and descendants - exempt
- Class C: siblings, sons-in-law and daughters-in-law – first $25,000 exempt, then 11% up to $1,100,000, 13% up to $1,400,000, 14% up to $1,700,000 and 16% over $1,700,000
- Class D: all other individuals – no exemption - 15% up to $700,000 and 16% over $700,000
- Class E: charities – exempt
ii. New Jersey Inheritance Tax benefits:

- Definition of who is Class A, which includes:
  - step-children, but not step-grandchildren  N.J.A.C. 18:26-1.1
  - a person who stands in the relationship of a mutually acknowledged child: ten year relationship that began before age 15. N.J.S.A. 54:34-2.1

- Definition of Property Subject to Inheritance Tax

  - Gifts other than transfers in Contemplation of Death are not subject to the inheritance tax. N.J.S.A. 54:34-1. New Jersey does not have a gift tax.

  - Life Insurance payable to a beneficiary and not the estate is not subject to the inheritance tax. N.J.S.A. 54:34-4.f. N.J.A.C. 18:26-6.8.

B. Income Tax matters

a. Basis step up. Assets included in the estate get a step up in basis for capital gains purposes to the date of death value IRC 1014.

b. Basis step up does not apply to assets gifted during lifetime. IRC 1015. Gifts preserve capital gains taxes. Avoid gifts of low basis assets.

c. Income in Respect of a Decedent (IRD). It remains subject to income taxes. IRC 691. The classic example is unpaid compensation, including distributions from IRA’s, 401K’s and other pension and retirement accounts.

d. Planning for the disposition of retirement accounts raises income tax issues in making the beneficiary designation to continue income tax deferral.

  - Surviving spouse as beneficiary can roll over account into own IRA tax free.

  - Other individual beneficiary may transfer account to an Inherited IRA with required minimum distributions beginning the year after death and continuing over the life expectancy of the beneficiary.
- A trust as a beneficiary is required to take minimum required distributions based on the life expectancy of the oldest beneficiary.

- Estate as beneficiary is required to withdraw entire balance of account within five years of death, unless Decedent attained age 70 and a half and began minimum required distributions, in which case minimum required distributions are based on the life expectancy of the Decedent.
VII. Preparing the Will

A. What is a Will?

N.J.S.A. 3B:1-2: Definitions: “Will” means the last will and testament of a testator or testatrix and includes any codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of a person or class to succeed to property of the decedent passing by intestate succession.

- appoints an executor
- revokes or revises another Will
- nominates a guardian
- limits or revokes the rights of any person who would take by intestate succession

N.J.S.A. § 3B:1-3. Devolution of property upon death. Upon the death of an individual, his real and personal property devolves to the persons to whom it is devised by his will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to rights of creditors and to administration.

§ 3B:3-2. Execution; witnessed wills; writings intended as wills.

a. Except as provided in subsection b. and in N.J.S.3B:3-3, a will shall be:

(1) in writing;

(2) signed by the testator or in the testator’s name by some other individual in the testator’s conscious presence and at the testator’s direction; and

(3) signed by at least two individuals, each of whom signed within a reasonable time after each witnessed either the signing of the will as described in paragraph (2) or the testator’s acknowledgment of that signature or acknowledgment of the will.

b. A will that does not comply with subsection a. is valid as a writing intended as a will, whether or not witnessed, if the signature and material portions of the document are in the testator’s handwriting.

c. Intent that the document constitutes the testator’s will can be established by extrinsic evidence, including for writings intended as wills, portions of the document that are not in the testator’s handwriting.
- Holographic wills recognized by statute.
- Writing intended to be a Will also recognized by statute; excuses strict compliance with the formalities of a Will. Requires a clear and convincing standard of evidence. N.J.S.A. 3B:2-3.

B. What every Will may or should contain

1. Pre-residuary bequests:

2. Specific bequests: namely specific items of property, which can be real property (land), tangible personal property (personal effects and possession, or intangible property (shares of stock or other interests in business entities, or financial accounts or intellectual property)

3. Tangibles, including pets - statute authorizes separate letter to dispose of tangibles NJSA 3B:3-11. Give them away - not a good idea to make them marry off the residue

4. General bequests - cash

5. Exercise of power of appointment

6. Residuary bequest: all the rest and residue of the estate

   - Class gifts; survivorship and unusual order of death, lapse and per stirpes distribution. See N.J.S.A. 3B:3-48 (class gifts), 41 (representation), and 35 (anti-lapse)

7. Trust provisions for beneficiaries: avoids guardianships; protects assets against the claims of third party creditors


9. Tax clauses

   - allocation of estate taxes
   - GST language
   - Qualified plan language

10. Fiduciaries

    - Successors
    - Compensation
    - No bond
11. Powers clauses

12. Simultaneous death and survivorship

13. Definitions: Class gifts, inclusion of adopteds, IRC, pronouns

C. Malpractice issues:

- estate tax allocation, N.J.S.A. 3B:24-1 et seq.
- survivorship N.J.S.A. 3B:6-1 et seq.

D. Formalities of execution: NJSA 3B:2-1 to 3:

- Two witnesses required. NJSA 3B:2-7 and 8. Why? Higher standard of proof due to death of testator.
- Self-proving affidavit authorized by N.J.S.A. 3B:2-4 and 5. Proof required for admission of Will to probate may be created at the time the Will is signed.
- Holographic wills recognized by statute. N.J.S.A. 3B:2-2
- E-signatures: The Uniform uniform law

E. Drafting software. Where to find the language for Wills.

- Formbooks, used to be published by the banks.
- Legal publishing companies publish treatises with forms.
- Specialized estate planning software also exists in the marketplace.
VIII. Ancillary Documents: Powers of Attorney and Living Wills


NJ does not have a statutory form but it does have statutory provisions that should be included in any New Jersey Power of attorney.

For estate planning purposes, the goal of the power of attorney is to avoid a guardianship proceeding to manage the clients property if the client becomes disabled during lifetime. To achieve this goal, the power of Attorney is required to include statutory language that makes it DURABLE:

§ 46:2B-8.2. Powers of attorney; durable powers of attorney; disability defined

a. A power of attorney is a written instrument by which an individual known as the principal authorizes another individual or individuals or a qualified bank within the meaning of P.L. 1948, c. 67, § 28 (C. 17:9A-28) known as the attorney-in-fact to perform specified acts on behalf of the principal as the principal’s agent.

b. A durable power of attorney is a power of attorney which contains the words “this power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time,” or “this power of attorney shall become effective upon the disability or incapacity of the principal,” or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal’s subsequent disability or incapacity, and unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.

“Springing” powers of attorney require proof of disability, which creates an item of proof that may be an inconvenience.

Formality Required:

N.J.S.A. § 46:2B-8.9. Formality: A power of attorney must be in writing, duly signed and acknowledged in the manner set forth in R.S. 46:14-2.1. [Acknowledgement, which is the form required for recording a deed].

The New Jersey power of attorney for estate planning purposes will set forth in detail the powers being granted.

Provisions to be to comply with the statute:


- Gifting Power:
§ 46:2B-8.13a. Power of attorney; gift of principal’s property; prohibited: A power of attorney shall not be construed to authorize the attorney-in-fact to gratuitously transfer property of the principal to the attorney-in-fact or to others except to the extent that the power of attorney expressly and specifically so authorizes. An authorization in a power of attorney to generally perform all acts which the principal could perform if personally present and capable of acting, or words of like effect or meaning, is not an express or specific authorization to make gifts.

Other aspects of Powers of Attorney in NJ:

- The Attorney in fact is a fiduciary with a duty to account to the principal, the personal representative of the principal’s estate, and any guardian or conservator appointed for the principal. N.J.S.A. § 46:2B-8.4 and 8.13.

- More than one attorney in fact can be appointed, to act severally or jointly, and the attorney in fact can be authorized to delegate powers. N.J.S.A. § 46:2B-8.7 and 8.8.
B. **Living Will.** N.J.S.A. 26:2H-53 Advance Directives for Health Care

Formality for execution: two witnesses or an acknowledgement:

§ 26:2H-56. Advance directive for health care; execution

A declarant may execute an advance directive for health care at any time. The advance directive shall be signed and dated by, or at the direction of, the declarant in the presence of two subscribing adult witnesses, who shall attest that the declarant is of sound mind and free of duress and undue influence. A designated health care representative shall not act as a witness to the execution of an advance directive. Alternatively, the advance directive shall be signed and dated by, or at the direction of, the declarant and be acknowledged by the declarant before a notary public, attorney at law, or other person authorized to administer oaths. An advance directive may be supplemented by a video or audio tape recording. A female declarant may include in an advance directive executed by her, information as to what effect the advance directive shall have if she is pregnant.

Two parts set forth in statute: advance directive and designation of agent.

§ 26:2H-58. Designation of health care representative; limitations

a. A declarant may execute a proxy directive, pursuant to the requirements of section 4 of P.L.1991, c.201 (C.26:2H-56), designating an adult with mental capacity to act as the declarant’s health care representative.

(1) An adult who has mental capacity, including, but not limited to, a declarant’s spouse, partner in a civil union as defined in section 2 of P.L.2006, c.103 (C.37:1-29), domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), adult child, parent, or other family member, friend, religious or spiritual advisor, or other person of the declarant’s choosing, may be designated as a health care representative.

(2) An operator, administrator, or employee of a health care institution in which the declarant is a patient or resident shall not serve as the declarant’s health care representative unless the operator, administrator, or employee is related to the declarant by blood, marriage, domestic partnership, civil union, or adoption.

This restriction does not apply to a physician, if the physician does not serve as the patient’s attending physician and the patient’s health care representative at the same time.

(3) A declarant may designate one or more alternate health care representatives, listed in order of priority. In the event the primary designee is
unavailable, unable, or unwilling to serve as health care representative, or is disqualified from such service pursuant to this section or any other law, the next designated alternate shall serve as health care representative. In the event the primary designee subsequently becomes available and able to serve as health care representative, the primary designee may, insofar as then practicable, serve as health care representative.

(4) A declarant may direct the health care representative to consult with specified individuals, including alternate designees, family members, and friends, in the course of the decision making process.

(5) A declarant shall state the limitations, if any, to be placed upon the authority of the health care representative including the limitations, if any, which may be applicable if the declarant is pregnant.

b. A declarant may execute an instruction directive, pursuant to the requirements of section 4 of P.L.1991, c.201 (C.26:2H-56), stating the declarant’s general treatment philosophy and objectives; or the declarant’s specific wishes regarding the provision, withholding, or withdrawal of any form of health care, including life-sustaining treatment; or both. An instruction directive may, but need not, be executed contemporaneously with, or be attached to, a proxy directive.

Observations on Living Wills in NJ:

- No Statutory form.
- Only one health care representative at a time.
- Additional wishes may be expressed.
- HIPAA authority to release information may be included.
IX. **Execution of Documents**

A. Once draft documents are prepared, they should be sent to the client, and a meeting or phone conference schedule to review them. Once all of the clients questions have been answered and revisions made, the execution of the documents can be scheduled.

B. Execution: persons needed: the clients, two witnesses, and a notary. The lawyer can serve as a witness or the notary.

C. Follow standard practices in the execution of the Wills, so that the business practice rule can be followed if testimony is ever required concerning the validity of the documents.

D. After the client arrives for the signing, review with the clients the documents to be signed, and give the client the chance to ask any additional questions before having the witnesses and the notary join the meeting.

E. Have all the participants in the conference together at the same time when the document is signed.

F. Ask the client directly: do you sign this as your will, ask the two witnesses to sign the attached affidavit that says you are over the age of 18 years and can read and write in the English language, and that you do this off you own free will. Prompt the client to say yes if you have to, and not just to nod.

G. Have the witnesses sign at the same time in the presence of each other.

H. For the documents that have to be acknowledged or notarized, have the client sign those documents in the presence of the notary, and have the notary complete the acknowledgements or jurats.

I. The witnesses and notary can leave after their part is done.

J. Discuss with the client who is to hold the original documents and who should get copies of documents.
X. **Completing the Estate Planning Project**

A. What happens to original documents?

B. Better practice is for the law firm to retain custody of the documents in a fire proof safe while maintaining a Will log.

C. if clients take them and they are lost they are presumed revoked

D. if lawyer keeps them and they cannot be found, a copy can be proven

E. Scan the documents once they are signed so that ready access to them exists.

F. Send to the client copies, both paper and pdf, with instructions to keep the copies in a place where they will be found, such as a desk or a file cabinet at home. They should not be placed in a safe or a safe deposit box that cannot be opened once the client dies.

G. Send a final bill
Attachment:

1. Retainer letter language re waiver of conflict
2. Estate Planning Questionnaire
3. Bergen County Intestacy
4. Ethics Opinions
5. NJ Inheritance Tax Summary
6. Sample Will
7. Sample Power of Attorney
8. Sample Living Will
Notice and Waiver of Conflicts of Interest

When two or more clients are represented regarding the same subject matter, such as spouses doing tax planning, the law recognizes that a potential exists for conflicts of interests to arise with respect to the interests of each of you. By way of example, if one of you transfers property to the other, then he or she may dispose of the property as he or she determines. By way of further example, confidential information which is or becomes available to us from one of you or from another source may be disclosed to the other of you. These are only two common examples, and other conflicts may arise.

Please accept this letter as our notice of the conflict of interests, your opportunity to be represented by independent counsel, and your waiver of the same. Specifically, by signing and returning this retainer letter, each of you expressly consents to the representation by Cooper Levenson, of the other, each of you waives any objection to such representation, and each of you consent to the disclosure of any confidential information concerning your uncle’s estate to the other of you. Each of you also consents to the Firm’s continued representation of the other of you in the event that one of you terminates our representation.
Estate Planning is the process of identifying family, tax and inheritance issues for you and assisting you in resolving those issues in the manner that you determine to be most appropriate for you and your heirs. The process includes: (1) compiling and analyzing your assets; (2) determining who you wish to leave them to; and (3) preparing documents to pass the assets to your intended beneficiaries in the most practical manner. In addition to Wills, the documents may include beneficiary designations and trust agreements. To begin this process, we ask that you complete the following questionnaire, which will provide us with the basic information necessary to prepare drafts of wills, living wills and powers of attorney.

I. General Information

1. Please set forth your full name.

2. Please set forth your mailing address. If the municipality in which you live is different from your mailing address, please also set forth the municipality.

3. Please set forth your telephone numbers and e-mail addresses.

4. Please set forth your date of birth, citizenship, and social security number.
5. Please set forth your occupation(s). If you have an employment agreement with your employer, please provide us with a copy.

6. What is your marital status? If you are divorced, please provide us with copies of any divorce decrees or separation agreements. These documents are required to be reviewed in connection with your estate planning because they may impact the distribution of your property.

7. Do you have any significant health issues?

8. **Family Information.** Please list the full names, birth dates and social security numbers of your children. If you do not have children, please list your parents, brothers or sisters, or other closest relatives.

   a.) Are any of your children married (if so, please list spouse’s names)?

   b.) Do you have any grandchildren (if so, please list names and dates of birth)?

   c.) Do you have any beneficiaries with health issues or other special needs? If so, please note which beneficiary and their needs.
II. **Assets**

Please provide a summary of your assets, including the value of your home, the contents of your home, cash, securities, interests in businesses, employee benefits and life insurance. Do you own any of this property jointly with another person? If so, please provide the names of the joint owners or co-owners for each asset. Have you named a beneficiary for any of these assets, such as life insurance or retirement assets? The overall value of your property may raise the tax planning issues to be considered to maximize the use of your exemption from Federal and State Estate and Gift Taxes.

Please note whether you have interests in any of the following types of property:
- Farm or ranch?
- Closely held business?
- Stock in SubChapter S corporation?
- Medical, Dental or Veterinarian Practice?
- Valuable collections? (e.g., art, antiques, etc.)
- Oil and gas or other mineral interests?
- Commercial real estate?
- Safe deposit box

<table>
<thead>
<tr>
<th>Homes and mortgages</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Contents</td>
<td></td>
</tr>
<tr>
<td>Cash and Securities (i.e., savings, checking, brokerage, investment accounts)</td>
<td></td>
</tr>
<tr>
<td>Business Interests (i.e. LLCs, corporations, partnerships, etc.)</td>
<td></td>
</tr>
<tr>
<td>Retirement Accounts (i.e. Pension, Profit Sharing, 401(k), IRA, etc.)</td>
<td></td>
</tr>
</tbody>
</table>
To prepare appropriate beneficiary designations, and to address tax planning considerations, we ask that you also provide us with copies of the following documents:

- the most recent statements for each retirement account;
- statement for each policy of life insurance;
- any beneficiary designations for retirement accounts, life insurance or other assets;
- any shareholder, partnership or other business agreements; and
- deeds to your real estate.

Property that is jointly owned by you and another person with a right of survivorship will pass directly to the joint owner at your death, and will not pass under your Will to the heirs you set forth in your Will. You may, if you wish, designate bank and financial accounts as being jointly owned for convenience purposes only, i.e. so that the joint owner may assist you in managing your affairs and paying your bills. The law requires that you make this designation when the account is created, and it does not allow you to make the designation by Will. Do you wish to designate any jointly owned bank or financial accounts to pass under your Will?

_____ YES  _____ NO

Are you the grantor, beneficiary or trustee of any trusts? Are you the custodian of any accounts created under the Uniform Transfers to Minors Act (UTMA) or the Uniform Gifts to Minors Act (UGMA)?

_____ YES  _____ NO

If Yes, please provide details.
III. Will Information

1. Do you have an existing estate plan (i.e., Will, Living Will, Power of Attorney, Trust, etc.)? If so, please provide us with copies of all existing documents.

2. Do you wish to leave your estate in equal shares to your children? If “No,” please explain.
   
   _____ YES
   _____ NO

4. If a child pre-deceases you, do you wish to leave that child's share of his or her estate to his or her children in equal shares? If “No,” please explain.
   
   _____ YES
   _____ NO

5. Do you wish to make any provisions for grandchildren or other beneficiaries?

6. Do you wish to create any trusts for beneficiaries? Minors may not legally own property in their own name. If property passes to a minor outright, then it may be required to be held in a guardianship that is cumbersome and expensive. It is usually more practical to create a trust for a minor. Not only is a trust less expensive and more flexible than a guardianship, but it also may continue beyond age 18, protecting property from taxes and creditors, while providing the beneficiary with a vehicle for managing the assets. In the event any portion of your estate passes to a person whom you believe to be too young to receive such property outright, or to otherwise benefit from a trust, until what age would you wish to have a trust for that person continue?
7. Do you wish to make any bequests of specific property to anyone?

8. Do you wish to leave any property to charity?

9. In the remote event that none of your immediate family survived your death or the termination of any trust which you create, to whom do you wish to leave your estate?

10. **Executors.** The executor's role is to obtain the probate of the will, to collect your assets, to pay all bills and debts, to file any estate tax returns and pay any estate taxes, and to distribute your assets to your heirs. Who do you wish to name to act as executor and as successor executor? (We recommend that you name at least one successor executor). (Please provide names and complete addresses.)

11. **Trustees.** The role of the trustee is to receive from the executor the beneficiary's share of the estate, to invest it on behalf of the beneficiary, and to distribute it to the beneficiary in accordance with the terms of the will. Who would you like to name as a trustee for any trusts to be created? Who would you like to name as successor trustee? Please provide name and complete address.)

12. **Guardians.** This section is only applicable if you have minor children who are unemancipated. The role of the guardian is to take primary responsibility for raising your minor children. Who would you like to name as guardians for your children? Who would you like to name as successor guardians? (Please provide name and complete address.)
IV. Other Information

1. Gift Information.

a.) Are you the beneficiary, trustee or grantor of any trusts? If so, please describe each trust and provide a copy of it.

b.) Have you ever filed any gift tax returns? Have you ever made any gifts in excess of $15,000.00? If so, please provide details.

2. Durable Powers of Attorney. By a durable power of attorney, you may designate an attorney-in-fact to conduct any and all transactions with respect to your property which you could perform for yourself. The power of attorney will continue to be effective in the event you became incapacitated. The primary purpose of the power of attorney is to avoid the necessity of a guardianship proceeding for the management of your affairs in the event you became unable to manage them for yourselves. Do you wish to execute a durable power of attorney to appoint an attorney-in-fact? Who do you wish to name as you attorney-in-fact? We recommend that you also name at least one successor. Please provide names and complete addresses and telephone numbers.
3. **Living Will.** By a living will, you may express your desires with respect to your health care in the event you were unable to provide instructions to your attending physicians at the time. By a living will, you may also designate a health care representative to make the appropriate health care decisions in the event you were unable to do so. Do you wish to execute a living will and to name a health care representative? Who do you wish to name as health care representative? We recommend that you also name at least one successor. Please provide names and complete addresses and telephone numbers.

4. **Burial Instructions.** Do you wish to include any specific burial instructions upon your death? If so, please provide details about your burial wishes.

5. **Other Information.** Please provide us with any additional information that you believe to be important to your estate planning (such as a provision for pets, etc.).

6. How would you like to receive drafts of your estate planning documents?

Date: ___________________________

______________________________

abc…

CLAC 5152604.1
INTESTACY

It is estimated that almost one third of Bergen County residents who die this year, will die without a Will. While I encourage county residents to execute a Will – and strongly recommend a Will for every Bergen County adult – this article provides the estate procedure when a Bergen County resident dies without a Will. (Another pamphlet setting forth the procedure for "How to Probate a Will in Bergen County" can be obtained, without charge, by contacting the Bergen County Surrogate's Court at (201) 336-6700.

The estate of every Bergen County resident must be settled with the Bergen County Surrogate's Court unless the deceased owned no assets individually (in his or her name alone) in New Jersey. Except in that limited circumstance, an estate must be presented to the Bergen County Surrogate before transfer and disbursement of the deceased's assets can occur. This estate settlement requirement applies whether the person died with or without a Will.

The estate of a person who dies without a Will is called an "intestate" estate. Whoever is to take charge of the assets of an intestate estate must appear at the Bergen County Surrogate's Court to make application to be designated as the estate's "Administrator". Those who are first entitled to be appointed the administrator are the closest surviving next of kin. The Administrator's responsibilities include assembling the estate's assets, paying any outstanding debts of the deceased from those assets and disbursing those remaining assets according to law. The applicant is not required to hire an attorney; this is the individual choice of the applicant. In fact, most applicants complete the entire Surrogate's Court process without the need for an attorney. However, you may bring an attorney to the Surrogate's Court if you would feel more comfortable.

To apply to be the Administrator of an intestate estate, a person must bring the following to the Bergen County Surrogate's Court: (1) The original death certificate with a raised seal; (2) An estimate of the gross value (but not an item-by-item description) of the estate covering all real estate and non-real estate (personal) assets; (3) The complete names and addresses of the deceased's next of kin; (4) A blank New Jersey check or cash for fees--the average fees, excluding bonding costs, are $125-$150; and (5) If applicable, a formal written Renunciation of the right to serve as the estate's Administrator signed (in
the presence of a Notary Public) by every person, if any, who has prior or equal right to the applicant to serve as the estate's Administrator.

You may telephone the Surrogate's Court at (201) 336-6700 in advance and we will mail you the appropriate “Renunciation Forms,” without charge.

As a matter of law, the family members of the deceased have the first right to serve as the Administrator, in the following order of preference: spouse, surviving partner of a civil union, domestic partner, children, grandchildren, parents, brothers, sisters, nieces, or nephews. Should no family member seek appointment, then a creditor or any interested party may apply. A person who renounces the right to serve as Administrator may do so without disclaiming the right to receive any of the deceased's assets. In contrast, by having a Will, a person can choose the individual(s) (i.e., "Executor(s)") he or she wishes to take charge and distribute his or her estate's assets.

Once the above described items have been received, the Surrogate will appoint the applicant as the Administrator of the intestate estate. In most cases, the Administrator must be bonded until the estate has been properly assembled and distributed. This bonding fee is in addition to the $125-$150 in average fees paid by the person seeking to be appointed as Administrator. Bonding is required to protect the creditors and beneficiaries of the estate from the possibility that the Administrator will misuse his or her authority to their financial detriment.

There are, however, exceptions to the bonding requirement for intestate estates. These exceptions depend on when the death occurred, prior to February 27, 2005 or after this date (see description of these exceptions in the applicable section “A” or “B”).

After the Administrator has been bonded and appointed, the Surrogate's Court will then issue Surrogate's Certificates (also known as Letters of Administration) that are used to assemble and transfer the intestate estate's assets. It is recommended that you order several extra copies of these Certificates, especially if assets are held at several banks, brokerage firms, with insurance companies and/or are pension plans. They will also be needed to sell or transfer motor vehicles and all real estate assets. Along with the Certificates, a General Information Brochure regarding the New Jersey Inheritance Tax and Estate Tax is sent by the Surrogate's Court to the Administrator by mail within 5-7 business days of his or her appointment.

The laws of the State of New Jersey provide for the assets of the intestate estate, if the deceased died on or after February 27, 2005, to be distributed to the next of kin by "intestate succession", as follows:

Section A – IF DECEASED DIED ON OR AFTER FEBRUARY 27, 2005:

The intestate share of the surviving spouse, surviving partner of a civil union, or domestic partner is:

** NO BOND REQUIRED FOR THE FOLLOWING CIRCUMSTANCES **
i.) The entire estate if:

a) No descendant or parent of the deceased survives him or her;

b) All of the deceased surviving descendants are also descendants of the surviving spouse, surviving partner of a civil union, or domestic partner and there is no other descendant of the surviving spouse, surviving partner of a civil union, or domestic partner who survives the deceased.

** BOND REQUIRED FOR THE FOLLOWING CIRCUMSTANCES **

ii.) The first 25% of the intestate estate, but not less than $50,000.00 nor more than $200,000.00, plus three-fourths of any balance of the intestate estate, if no descendant of the deceased survives the deceased, but a parent of the deceased survives the deceased.

iii.) The first 25% of the intestate estate, but not less than $50,000.00 nor more than $200,000.00, plus one-half of the balance of the intestate estate:

If all of the deceased’s surviving descendants are also descendants of the surviving spouse, surviving partner of a civil union, or domestic partner and the surviving spouse, surviving partner of a civil union, or domestic partner has one or more surviving descendants who are not descendants of the deceased;

If one or more of the deceased’s surviving descendants is not a descendant of the surviving spouse, surviving partner of a civil union, or domestic partner.

The intestate share of heirs other than surviving spouse, surviving partner of a civil union, or domestic partner is:

Any part of the intestate estate not passing to the deceased’s surviving spouse, surviving partner of a civil union, or domestic partner, or the entire intestate estate if there is no surviving spouse, surviving partner of a civil union, or domestic partner, pass in the following order to the individuals designated below who survived the deceased: To the deceased’s descendants by representation;

If there are no surviving descendants: to the deceased’s parents equally if both survive, or to the surviving parent;

If there are no surviving descendants or parent: to the descendants of the deceased’s parents or either of them by representation.

If there is no surviving descendant, parent or descendant of a parent, but the deceased is survived by one or more grandparents, half of the estate passes to the deceased’s paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the
descendants of the deceased’s paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the deceased’s maternal relatives in the same manner; but if there is no surviving grandparent, or descendant of a grandparent on the paternal or maternal side, the entire estate passes to the deceased’s relatives on the other side in the same manner as the half. If there is no surviving descendant, parent, descendant of a parent, or grandparent, but the deceased is survived by one or more descendants of grandparents, the descendants take equally if they are all of the same degree of kinship to the deceased, but if of unequal degree those of more remote degree take by representation.

If there are no surviving descendants of grandparents, then the deceased’s step-children or their descendants by representation.

Section B – IF DECEASED DIED PRIOR TO FEBRUARY 27, 2005

The laws of the State of New Jersey provide for the assets of the intestate estate to be distributed to the next of kin by "intestate succession", as follows:

I.) If you die leaving a spouse but no children, grandchildren or parents, the surviving spouse receives all.

II.) If you die leaving a spouse and children who are also the children of the spouse, the spouse receives the first $50,000 plus one-half of the balance of the estate. The children receive the other one-half of the balance divided equally amongst them. If one of your children dies leaving children then your grandchildren take their deceased parent's share. However, if all of your children have died before you then all of your grandchildren will share equally.

III.) If you die leaving a spouse and children who are not also the children of that spouse, the spouse receives one half, the children receive one-half divided equally and, if applicable, the grandchildren take their deceased parent's share unless all the children are deceased. Should that occur, all the grandchildren share equally.

IV.) If you die leaving children but no spouse, the children receive all divided equally among them. If there are grandchildren, they take their deceased parent's share, unless all the children are deceased. In that event, all the grandchildren share equally.

V.) If you die leaving a spouse but no children or grandchildren, and if your mother or father is still living, your spouse receives the first $50,000 of your estate plus one-half of the balance and your parents (or parent, if only one survives you) receive the remainder.

VI.) If you die leaving no spouse, no children, no grandchildren and one or both of your parents survive you, the surviving parent or parents take all divided equally. If no parent survives, then your surviving brothers and sisters receive all divided equally.
VII.) If you die leaving no surviving spouse, children, grandchildren, parents, brothers 
or sisters, then the estate will be divided equally among those people surviving you in the 
closest degree of kinship (starting with nieces and nephews) until an heir is found, if 
possible.

VIII.) If you die leaving no surviving next of kin without a Will, your estate assets 
escheat to the State of New Jersey.

Waiver of Administration
(Assets $50,000 or less for Surviving Spouse; $20,000 or less for Next of Kin)

There is a way for an intestate estate to avoid the General Administration process with 
its corresponding fees and bond premiums: an Application for a Waiver of 
Administration. If this Application is approved, then no Surrogate's Certificate (also 
known as Letters of Administration) is issued, no bond is required. In order to be eligible 
for this Waiver, the intestate estate must be valued at $50,000 or less (if the surviving 
spouse is making the application for Waiver) or $20,000 or less (if any other next of kin 
is making the application for Waiver). If the Waiver of Administration is granted, then, 
instead of a Surrogate's Certificate (or Letters of Administration), an Affidavit of 
Surviving Spouse (or Next of Kin, as the case may be) is issued. There is a small 
statutory charge of $5.00 per $100 of the intestate estate's value up to $1,000, then $50 
flat fee.

In order to make an Application for a Waiver of Administration, a person must bring 
the following to the Bergen County Surrogate's Court: (1) The original death certificate 
with a raised seal; (2) An itemized list of each real estate and personal asset owned by the 
deceased individually, the asset's location and value; (3) The complete names and 
addresses of the deceased's next of kin; and (4) A formal, written Consent to the Waiver 
of Administration signed in the presence of a notary by every person, if any, who has an 
equal right to the applicant, unless the applicant is the surviving spouse, to serve as the 
estate's Administrator. (See the earlier part of this article). You may telephone the 
Surrogate's Court in advance and, upon request, the appropriate Consent forms will be 
mailed to you without charge. The Affidavit functions just like the Letters of 
Administration in permitting the holder to transfer the intestate estate's assets. Its 
effectiveness, however, is limited to the assets itemized in the Application for Waiver of 
Administration.
ATTORNEY'S INCLUDING PERSON GAIN IN CLIENT'S WILL

108 N.J.L.J. 501
December 3, 1981

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the New Jersey Supreme Court

OPINION 487

Attorney's Including Person Gain in Client's Will

The inquirer requests us to provide the ethical considerations surrounding the preparation and execution of a client's last will and testament under the following circumstances:

(1) Where the scrivener, absent a request from the testator, includes a direction that the executor retain the services of the scrivener or his firm as attorney for the estate.
(2) Where the scrivener is specifically directed by the testator to include such a provision.
(3) Where the testator directs the scrivener to appoint himself as executor or trustee under his last will and testament.
(4) Where the testator directs the scrivener to include a provision for a legacy for himself.

Inquiry 1. The suggested practice would clearly violate DR 2-103(A). The thrust of DR 2-103(A) is that professional employment must be initiated by the client. The inclusion of such designations as a matter of form in the preparation of wills is violative of DR 2-103(A). In State v. Gulbankian, 54 Wis.2d. 605, 196 N.W.2d. 733 (Sup. Ct. 1972), 57 A.L.R.3d. 696 (1974), the Wisconsin Supreme Court in concluding the conduct to be unethical, cites former Canon 11, existing DR 2-103(A) and the "appearance" of solicitation that results from
such a systematic inclusion as the three reasons that such conduct should be frowned upon. Our Supreme Court in In re Honig, 10 N.J. 75-78 (1952), held:
The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.

Clearly, this proposition is still a viable ethical standard notwithstanding the fact that it was bottomed on former Canon II, since replaced by the Disciplinary Rules. See also ABA Comm. on Professional Ethics, Opinion 602 1963) We are of the opinion that such conduct is unethical.

Inquiry 2. The inclusion of a mandatory designation of the scrivener as attorney for the executor at the insistence of the testator provides a more vexing problem. In his treatise on legal ethics, Henry S. Drinker handles the question thus:
A question is sometimes raised as to the propriety of a lawyer's inserting in the will a legacy to himself, or a provision appointing him executor or trustee, or one directing his executors to employ him as counsel for the estate. This, of course, depends on the surrounding circumstances. If they are such that the lawyer might reasonably be accused of using undue influence, he will be wise to have the provision inserted in a codicil drawn by another lawyer. Where, however, a testator is entirely competent and the relation has been a longstanding one, and where the suggestion originates with testator, there is no necessity of having another lawyer in the case of a reasonable legacy, or of a provision appointing the draftsman executor, or of a direction that he be retained by the executors. In the case of the latter provision, it should be clearly explained to the testator that it will not be binding on the executor, who will be free to choose his own counsel, since a lawyer has no vested interest in representing the estate of one whose will he has drawn." Drinker, Legal Ethics 94 (1953) *** (footnote omitted)

This position of Drinker's may be followed provided the scrivener advises the executor or trustee upon the death of the testator that the mandatory nature of the appointment has no effect, and he is free to select counsel of his own choosing.

Inquiry 3. The appointment of the attorney (scrivener) as executor or trustee can be handled somewhat more simply where it is the true desire of the testator. Again, where the provision in the will results from the systematic inclusion by the attorney of the clause without a specific request of the testator DR 2-103(A) is violated. This Committee feels that the Drinker position heretofore outlined may be followed; that is to say, where the testator is entirely competent and the relation has been a long-standing one and where the suggestion originates with the testator, there is no necessity for having another lawyer prepare the provision appointing the draftsman executor or trustee. It is advisable, however, that a memorandum of these facts be prepared and maintained by the scrivener.
Inquiry 4. The legacy problem as outlined by Drinker, supra, depends upon the circumstances. However, lurking in the background of every legacy to the scrivener are the dangers of overreaching, abuse of the confidence reposed in him by his client, actual undue influence, and the presumption of undue influence created by the confidential relationship with the testator. At the very least, the "appearance" of these evils is present. The New Jersey Supreme Court in In re Davis, 14 N.J. 166, 171 (1953), stated as follows:

We wish to reiterate what has been said repeatedly by our courts as to the proprieties of a situation where the testatrix wishes to make her attorney or a member of his immediate family a beneficiary under a will. Ordinary prudence requires that such a will be drawn by some other lawyer of the testatrix' own choosing, so that any suspicion of undue influence is thereby avoided. Such steps are in conformance with the spirit of Canons 6, 11, of the Canons of Professional Ethics promulgated by this court.

Subsequently, the New Jersey Supreme Court presented the problem thus:

Our courts have on occasion said that where a testator wishes to name his attorney or a member of his attorney's family as a beneficiary, ordinary prudence requires that the will be drawn by some other lawyer of the testator's choosing, and thus to avoid the suspicion of an abuse of the confidential relationship. In re Nixon's Will, supra, Brogan, C.J.- In re Davis' Will, supra,- where

Mr. Justice Oliphant said: 'Such steps are in conformance with the spirit of Canons 6, 11 of the Canons of Professional Ethics promulgated by this court.' See also In re Putnam's Will, supra. Canon 11 declares that the lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.' It would seem to be equally imperative that the lawyer also avoid the suspicion of benefit or gain. By the civil law a will written by a person in favor of himself was void. Bennett v. Bennett, 50 N.J. Eq. 439, 446 (Prerog. 1892). This by an ordinance under Claudius, that the writer of another's will should not mark down a legacy for himself. 28 L.R.A., N.S. 272.

Clearly these admonitions from our Supreme Court spanning 27 years dictate that the prudent practice under these circumstances is to have the legacy created by independent counsel in a codicil or having independent counsel prepare the entire will. See also State v. Horan, 21 Wis 2d. 66, 123 N.W. 2d. 488 (Sup. Ct. 1963), and State Bar Association v. Behnke, 276 N.W. 2d. 838 (Sup. Ct. Iowa 1979); In re
Gonyo, 73 Wis. 2d. 624, 245 N.W. 2d. 893 (Sup. Ct. 1976), and cases collected in 98 ALR 2d. 1234 (1964).

* * *

* * *

* * *
LEGAL ETHICS OPINION 1515

ATTORNEY DRAFTING INSTRUMENT WHICH NAMES SELF EITHER AS PERSONAL REPRESENTATIVE OR TRUSTEE OR WHICH DIRECTS SUCH OTHER DESIGNEE TO EMPLOY ATTORNEY AS FIDUCIARY ADMINISTRATOR.

Inquiry: An attorney requests the Committee to opine as to the circumstances under which an attorney may draft an instrument in which the client names the attorney either as executor or trustee or which specifically directs that other persons whom the testator/grantor/client designates as executor or trustee consult the attorney/draftsman for legal services. Specifically, the attorney inquires:

(1) whether there must be a pre-existing attorney-client relationship in addition to the attorney-client relationship arising out of the preparation of the instrument in order for the attorney to be named as executor or trustee or for the document to designate that the executor or trustee engage the services of the attorney to provide legal services;

(2) what disclosure, if any, must be made to the client by the attorney with respect to fees that may be charged for the attorney's service as contemplated by the instrument and if disclosure is required, when must the disclosure be made;

(3) (a) whether an attorney执行力 or trustee may retain his law firm as attorney for a trust or estate for which he is serving as fiduciary;

(b) if it is proper to retain the executor or trustee's own law firm, what limitations exist as to compensation for each;

(c) whether the matter must be disclosed to the testator/grantor/client in the course of the preparation of the instrument;

(4) whether the Code of Professional Responsibility imposes a minimum standard of competence upon attorneys serving as fiduciaries; and

(5) whether Virginia attorneys initiate the conversation with their clients as to who might be an appropriate fiduciary for the client's trust or estate or who might provide appropriate legal counsel to the estate, and whether the attorney may suggest his willingness to serve as such.

Opinion: 1. Draftsman as Fiduciary. Must there be a pre-existing attorney-client relationship in addition to the attorney-client relationship arising out of the preparation of the instrument in order for the attorney to be named as executor or trustee or for the document to designate that the executor or trustee engage the services of the attorney to
provide legal services and, if so, what must be the nature and quality of that attorney/client relationship?

Although the committee is of the opinion that a pre-existing attorney/client relationship is not required, it believes that a significant factor concerning the appropriateness of an attorney being named as executor or trustee in a document drafted by the attorney is whether the attorney draftsman took advantage of his role as draftsman to secure such a nomination for the attorney or another member of the attorney's firm. The naming of the executor or trustee must be an informed and fully volitional act of the client.

Although the issue of whether or not undue influence was exerted upon the testator/grantor by the attorney requires a factual determination, on a case-by-case basis, which is beyond the purview of the committee, the committee is of the opinion that the total lack of any pre-existing attorney/client relationship greatly enhances the potential for a finding of undue influence. The existence, duration, and nature of any earlier relationship would obviously mitigate such a finding because, clearly, an attorney with knowledge of the testator's/grantor's affairs, values, and estate would be in a position to best serve the client's needs. See DR:5-101(A); H. Drinker, Legal Ethics 94 (1979) (cited in ABA Comm. on Ethics and Professional Responsibility, Informal Dec. 602 (1963). See also Estate of Weinstock, 386 N.Y.S.2d 1 (1976) (when evidence also indicates overreaching, attorneys who named themselves as executors and who also were strangers to testator were removed as executors); Haynes v. First Nat'l State Bank of New Jersey, 432 A.2d 890 (N.J. 1981); Disciplinary Board v. Amundson, 297 N.W.2d 433 (N.D. 1980); and Discipline of Theodosen, 303 N.W.2d 104 (S.D. 1981).

Furthermore, while the Virginia Code of Professional Responsibility does not generally preclude in-person solicitation, DR:2-103(A) prohibits it under certain circumstances and requires that the attorney take into consideration the "physical, emotional or mental state of the person to whom the [solicitation] communication is directed and the circumstances in which the communication is made." Therefore, whether or not a pre-existing attorney/client relationship is involved, in order to minimize the appearance of undue influence, the attorney must consider carefully the testator's/grantor's state of mind and health before recommending himself or a member of his firm, for future employment as executor or trustee.

2. Disclosure of Fees. What disclosure, if any, must be made to the client by the attorney with respect to fees that may be charged for the attorney's service as contemplated by the instrument and, if disclosure is required, when must the disclosure be made?

The committee believes that the disciplinary rules applicable to your second question are DR:2-105(A), requiring, in pertinent part, that the attorney's fees be adequately explained to the client; DR:5-101(A) requiring a client's consent, after full and adequate disclosure, to the attorney's financial interest when that interest may affect the exercise
of the attorney's professional judgment on behalf of his client; and DR:6-101(C) which requires an attorney to keep a client reasonably informed about matters in which that attorney's services are being rendered.

It is the committee's opinion that full disclosure of the attorney/draftsman's potential fees as executor or trustee or legal counsel to the estate must be made to the client, as required by each of the pertinent disciplinary rules, prior to the execution of the instrument. See Estate of Weinstock, 386 N.Y.S.2d 1. The committee believes that the guidance articulated in EC:2-21 is particularly pertinent in these circumstances:

As soon as feasible after a lawyer has been employed, it is desirable that he reach a clear agreement with his client as to the basis of the fee charges to be made .... It is usually beneficial to reduce to writing the understanding of the parties regarding the fee ....

The committee is of the further opinion that it is advisable that the disclosure be made in written form, signed by the testator/grantor, either in the will or trust agreement itself or in a separate document.

Furthermore, when the attorney/draftsman or a member of his firm is being named executor or trustee, the committee also believes that the attorney has a duty to suggest that the client investigate potential fees of others who might otherwise provide such services. Finally, the committee is of the opinion that an attorney/draftsman who contemplates charging separate fees for investment, tax or other services, over and above the fees for executor/trustee, must also fully disclose those separate fees.

3. Attorney/Fiduciary Retaining Own Law Firm as Attorney For Trust/Estate. May an attorney/executive or trustee retain his law firm as attorney for a trust or estate for which he is serving as fiduciary? If it is proper to retain the executor or trustee's own law firm, what limitations exist as to compensation for each? Should this matter be disclosed to the testator/grantor/client in the course of the preparation of the instrument?

The committee is of the opinion that the attorney named as executor or trustee must disclose and obtain the consent of the testator/grantor prior to the execution of the trust/will when the attorney intends to or is considering retaining his law firm as attorney for the trust or estate. The committee is of the further opinion that the disclosure must include the general compensation to be paid to the law firm. The role of the attorney who serves as fiduciary to a trust or estate and additionally engages his law firm as attorney for the same entity presents a personal conflict as described by DR:5-101(A). In such a situation, the attorney's own financial, business, or personal interest may potentially affect the exercise of his professional judgment on behalf of the trust or estate.

The committee has earlier opined that it is not per se improper for an executor or trustee to engage his own law firm to provide representation in legal matters relating to estate administration. LE Op. 1387.
The committee believes that LE Op. 1353 is also relevant to the question you raise.

That opinion found that it would not be improper for a lawyer who is employed both as Assistant General Counsel to a corporation and as "of counsel" to a law firm to retain the outside law firm to provide legal services to the same corporate client. The committee did opine, however, that full disclosure of the conflict must be made, consent from the corporate client must be received, the lawyer must not provide direct representation to the corporate client through the law firm, the lawyer must not share in any of the fees received by the firm from the corporate client, and communication between the outside law firm and the corporation must be maintained with other directors or employees of the corporation.

LE Op. 1353 dealt with a situation where the consent of the client could be readily obtained. Clearly, if at the time of the preparation of the document, the attorney/draftsman/executor/trustee makes a full and adequate disclosure of the possibility that the trustee/executor may retain his firm as legal counsel and of the general compensation that would be paid, and the testator/grantor/client consents, then the personal conflict is cured. However, if the trustee/executor did not obtain the consent of the now deceased testator/grantor/client, either because it was not disclosed at the time the document was drafted, or because the executor/trustee did not draft the document, then the committee is of the opinion that, after full and adequate disclosure, the conflict can be cured by the consent of all the residual beneficiaries of the estate or all of the income beneficiaries and vested remainder beneficiaries of the trust.

4. Fiduciary Competence. As a matter of ethical consideration, does the Code of Professional Responsibility impose a minimum standard of competence upon attorneys serving as fiduciaries?

Although the committee believes that standards for competence of Virginia attorneys serving as fiduciaries are governed by Virginia law and thus present a legal question beyond the purview of the committee, the committee does direct your attention to LE Op. 1325 which adopted the conclusions reached in ABA Formal Opinion 336 and found that when an attorney assumes the responsibility of acting as a fiduciary and violates his or her duty in a manner that would justify disciplinary action had the relationship been that of attorney/client, the attorney may be properly disciplined pursuant to the [Virginia] Code of Professional Responsibility.

Further, the committee directs your attention to DR:6-101(A) which in pertinent part mandates that a lawyer should undertake representation only in matters in which the lawyer can act with competence an demonstrate the specific legal knowledge, skill, efficiency, and thoroughness in preparation employed in acceptable practice by lawyers undertaking similar matters.

Finally, the committee cautions that DR:6-102(A) precludes a lawyer from limiting his liability to his client for his personal malpractice. See also LE Op. 1452 (an
attorney/client relationship arises between the attorney and the personal representative of an estate, albeit for the ultimate benefit of the estate).

5. Suggestions for Fiduciaries. May Virginia attorneys initiate the conversation with their clients as to who might be an appropriate fiduciary for the client's trust or estate or who might provide appropriate legal counsel to the estate, and, further, may the attorney suggest his willingness to serve as such? Are there limitations on an attorney's ability to solicit his designation as a fiduciary or future legal counsel to the estate?

The committee is of the belief that DR:2-103(A), regarding a lawyer's solicitation of professional employment, is applicable to the question you raise. In addition, Ethical Consideration 5-6 [ EC:5-6] provides further guidance in that it instructs that

[A] lawyer should not consciously influence a client to name him as executor, trustee, or lawyer in an instrument. In those cases where a client wishes to name his lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety.

The committee is of the opinion that, although conversation with the testator/grantor as to the suitability of specific persons or entities to serve as fiduciaries or legal counsel to the estate, and recommendations that a professional fiduciary (e.g., a bank, attorney, or accountant) would be preferable to or in addition to a lay person in certain instances, is clearly in the nature of appropriate legal advice to a client, the attorney's suggestion of his own willingness to serve in those capacities would constitute solicitation for future employment. Although the Virginia Code of Professional Responsibility does not generally preclude in-person solicitation, DR:2-103(A) does, however, prohibit it if the communication has a substantial potential for or involves the use of overpersuasion or overreach and requires that the attorney take into consideration the "sophistication regarding legal matters, [and] the physical, emotional or mental state of the person to whom the [solicitation] communication is directed and the circumstances in which the communication is made." Therefore, the attorney must consider carefully the testator's state of mind and health before soliciting future employment as executor, trustee or legal counsel to the estate, in order to minimize the appearance of undue influence.

The committee is of the view that the same considerations apply whether the document names the attorney as executor or trustee, on the one hand, or directs that the executor/trustee whom the client has designated engage the services of the attorney. In addition, the same considerations would also apply to the issue of waiving security on the executor's or trustee's bond where the attorney or a member of the attorney's firm is designated as executor or trustee. Advice about the suitability of specific persons or entities to serve as fiduciary should cover, in addition to competence and personal service, matters of financial stability both for the attorney and any agents with whom the attorney is expected to deal.

In addition, it is especially important to review with the client who wishes to avoid probate the availability of alternate fiduciary review procedures. Whether or not the client
elects to remain within the probate system, the attorney in all cases should carefully review with the client the potential consequences of an elective waiver of security on the bond of the fiduciary.

Summary: No previous attorney/client relationship is required before an attorney may be named as executor or trustee in an instrument drafted by the attorney or for the instrument to designate that the executor or trustee consult the attorney/draftsman or his firm to provide legal services in the administration of the estate. However, the total lack of a pre-existing attorney/client relationship may enhance the possibility of a finding of undue influence. The attorney/draftsman must consider the testator's/grantor's mental and physical health before soliciting or accepting future employment as executor or trustee.

Full disclosure of the attorney/draftsman's potential fees as executor or trustee or legal counsel to the estate must be made to the client prior to the execution of the instrument. It is advisable that the disclosure be made in written form, signed by the testator/grantor, either in the will or trust agreement itself or in a separate document. The attorney/draftsman has a duty to suggest that the client investigate potential fees of others who might otherwise provide such services. An attorney/draftsman who contemplates charging separate fees for investment, tax or other services, over and above the fees for executor/trustee, must also fully disclose those separate fees.

An attorney/fiduciary executor or trustee may retain his own law firm as attorney for the trust or estate; however, such employment creates a personal conflict under DR:5-101(A) which may be cured by the client's consent after full disclosure. If consent was not received at the time the document was drafted, the conflict can be cured by the consent of all the residual beneficiaries of the estate or all the income beneficiaries and vested remainder beneficiaries of the trust.

In the event that there are co-fiduciaries, consent must be obtained from all such co-fiduciaries prior to the firm's taking on representation of the estate.

Standards for competence of Virginia attorneys serving as fiduciaries are governed by Virginia law. However, when an attorney acts as a fiduciary and violates his or her duty in a manner that would justify disciplinary action had the relationship been that of attorney/client, the attorney may be disciplined under the Code of Professional Responsibility. LE Op. 1325. A lawyer should undertake representation only in matters in which the lawyer can act with competence and demonstrate the specific legal knowledge, skill, efficiency, and thoroughness in preparation employed in acceptable practice by lawyers undertaking similar matters. DR:6-101(A). A lawyer may not limit his liability to his client for his personal malpractice. DR:6-102(A).

An attorney's suggestion to a testator/grantor of the attorney's willingness to serve as fiduciary or legal counsel to the estate constitutes solicitation for future employment. The attorney must consider carefully the testator's state of mind and health before soliciting future employment as executor, trustee or legal counsel to the estate.
The same considerations apply to the issue of waiving security on the executor's or trustee's bond where the attorney or a member of the attorney's firm is designated as executor or trustee.

Advice as to the suitability of specific persons or entities to serve as fiduciary should cover competence, personal service, and matters of financial stability. The attorney should also review probate and the availability of alternate fiduciary review procedures, and the potential consequences of an elective waiver of security on the bond of the fiduciary.

Approved by Supreme Court
Effective February 1, 1994
GENERAL INFORMATION

Inheritance and Estate Tax

Inheritance and Estate Tax Branch
New Jersey Division of Taxation
50 Barrack Street, 3rd Floor
PO Box 249
Trenton, NJ 08698-0249

For additional information call:
(609) 292-5033
8:30 AM - 4:30 PM, M-F
or go to:
www.njtaxation.org
"Inheritance & Estate Tax"

INTRODUCTION

Inheritance and Estate Tax is a "beneficiary" tax and is
determined using the grossed-up value of real or personal property
transferred by asset. Beneficiaries are defined as those who receive
any portion of the deceased person's estate. The law imposes a graduated
inheritance and estate tax ranging from 0% to 16% on the transfer of
real and personal property with an aggregate value of $100,000 or more
to certain beneficiaries.

What's New?

Ik, 37, signed into law on Oct. 2, 2016, provides
that the New Jersey Estate and Inheritance Tax:

- Inheritance and Estate Tax Branch
- New Jersey Division of Taxation
- PO Box 249
- Trenton, NJ 08698-0249

RETURN ARE DUE

Inheritance and estate tax must be filed no later than
the date of death, plus an additional 4 months. The tax is
due 4 months after the date of death, plus an additional 4 months.

For a resident decedent, the return must be filed 4 months after
the date of death, plus an additional 4 months. The tax is
due 4 months after the date of death, plus an additional 4 months.

For a nonresident decedent, the return must be filed 4 months after
the date of death, plus an additional 4 months. The tax is
due 4 months after the date of death, plus an additional 4 months.

Beneficiary Classes and Tax Rates

There are four active inheritance Tax beneficiary classes as follows:

- Class A - Exempt from tax
- Class B - Exempt from tax
- Class C - Exempt from tax
- Class D - Exempt from tax

For a resident decedent, the return must be filed 4 months after
the date of death, plus an additional 4 months. The tax is
due 4 months after the date of death, plus an additional 4 months.

For a nonresident decedent, the return must be filed 4 months after
the date of death, plus an additional 4 months. The tax is
due 4 months after the date of death, plus an additional 4 months.

Inheritance and Estate Tax Branch
New Jersey Division of Taxation
50 Barrack Street, 3rd Floor
PO Box 249
Trenton, NJ 08698-0249

For additional information call:
(609) 292-5033
8:30 AM - 4:30 PM, M-F
or go to:
www.njtaxation.org
"Inheritance & Estate Tax"
EXCEPTIONS
In addition to the exceptions listed under “Beneficiary Classes and Tax Rates,” no inheritance tax is imposed on:

• Transfers to a beneficiary having an aggregate value of less than $100.
• Life insurance proceeds paid to a named beneficiary.
• Payments from the New Jersey Public Employees Retirement System, the New Jersey Teachers’ Pension and Annuity Fund, and the New Jersey Police and Firemen’s Retirement System.
• Federal Civil Service Retirement benefits payable to a beneficiary other than the estate or the executor or administrator of a deceased’s estate.
• Annuities payable by the U.S. Government pursuant to the Federal Survivors’ Family Protection Plan or the Survivor’s Benefit Plan to a beneficiary other than the estate or the executor or administrator of a deceased’s estate.

ESTATE TAX
In addition to the inheritance tax, the State of New Jersey imposes an Estate Tax on the estates of certain resident decedents. (There is an Estate Tax assessed against non-resident decedent’s estates.) Even estates that are partially or fully exempt from inheritance tax may also be subject to the New Jersey Estate Tax. NOTE: A number of assets that are not reportable for inheritance tax are included in the gross estate for Estate Tax, most notably life insurance paid to a named beneficiary and non-NJ real estate.

For decedents dying after Dec. 31, 2005, but before Jan. 1, 2017:
The New Jersey Estate Tax is an amount equal to the greater of State death taxes allowed under Federal Estate Tax law, less that portion of the credit which is attributable to property located outside New Jersey, and any New Jersey Inheritance Tax.

The credit allowed is calculated in accordance with the provisions of the Internal Revenue Code in effect on Dec. 31, 2001. A 2001 Federal Form 706 must be completed in accordance with the provisions of the Internal Revenue Code in effect on Dec. 31, 2001.

Although the 2001 Internal Revenue Code did not permit a marital deduction for property passing to a surviving civil union partner, such a deduction is permitted for New Jersey Estate Tax purposes for decedents dying on or after Feb 19, 2007. In those cases, the 2001 Form 706 should be completed as though the Internal Revenue Code treated a surviving civil union partner and a surviving spouse in the same manner.

As an alternative to filing a completed 2001 Form 706, an estate may, in many cases, use the Simplified Method to compute the New Jersey Estate Tax. This method is based upon the net assets as determined for the New Jersey Inheritance Tax, with certain adjustments. The Simplified Method is not intended for use in all estates. It may not be used if an estate tax, or is required to file a Federal Estate Tax return (Form 706) with the IRS, or if the estate does not produce a tax liability similar to that produced using the 2001 Federal Form 706. This method permits a marital deduction only for property passing outright to a surviving spouse or to a surviving civil union partner on or after Feb 19, 2007.

For decedents dying on or after Jan. 1, 2017, but before Jan. 1, 2018:
The Estate Tax is calculated on the amount of taxable estate pursuant to the current Internal Revenue Code, using a progressive rate schedule with rates ranging from 0% to 16%. Credits against the tax will include the portion of the tax attributable to property located outside New Jersey any New Jersey Inheritance Tax, and a credit equal to the tax due on the $2 million exclusion amount ($59,600).

A completed current Federal Form 706 must be submitted along with the New Jersey Estate Tax Return whether or not the estate is subject to Federal Estate Tax.

For decedents dying on or after Jan. 1, 2018:
There is no New Jersey Estate Tax imposed on the estates of resident decedents dying on or after Jan. 1, 2018. This provision does not affect the New Jersey Inheritance Tax, which remains in force.

FEDERAL ESTATE TAX RETURN
This law requires that a copy of the Federal Estate Tax return be filed with the Division within 30 days after the filing of the original with the federal government. Also, a copy of any communication from the Federal Government making any change in the return, or confirming, increasing, or reducing the tax shown to be due must be filed with the Division within 30 days of receipt.

INHERITANCE AND ESTATE TAX WAFERS
Certain property in the name of or belonging to a decedent cannot be transferred without the written consent of the Director, Division of Taxation. This consent, commonly known as a “waiver,” will not be granted until any tax due has been paid or provided for.

A. PERSONAL PROPERTY – RESIDENT DECEDENTS
1. Wages are not required for automobiles or other vehicles, household goods, armoire wardrobes, or mortgage, but these assets must be reported in the tax return(s) filed.
2. A membership certificate or stock in a cooperative housing association held in the name of a decedent and a surviving spouse, civil union partner or domestic partner as joint tenants with right of survivorship is exempt from the inheritance tax. However, a waiver is required to transfer ownership to the survivor.
3. Bonds, savings and loan associations, and other financial institutions may increase 50% of all funds on deposit with them to the proper party prior to the issuance of a waiver. The full amount on deposit as of date of death of decedent must be listed in the tax return(s), and will eventually require a waiver. This procedure is referred to as a BLANKET WAIVER and is not available for the transfer of stocks and bonds.
4. A SELF-EXECUTING WAIVER FORM I-6 has been created for use in the estate of a RESIDENT decedent. This form may be used in most cases to transfer bank accounts, stocks, bonds and brokerage accounts, when the transfer is to a Class A beneficiary only. This form may NOT be used:
   a. For the transfer of real estate.
   b. For decedents dying after Dec. 31, 2007, but before Jan. 1, 2017, and the taxable estate plus adjusted taxable gifts exceeds $575,000 for Federal Estate Tax purposes under the provisions of the Internal Revenue Code in effect on Dec. 31, 2007. (If the decedent died on or after Feb 19, 2007, survived by a civil union partner a marital deduction equal to that permitted a surviving spouse under the provisions of the Internal Revenue Code in effect on Dec 31, 2007, may be used in determining the taxable estate.)
   c. For decedents dying on or after Jan. 1, 2017, but before Jan 1, 2018, and the taxable estate exceeds $2 million for Federal Estate Tax purposes under the provisions of the current Internal Revenue Code.
   d. The completed Form I-6 should be filed with the Financial Institution or transfer agent who will then be authorized to transfer the asset to the transferee.

B. PERSONAL PROPERTY – NONRESIDENT DECEDENTS
In the estate of a NONRESIDENT decedent, no waivers are required for bank accounts, brokerage accounts or other financial properties, including stock and membership certificates or shares held in a co-op. However, all of these assets must be reported on the return. For full information on nonresident filing requirements, see the Division’s website or call Inheritance Tax Information at 609-292-5333.

C. REAL PROPERTY – RESIDENTS AND NONRESIDENTS
Commonly called “real estate,” this refers to land and/or physical buildings that are permanent structures attached to the land.

1. Unpaid Inheritance and Estate Taxes constitute a lien on New Jersey real property. Tax waivers are required to transfer the realty. However, realty held by husband and wife or civil union partners as “tenants by the entirety” in the estate of the spouse or civil union partner who dies first, need not be reported and may be transferred without a waiver.
2. A REQUEST FOR A REAL ESTATE TAX WAIVER, Forms L-4 (Resident Deceased) and L-8 (Non-Resident Deceased) have been created for use by Class A beneficiaries.
   These forms may be used if the entire estate is unassignable for inheritance tax purposes and passes to Class A beneficiaries, and the only reason to file a return is to which a tax waiver for real property.

Proper use of these forms may eliminate the need to file a formal tax return(s). Form I-6 may not be used if there is any New Jersey Estate Tax payable or:
   b. For resident decedents dying on or after Jan. 1, 2017, but before Jan 1, 2018, the gross estate exceeds $2 million for Federal Estate Tax purposes under the provisions of the current Internal Revenue Code.

These forms are to be filed with the Inheritance and Estate Tax Branch at Trenton. If the form is in order, the necessary waiver(s) will be promptly issued.

NEITHER THE L-4 NOR I-6 MAY BE USED WHEN IT IS CLAIMED THAT A RELATIONSHIP OF MUTUALLY ACKNOWLEDGED CHILD EXISTS.

SAFE DEPOSIT BOXES
Safe deposit boxes are no longer inventoried by the New Jersey Division of Taxation. The Division has issued a blanket release in this form of a letter from the Sheriff’s Division of Taxation to all banking institutions, safe deposit companies, trust companies, and other institutions which serve as custodians of safe deposit boxes. The contents of the boxes may be released without inspection by the Division.
New Jersey Tax Guide

A Guide to Being an Executor
What if you are an Executor or Administrator of an estate?

You are most likely looking to obtain waivers to release the decedent’s assets, such as NJ bank accounts, NJ stock, and NJ real estate. There are several steps to follow, and a few things you need to know before this can happen.

What are the different types of waivers?

A self-executing waiver (do-it-yourself) and the 0-1 waiver (issued by the Division of Taxation) are the different types of waivers. New Jersey banks are prohibited from closing a decedent's bank accounts without one of these forms:

- **Form L-8 Self-Executing Waiver Affidavit** can only be used when there is no Inheritance or Estate Taxes due (see below).
  - L-8s are to be filled out by you, as the estate representative. Then they can be sent or brought directly to the bank, transfer agent, or other financial institutions holding the funds.
  - Many banks have these forms on hand, but they can also be obtained on our website.
  - You do not file anything with the Inheritance and Estate Tax Branch if you qualify to use this form.

- **Form 0-1 is a “waiver” that can only be issued by the Division of Taxation.**
  - To get this form, you must file a return with the Division.
  - Real Estate transfers always require Form 0-1.
  - Note: 0-1 is not a form that you will be able to find on our website. This form can only be issued by the Division of Taxation.

Are there any Inheritance or Estate Taxes Due?

Your next job as Executor/Administrator is to figure out if any Inheritance or Estate taxes will be due. This will determine what forms or returns you will need to file.

Besides the Federal estate tax, there are two separate State taxes related to a person’s death: the Inheritance Tax and the Estate Tax. You may owe one, but not the other. You will never pay more than the higher of the two taxes:

- **Inheritance Tax** mainly depends on the relationship between the deceased person and the beneficiary. Estate proceeds payable to:
  - Surviving spouses, parents, children, grandchildren, etc. are exempt from Inheritance Tax. These are Class A beneficiaries.
  - Brothers and sisters and children-in-law are subject to tax after built-in exemptions. These are Class C beneficiaries.
  - Nieces, nephews, aunts, uncles, friends, and non-relatives are subject to Inheritance Tax. These are Class D beneficiaries.
  - Charitable institutions are exempt from Inheritance Tax. These are Class E beneficiaries.

  If it turns out that Inheritance Tax may be due, the Inheritance Tax Resident Return (Form IT-R) needs to be filed. Any tax must be paid within eight months after the date of death or you will incur a 10% annual interest charge on unpaid tax.

  Sometimes, a return needs to be filed even if there might not be any tax due. If there are any Class C, D, or E beneficiaries, you will need to file a full return.
- **Estate Tax** depends on the size of the decedent’s gross estate and the decedent’s date of death. You will have to file an Estate Tax return if the estate value is higher than the exemption level for that year:

<table>
<thead>
<tr>
<th>YEAR OF DEATH</th>
<th>EXEMPTION LEVEL</th>
<th>RETURN REQUIRED</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016 or earlier</td>
<td>$675,000 including adjusted taxable gifts</td>
<td>IT-Estate</td>
</tr>
<tr>
<td>2017</td>
<td>$2 million</td>
<td>IT-Estate 2017</td>
</tr>
<tr>
<td>2018 or after</td>
<td>All exempt</td>
<td>No Estate Tax return</td>
</tr>
</tbody>
</table>

If you determine that all of the beneficiaries and the estate are exempt from tax, you may use the following form to obtain a real estate waiver:

- **Form L-9**: Resident Decedent Affidavit Requesting Real Property Tax Waiver. This Form needs to be filed with the Inheritance & Estate Tax Branch to receive a Form 0-1 Waiver for real estate.

**Non-Resident Decedents** (someone who died as a legal resident of another state or a foreign country): People who did not live in New Jersey, but owned certain types of property in New Jersey (usually real estate) may need to pay NJ Non-Resident Inheritance Tax. See New Jersey Non-Resident Inheritance Tax [Frequently Asked Questions](#) for more information. There is no Estate Tax on non-resident decedents.

**Other Important information for executors/administrators to know:**
- Banks and financial institutions may release up to 50% of the entire amount of funds on hand before a waiver is received. These funds may only go to the executor or administrator or joint owner of the account(s).
- Banks also must pay (without a waiver) any checks for Inheritance/Estate Taxes written to *New Jersey Inheritance and Estate Tax* from a decedent’s account (if there are sufficient funds in the account, of course.)
- When filing any return for Inheritance Tax, the fair market value of decedent’s assets should be reported as of the date of death, not as of the filing date.

**How long does processing take?**

Once you have filed a return with the Division, please plan for processing to take at least several months. If a return must be audited, it may take several months longer. About 40 to 50% of returns require additional attention in the form of an audit. Returns are processed and audited in the order they are received.

Inheritance and Estate Tax payments are usually posted within two weeks from the time they are received, but the processing of a return and issuing of waivers will take longer.

Full details regarding the above information are available on our website or by calling the Inheritance and Estate Tax Hotline at 609-292-5033 M-F 8:30 a.m.- 4:30 p.m. EST.

As executor, you may be required to file income tax returns on behalf of the decedent. For more information on New Jersey Gross Income Tax, please call 609-292-6400, or visit the [Division’s website](#).
WILL FORM 1 SIMPLE WITH TRUSTS
LAST WILL AND TESTAMENT

I, ABC..., now of ..., do hereby make, publish and declare this to be My Last Will and Testament, hereby revoking all Wills, Testaments and Codicils previously made by me.

FIRST: A. Tangibles. I give and bequeath such items of my tangible personal property to those persons whom I identify in a separate written statement as the person or persons whom I intend to have receive specific items of such property, which written statement is made by me latest in date prior to my death, and I give and bequeath the balance of my tangible personal property to my wife, xyz..., if she survives me, or if she does not survive me, to such of my children who survive me, in shares as nearly equal in value as practicable as they may agree or, if they do not agree or if any child is a minor, as my Executors shall determine.

The expense of packing, shipping, insuring and delivering my tangible personal property to any beneficiary shall be paid as an administration expense of my estate. Each bequest of property under this Article shall include all rights I may have under any insurance policies relating thereto.

Any tangible personal property distributable hereunder to a minor may be delivered to the person who is, in the sole and conclusive judgment of my Executor, in proper charge of such minor, whether with or without a court order.

B. Real Estate. I give, devise and bequeath any right, title and interest I may have in and to any real property, condominium or cooperative apartment (including any shares in the cooperative corporation and any proprietary lease appurtenant thereto), which shall be used by me for residential purposes, together with all rights I may have under any insurance policies relating thereto, to my wife, xyz..., if she survives me.

SECOND: Residue. All of the rest, residue and remainder of my estate, real and personal, wherever situated, including any lapsed bequests or devises not otherwise disposed of under this Will, (but excluding any property over which I may have a power of appointment, it being my intention not to exercise any such power), herein sometimes referred to as my "residuary estate", I dispose of as follows:

A. Marital Bequest. If my wife, xyz..., survives me, I give, devise and bequeath my residuary estate to my said wife.

B. Issue, Per Stirpes. If my wife, xyz..., does not survive me, my residuary estate shall be divided into shares per stirpes for my issue who survive me, and I give, devise and bequeath each share so set aside for any person who shall have then attained the age of ...( ...) years to such person, and I give, devise and bequeath each share so set aside for any person who shall not have then attained the age of ...( ...) years to my Trustees, to be disposed of for the benefit of such person as provided by Section C. of this Article.
C. Trust Until Age ...(...) Whenever property is directed to be disposed of as provided by this Section, I give, devise and bequeath such property to my Trustees, to hold IN TRUST, as a separate trust fund for the benefit of the person for whom it was set aside, to invest and reinvest the same and, until the beneficiary shall attain the age of twenty-one (21) years, to pay or apply such part or all or none of the net income of the trust at any time or from time to time to or for the benefit of the beneficiary as my Trustees, in their absolute discretion, may deem advisable. Any net income that is not paid or applied shall be added to the principal of the trust from time to time. Upon the beneficiary attaining the age of twenty-one (21) years, my Trustees shall pay or apply the net income of the trust at least quarter-annually to or for his or her benefit.

My Trustees may also pay or apply to or for the benefit of the beneficiary such part or all of the principal of the trust, even to the extent the trust is terminated thereby, as my Trustees, in their absolute discretion, may deem advisable for the health, education, maintenance, support or general welfare of the beneficiary.

My Trustees shall distribute to the beneficiary, upon the beneficiary attaining the age of twenty-five (25) years, one-third (1/3) of the then principal of the trust and, upon the beneficiary attaining the age of thirty (30) years, one-half (½) of the then principal of the trust and, upon the beneficiary attaining age thirty-five (35), the balance of the trust. If the beneficiary shall attain the age of twenty-five (25) years prior to property being disposed of for him or her under this Section, then my Trustees shall distribute to the beneficiary one-third (1/3) of such property outright. If the beneficiary shall attain the age of thirty (30) years prior to property being disposed of for him or her under this Section, then my Trustees shall distribute to the beneficiary two-thirds (2/3) of such property outright.

Upon the death of the beneficiary prior to the termination of his or her trust, my Trustees shall distribute the then remaining principal and any undistributed and accrued income of such trust to such one or more of persons, corporations or other entities (exclusive, however, of the beneficiary, his or her estate, his or her creditors or creditors of his or her estate, provided that, in the event a portion of the trust would pass in default of the within power of appointment to a person who is a "skip person" vis-a-vis the "transferor" of the trust as those terms are defined for purposes of the tax imposed pursuant to Section 2601 et seq. of the Internal Revenue Code, which portion of the trust shall have an inclusion ratio of ONE (1) for purposes of such tax, such beneficiary may exercise the within power of appointment over such portion of the trust in favor of his or her estate), in such shares, equal or unequal, in further trust or otherwise, as the beneficiary shall appoint by his or her Last Will and Testament duly established and therein expressly referring to this power of appointment. To the extent such property shall not be effectively appointed, the same shall be divided into shares per stirpes for the then living issue of the beneficiary, per stirpes, or, in default of such issue, for the then living issue, per stirpes, of the most immediate ancestor of the beneficiary who shall be me or my issue and who shall have issue then living, and each share so set aside for any person who shall have then attained the age of ...(....) years shall be distributed to such person outright, and each share so set aside for any person who shall not have then attained the age of ...(....) years shall be retained by my Trustees, to be disposed of for the benefit of such person as provided by this Section.
D. Remote Contingency. In the remote event that upon my death or the termination of any trust created under this Will, any part of my estate or such trust is not effectively disposed of as provided by this Will, then I give, devise and bequeath such property in the following shares to the following persons:

1. ONE-HALF (½ thereof (or the whole thereof if none of the parents of my said wife, xyz..., or their issue is then living) to the then living issue of my parents, per stirpes, or in default thereof, to such of my parents who are then living, in equal shares if both are then living, or all to the survivor of them if only one of them is then living; and

2. ONE-HALF (½ thereof (or the whole thereof if none of my parents or their issue is then living) to the then living issue of the parents of my wife, xyz..., per stirpes, or in default thereof, to such of the parents of my said wife who are then living, in equal shares if both are then living, or all to the survivor of them if only one of them is then living.

OR

1. ONE-HALF (½ thereof (or the whole thereof if none of the parents of my said wife, xyz..., or their issue is then living) to such of my parents who are then living, in equal shares if both are then living, or all to the survivor of them if only one of them is then living, and if neither of my parents are then living, to the then living issue of my parents, per stirpes: and

2. ONE-HALF (½ thereof (or the whole thereof if none of my parents or their issue is then living) to such of the parents of my said wife, xyz..., who are then living, in equal shares if both are then living, or all to the survivor of them if only one of them is then living, or if neither of the parents of my said wife are then living, to the then living issue of the parents of my wife, per stirpes.

OR

1. One-fourth (1/4) thereof to my ..., if she is then living, or if she is not then living to her issue then living, per stirpes;

2. One-fourth (1/4) thereof to my ..., if she is then living, or if she is not then living, to her issue who are then living, per stirpes;

3. One-fourth (1/4) thereof to my ..., if he is then living, or if he is not then living, to his issue then living, per stirpes; and

4. One-fourth (1/4) thereof to my ..., if she is then living, or if, she is not then living, to her issue then living, per stirpes;
provided that if any of the foregoing bequests shall lapse, such lapsed bequest shall accrue to each of the foregoing bequests which shall not have lapsed in the proportion which such non-lapsed bequest bears to the aggregate of non-lapsed bequests.

E. Perpetuities. Anything in this Will to the contrary notwithstanding, my intention is to permit any trusts created under this Will (by exercise of power of appointment or otherwise) to continue for the longest period of time permitted by law. Unless a statute or other rule of law allows the trusts created under this Will to continue for a longer period of time, then any trust hereunder which is still in existence on the twenty-first (21st) anniversary of the death of the last survivor of my wife, xyz..., and my issue living on the date of my death, shall then terminate and my Trustees shall distribute the then remaining principal and any accrued and accumulated income of such trust to the beneficiaries to whom the income of such trust may then be or is then required to be distributed, per stirpes, if more than one. If a statute or other rule of law allows any trust created under this Agreement to continue for a longer period of time, then, upon the expiration of that time period, each such trust shall then terminate and my Trustees shall distribute the then remaining principal and any accrued and accumulated income of such trust to the beneficiaries to whom the income of such trust may then be or is then required to be distributed, per stirpes, if more than one.

The foregoing notwithstanding, in no event may a power of appointment created hereunder be exercised to create another power of appointment which may be validly exercised to postpone the vesting of any interest in any property disposed of pursuant to this Will for a period greater than one thousand years after the date of my death or to suspend the power of alienation of such property for a period greater than twenty-one (21) years after the death of the last to survive of my wife, xyz..., and my issue living on the date of my death.

THIRD: Age 21 Catch Trust. Whenever under the provisions of this Will my Executors or Trustees would be required to distribute any property, either income or principal, to a person who has not then attained the age of twenty-one (21) years, my Executors or Trustees may, in their absolute discretion and notwithstanding any other provision of this Will, retain such property (or in the case of my Executors, transfer such property to my Trustees to retain). My Executors or Trustees, as the case may be, shall hold any property so retained IN TRUST, as a separate trust fund for the benefit of such person, shall invest and reinvest the same and, until the beneficiary shall attain the age of twenty-one (21) years, shall pay or apply such part or all or none of the net income of the trust at any time or from time to time to or for the benefit of the beneficiary, as my Executors or Trustees, as the case may be, in their absolute discretion, may deem advisable. Any net income that is not paid or applied shall be added to the principal of the trust from time to time. My Executors or Trustees also may pay or apply to or for the benefit of the beneficiary such part or all of the principal of the trust, even to the extent the same is terminated thereby, as they, in their absolute discretion, may deem advisable for the beneficiary's health, support, education or general welfare. Upon the earlier to occur of the beneficiary attaining of the age of twenty-one (21) years or the death of the beneficiary, my Executors or Trustees, as the case may be, shall distribute all of the remaining principal and any undistributed and accrued income of the trust to the beneficiary if the beneficiary shall then be living, or, if the beneficiary shall not then be living, to the legal representatives of the beneficiary's estate.
FOURTH:  A.  Estate Tax Allocation.  My Executors shall pay any and all estate, inheritance and other death taxes and duties, including any interest and penalties thereon imposed by reason of my death by the United States of America, or any State or local entity thereof (but not any tax, interest and penalties imposed under Chapter 13 of Subtitle B of the Internal Revenue Code (the “generation skipping transfer tax”) or any similar state statute), in respect of property required to be included in my gross estate for the purposes of such taxes, ... whether passing under this Will or otherwise, other than i) any property which is subject to such taxes as a result of Section 2044 of the Internal Revenue Code or any similar state statute and which is not exempt from the Federal generation skipping transfer tax or similar state tax (my intention being to preserve exemption from any generation skipping transfer tax); ii) any property passing under any irrevocable trust created by me during my lifetime; iii) or any property over which I have a general power of appointment within the meaning of Section 2041 of the Internal Revenue Code created by a person other than me that I have not exercised.  I authorize my Executors, in their absolute discretion, to pay or to decline to pay any such taxes, and interest and penalties thereon, imposed by any foreign government or subdivision thereof.

If my wife, xyz..., survives me, I direct that any such taxes and interest and penalties thereon so paid shall be apportioned to and paid out of my residuary estate.

If my said wife does not survive me, I direct that any such taxes and interest and penalties thereon, other than the New Jersey inheritance tax or any other similar death tax to the extent such inheritance taxes exceed the Federal credit allowed for state death taxes paid, so paid shall be paid without apportionment out of that part of my residuary estate which does not qualify for a charitable deduction or exemption with respect to each such tax, and I direct further that the New Jersey inheritance tax or any other similar death tax so paid, to the extent that such taxes exceed the Federal credit allowed for state death taxes paid, shall be apportioned to and paid from the property passing to each person or entity with respect to whom such tax is imposed.

B.  Generation Skipping Transfer Tax.  My Executors are authorized to allocate my generation-skipping transfer tax exemption under Section 2631(a) of the Internal Revenue Code, to and among any one or more dispositions of property with respect to which I am the transferor for purposes of such tax, whether such dispositions are contained in this Will or otherwise, in equal or unequal shares, to the exclusion of any one or more such dispositions, as they in their absolute discretion deem to be appropriate.  Any allocation so made by my Executors shall be conclusive on all persons interested in any such disposition, and my Executors shall have no liability if, in light of or as the result of subsequent events, a different allocation would have caused a higher value of assets to be exempt from any generation-skipping transfer tax.

My Executors and Trustees are authorized at any time to divide any separate trust or separate trust share created under this Will (including any separate trust or separate trust share created pursuant to the application of this Article), into as many shares, equal or unequal, as they, in their absolute discretion deem appropriate, for purposes of allocating (whether as the result of my death or the death of any other individual) to any one or more of such shares any part or all of the exemption under Section 2631(a) of the Internal Revenue Code, or any successor statute thereto, and to combine such shares with each other, as they, in their absolute discretion, deem appropriate.  I further authorize my Trustees, in their absolute discretion, to divide any property
received or held in any trust hereunder with an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one (1) nor zero into two separate trusts or trust shares representing two fractional shares of the property being divided, one to have an inclusion ratio of one (1) and the other to have an inclusion ratio of zero.

Any death taxes imposed by reason of my death or the death of any other individual and chargeable against any trust created under this Will shall, if such trust shall theretofore have been divided or shall then be divisible into separate trusts or separate trust shares, be allocated against such separate trusts or trust shares (to the exhaustion of each such trust or share respectively) in descending order of the inclusion ratios (as defined in Chapter 13 of the Internal Revenue Code) applicable to such trusts or shares.

FIFTH: A. Executors and Trustees. I appoint my wife, xyz..., as Executor of this Will. If my said wife fails to qualify or ceases to act as such Executor, I appoint ... and ... as successor Executor of this Will, to take office in the order in which his and her name is set forth. Subject to the foregoing, any Executor acting hereunder from time to time may by written instrument, duly acknowledged, appoint any individual or bank or trust company as his, her or its successor Executor of this Will.

[Or...] Any Executor acting hereunder from time to time may by written instrument, duly acknowledged, appoint any individual or bank or trust company as his, her or its successor Executor of this Will. If no such successor is appointed, then I appoint ... and ... as successor Executor of this Will, to take office in the order in which his and her name is set forth.

A sole, surviving Executor at any time acting hereunder may by written instrument, duly acknowledged, appoint any individual or bank or trust company as co-Executor of this Will (provided that a co-Executor who has then ceased to act has not effectively appointed his, her or its successor Executor).

I appoint ..., as Trustee under this Will. If ...he/she fails to qualify or ceases to act as Trustee hereunder, then I appoint ... and ... as successor Trustee hereunder, to take office in the order in which his and her name is set forth.

I appoint the beneficiary of any trust created under Section C. of Article SECOND ... (Residuary) of this Will as a co-Trustee of such trust for his or her own benefit upon he or she attaining the age of ...(...) years.

Subject to the foregoing, any Trustee acting hereunder from time to time may, by written instrument, duly acknowledged, appoint any individual or bank or trust company as his, her or its successor Trustee hereunder.

[Or...] Any Trustee acting hereunder from time to time may by written instrument, duly acknowledged, appoint any individual or bank or trust company as his, her or its successor Trustee under this Will. If no such successor is appointed, then I appoint ... and ... as successor Trustee under this Will, to take office in the order in which his and her name is set forth.
A sole, surviving Trustee at any time acting hereunder may by written instrument, duly acknowledged, appoint any individual or bank or trust company as a co-Trustee hereunder (provided a co-Trustee who has ceased to act has not effectively appointed his, her or its successor Trustee hereunder).

In the event no Trustee shall be acting or appointed to act as provided herein, then a majority of the beneficiaries hereunder to whom the income of each separate trust hereunder may then be or is then required to be distributed and who are not then under a legal disability may by written instrument, duly acknowledged, appoint any individual or bank or trust company to act hereunder as Trustee.

…A majority of the then current beneficiaries of any trust created hereunder who are not under a disability shall have the right with respect to such trust, from time to time, by a written instrument duly acknowledged and delivered to each Trustee then acting, to remove any then acting bank or trust company as Trustee of such trust, provided that they appoint a bank or trust company in its place as a successor Trustee, which bank or trust company has at least one hundred million ($100,000,000) dollars of trust assets.

Any appointment of a fiduciary hereunder shall be effective at such time and upon such conditions as are set forth in the written instrument making such appointment. The foregoing power of appointment of successor fiduciaries or co-fiduciaries shall be a continuing power that may be exercised as often as required. In the event of a conflict in such appointments, the one latest in date shall control.

Each fiduciary appointed as herein provided shall have all of the powers and authority as if originally named herein, including the foregoing power of appointment of a successor fiduciary or a co-fiduciary.

B. Commissions. I direct that each Executor of my Will and Trustee hereunder shall be entitled to receive commissions for services as such fiduciary at the rates and in the manner provided for a sole Executor or testamentary Trustee, as the case may be, under the laws of the State of New Jersey in effect at the time or times such commissions shall be payable; provided, however, that in the case of any corporate fiduciary hereunder, the commissions of such corporate fiduciary shall be its regularly published fees for such services in effect at the time or times such commissions are payable.

C. Probate. I authorize my Executors to offer this Will for original or separate probate in the jurisdiction in which I am domiciled at my death or, if they deem it advisable or expedient to do so, in any other jurisdiction, and I request the appropriate court of each such jurisdiction to assume jurisdiction. If ancillary or separate administration of my estate is required in any jurisdiction where my Executors are unable or do not desire to qualify as ancillary or separate legal representatives, I appoint as such ancilliary or separate legal representative such individual or corporation as my Executors shall designate in writing. Any balance of my property remaining after such ancillary or separate administration shall be delivered, to the extent permitted by law, to my Executors for disposition in accordance with the terms of this Will, or distributed directly without remission, as my Executors shall direct. I direct that all of the
powers and discretion granted to my Executors and Trustees hereunder shall also apply to any such ancillary or separate legal representative.

D. Guardians. If my wife, xyz..., is not living or is under a legal disability at my death, I appoint ..., as testamentary guardian of the person and property of any child of mine who shall not then have attained the age of majority. If ... shall fail or cease to qualify as such guardian, then I appoint ..., as such guardian in his/her place.

E. Bond. I direct that no Executor, Trustee, ancillary or separate legal representative or Guardian named in or appointed pursuant to this Will shall be required to give any bond or other security in any jurisdiction for the faithful performance of the duties of such office, for any reason whatsoever, including the advance payment of fiduciary commissions.

F. Trustee-Beneficiary. Notwithstanding anything contained elsewhere in this Will, no person who is both a Trustee and a beneficiary of any trust hereunder shall participate as Trustee in the exercise of any power to make discretionary allocations of receipts or disbursements as between income and principal or the exercise of any power to make discretionary distributions of principal or income to himself or herself as a beneficiary of such trust.

SIXTH: Powers. I give to my Executors and Trustees, in addition to the authority and power conferred upon them by law (including without limitation the powers set forth at ... N.J.S.A. 3B:14-23), express authority and power to be exercised by them as such fiduciaries, in their discretion, for any purpose, without application to, authorization from or confirmation by any court:

1. To determine what property is covered by general descriptions contained in this Will;

2. To pay my debts, funeral expenses and the expenses of my last illness (all of which I direct shall be paid out of my estate) as soon as the convenience of my estate will permit, and to pay or deliver any legacy without waiting the time prescribed by law;

3. To retain any property forming part of my estate or any trust hereunder in the same form in which it is received, whether or not the same be such as is permitted by law for the investment of trust funds or is deemed to be speculative or hazardous, and including the stock of any corporate fiduciary hereunder and the stock of any corporation in which my fiduciaries may have an interest by the ownership of stock or by being an officer or director thereof;

4. To invest and reinvest any funds of my estate or any trust hereunder in any property, wherever situated, real or personal, of any kind or nature, including without limitation, stocks, whether common, preferred or otherwise, options to buy or sell shares or other property, bonds, secured or unsecured obligations, mortgages, other securities, and interests in any of the foregoing, secured or unsecured, regardless of whether the same are permitted by law for the investment
of trust funds, it being my intention to give my Executors and Trustees the same power of investment and reinvestment which I possessed with respect to my own funds, including, but not limited to, powers to make loans (provided, however, that no loans shall be made to any person who is then acting as an Executor hereof or Trustee hereunder, unless such person is also a beneficiary hereunder) to make short sales, to purchase on margin, to acquire and invest in securities and interests of family-owned entities and in entities in which any Executor hereof or Trustee hereunder may have a personal or other interest;

5. To sell at public or private sale any property which I may own or which may become part of my estate, or any trust hereunder, for such price and upon such terms as they shall deem proper, and to grant options for the purchase thereof;

6. To purchase, exchange, mortgage, manage, partition, improve or otherwise alter any real estate comprising part of my estate, or of any trust hereunder or to lease the same for a term extending beyond the life of the trust without application to any court, upon such terms as they may deem proper, and to execute and deliver deeds, leases, mortgages or other instruments relating thereto;

7. To vote personally or by proxy, and to delegate power and discretion to any such proxy;

8. To exercise subscription, conversion and other rights and options, and to make payments in connection therewith;

9. To continue or renew any loans made by me which may be outstanding at the time of my death and to borrow money from any lender, including any corporate Executor or Trustee, for the purposes of paying taxes or administration expenses, or for any other purpose in the administration of my estate, to pay interest thereon, and to mortgage or pledge any property forming part of my estate or any trust hereunder as security for the repayment of the same;

10. To take any action, and to refrain from taking any action, with respect to any incorporation, reorganization, consolidation, merger, dissolution, recapitalization, refinancing, and any other plan or change affecting any property held by them, and in connection therewith to delegate their discretionary powers, and to pay any assessments, subscriptions and other charges;

11. To register any property in the name of a nominee or in street name or to hold the same unregistered or in such other form that title shall pass by delivery, but without thereby increasing or decreasing their liability as fiduciaries;

12. To apply to the use of any person any property, whether principal or income, vesting in or payable to such person, and in the case of a minor (a) to do so without regard either to the duty of any person to furnish support for such minor or the availability of other funds for such purpose, or (b) to pay or deliver the
same to such minor, or to a guardian or custodian under a gifts to minors act, including a custodian selected by any of them (who may select attaining twenty-one years for termination of the custodianship), or to a parent of such minor, or to a person with whom such minor resides, or to any person authorized by this Will to hold the same, or to the Trustees of any trust for the benefit of such person;

13. Without the consent of any beneficiary to make distributions of principal or income of my estate or any trust hereunder (including the satisfaction of any pecuniary bequest) in cash or in specific property, real or personal, or an undivided interest therein, or partly in cash and partly in such property, and to make distributions of different classes of income for income tax purposes to any one or more beneficiaries; and to do so without regard to the impact thereon to any beneficiary for income tax purposes or the income tax basis of specific property allocated to any beneficiary (including any trust) and without making pro rata distributions of specific assets; provided that in making distributions, property shall be valued as of the date of its distribution;

14. To pay out of my general estate in respect of any real or tangible personal property situated outside the state of the principal administration of my estate at the time of my death any administration expense payable under the laws of the state or country where such property is situated;

15. To renew, assign, alter, extend, compromise, release, with or without consideration, or submit to arbitration, obligations or claims, including claims in respect of taxes, in favor of or against my estate or any trust fund hereunder, and to accept any composition or security for any debt and to allow such time for payment thereof, either with or without security, as to them shall seem proper; and to abandon, in any way, property which they may determine not to be worth protecting;

16. To determine what portion, if any, of the income from wasting assets or stocks of corporations with wasting assets, or of the income from interest-bearing securities selling at a premium which I may leave at the time of my death, or which may subsequently be received or purchased by them, shall be set aside as a sinking fund to amortize such premiums or the depletion of such wasting assets, and upon the sale or collection of such securities or assets for more than their amortized cost to pay over to the then income beneficiary or beneficiaries any part or all or none of such sinking fund as they may, in their discretion, determine advisable;

17. To keep any or all of my estate assets and the assets of any trust hereunder at any place or places, whether in any jurisdiction inside the United States of America or abroad, or with a depositary or a custodian at such place or places, to the extent permitted by law, as they may deem advisable; and at any time or from time to time as they deem advisable in their discretion for the benefit or security of my estate or any trust or fund or portion thereof, to remove (or decline to remove) all
or part of the assets or the situs of administration thereof from one jurisdiction to another jurisdiction and elect that the law of such other jurisdiction shall thereafter govern the same to such extent as may be necessary and appropriate, and thereupon the courts of such other jurisdiction shall have the power to effectuate the purposes of this Will to such extent as may be necessary and appropriate; this power of removal shall be a continuing power which may be exercised any number of times including for the purposes of further removal or change of location of assets or situs of administration and the determination of my Executors or Trustees, as the case may be, as to any such removal or change of situs shall be conclusive and binding on all persons interested in my estate or in any trust or fund hereunder;

18. To hold the principal of any trusts hereunder in one or more consolidated funds without making a physical division of the investments therein, and to hold the principal of any trust hereunder in two or more separate sub-trusts, as they may, in their absolute discretion, deem advisable;

19. To keep the buildings and improvements on any real property in my estate or in any trust hereunder in good repair and properly insured against loss by fire and other casualty; and in case of loss or damage to any of the buildings or improvements, to rebuild and repair the property so damaged and to pay for the same out of insurance moneys received or out of other funds of my estate or any trust hereunder;

20. To continue as a going concern, for as long as they may deem advisable, any business in which I may be engaged at the date of my death, and to continue to hold the stock, bonds, notes or other evidence of ownership or partial ownership thereof, as trust investments, to make additional contributions of capital thereto or to any new corporation, business or venture which to them may seem advisable, specifically including new businesses or business ventures which ordinarily would be regarded as speculative in nature, without liability on their part for losses incurred in connection therewith;

21. To conduct and continue to conduct at the risk and with the assets of my estate or any trust hereunder, any partnership, limited liability company, joint venture, tax shelter investment or other business in which I may be engaged or in which I may have an interest at the time of my death for such period or periods as they may deem advisable; to delegate to any partner, member, joint venturer, manager or employee, or any other person such powers and authority as they may deem advisable; in their discretion, without application to any court, to organize a corporation to carry on such partnership, limited liability company, joint venture or other business; and to take such action with reference thereto as they may deem advisable;

22. To become or to continue to act as a partner of any partnership or a manager or member of any limited liability company in which my estate or any trust
hereunder may have an interest and to serve as a director or officer of any corporation, or a manager of any limited liability company the obligations or the stock, bonds or other securities of which constitute a part of the principal of my estate or any trust hereunder; and to vote for themselves or any others as directors, managers or officers of any such corporation or limited liability company and to accept without accountability therefor, salaries or other compensation for services rendered by them as such partner, manager, director or officer, without diminution of or offset to any commissions payable to any fiduciary hereunder;

23. To claim proper deductions either from my gross estate for estate tax purposes or from my estate's gross income for income tax purposes, to have the federal estate tax on my estate fixed on date of death or alternate valuation date values, and to exercise or forbear to exercise any income, gift or estate tax option, without necessity for any adjustment between principal, income, or both, in the share of any beneficiary hereunder, as they may deem advisable;

24. To employ such agents, experts, accountants, tax preparers, custodians, bookkeepers and counsel, investment or legal (including, specifically any corporation, partnership or firm of which any fiduciary hereunder is an officer, employee, director, member, principal or affiliated with in any way), as they shall consider advisable, to delegate discretionary powers to and to rely on information or advice furnished by them, and to compensate them for their services out of principal or income without diminution of or offset to any commissions payable to any fiduciary hereunder, or prior authorization from any court or person interested in my estate or any trust created hereunder, as they may deem advisable; and

25. To pay themselves, individually, at such time or times and without prior approval of any court or person interested in my estate or any trust hereunder or payment of interest or the securing of any bond or rendering of any annual statement, account or computation thereof, such sum or sums on account of commissions to which they may eventually be entitled hereunder as they, in their discretion, may determine to be just and reasonable, to charge the same wholly against principal or wholly against income, or partially against principal and partially against income, as they may, in their discretion, determine advisable, and in the case of any Trustee to retain commissions which they may determine shall be payable out of income from income derived from any year preceding or succeeding the year with respect to which such commissions shall have been earned.

SEVENTH: A. No Annual Accounts. I direct that no Executor, Trustee, ancillary or separate legal representative or Guardian named in or appointed pursuant to this Will shall be required to file annual or other periodic accounts of proceedings in any court having jurisdiction over my estate or any trust created hereunder.

B. Settlement of Accounts. In order to avoid the expense and delay incident to the judicial settlement of accounts, any Executor or Trustee hereunder may from time to time during
administration of my estate or the term of any trust hereunder, in such his, her or its absolute discretion, render an account, customer statement or other statement of such his her or its proceedings as Executor or Trustee to the then living persons under no disability of age or otherwise to whom the assets of the estate or the income of the trust is required to be or may then be distributed and such persons who would then be presumptively entitled to the remainder of such trust if it had then terminated. Any such competent adult beneficiaries or beneficiary, as the case may be, shall have full power to settle finally any such account and on the basis of such settlement to release such Executor or Trustee from all liability for such Trustee's acts or omissions as Trustee for the period covered thereby. Such settlement and release shall be binding upon all interested parties hereunder including those who may be under legal disability or not yet in being and shall have the force and effect of a final decree, judgment or order of a court of competent jurisdiction rendered in an action or proceeding for an accounting in which jurisdiction was duly obtained over all necessary and proper parties. The foregoing provisions, however, shall not preclude any Executor or Trustee from having such his, her or its accounts judicially settled if such Executor or Trustee shall so desire.

C. **Representation of Interests.** I direct that in any judicial proceeding relating to my estate or any trust created hereunder service upon any person under a disability shall not be required when another person not under a disability is a party to the proceeding and has the same interest as the person under the disability.

EIGHTH: **Definitions.** A. As used in this Will the terms "Executors" and "Trustees" and pronouns relating thereto shall mean the Executor or Executors and Trustee or Trustees who may be acting as such hereunder from time to time.

B. As used in this Will the terms "child", "children" or "issue" shall include only natural issue, persons deriving their relationship to or through their parent or ancestor by legal adoption prior to such adopted person's attainment of the age of eighteen (18) years, and persons deriving their relationship to or through their parent or ancestor by artificial insemination, and shall not include persons deriving their relationship to or through their parent or ancestor by acknowledgment of paternity unless a Court of competent jurisdiction determines such person to be the natural issue of his or her alleged father on the basis of scientific evidence. I now have ... children, whose names are ....

C. As used in this Will the phrase the "Internal Revenue Code" shall refer to the Internal Revenue Code of 1986, as amended from time to time, or any successor statute thereto, together with such regulations as may be validly promulgated thereunder.

D. Wherever the phrase "per stirpes" is used in this Will with reference to the issue of any person, it shall mean that the stirpes begin with the children of such person and not at any generational level junior to such children.

NINTH: A. **Spendthrift.** No interest of any beneficiary in the income or principal of any trust created hereunder shall be subject to pledge, assignment, sale or transfer in any manner, nor shall any beneficiary have the power in any manner to anticipate, charge or encumber his or her said interest, nor shall said interest of any beneficiary be liable or subject in any manner while in
the possession of my Trustees, for the debts, contracts, liabilities, engagements or torts of such beneficiary.

B. **Survivorship.** If any descendant of mine fails to survive me or any prior beneficiary for a period of ninety (90) days, it shall conclusively be presumed for the purposes of this Will that I survived or that such prior beneficiary survived, as the case may be. If any other beneficiary under this Will and I, or any other prior beneficiary and any other subsequent beneficiary hereunder, shall die simultaneously or under such circumstances that there is not
sufficient evidence that we or they have died otherwise than simultaneously, it shall conclusively be presumed for the purposes of this Will that I survived or that such prior beneficiary survived, as the case may be.

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of _____________, 2019.

______________________________ (L.S.)

ABC...

The foregoing instrument was signed, sealed, published and declared by ABC..., the Testator named therein, as and for his Last Will and Testament, in our joint presence, and we, at the same time, at his request, in his presence, and in the presence of each other, hereunto subscribe our names and residences as attesting witnesses.

______________________________  residing at ______________________________

______________________________

______________________________  residing at ______________________________

______________________________

______________________________  residing at ______________________________

______________________________

______________________________  residing at ______________________________

______________________________
STATE OF NEW JERSEY    )
                        ) ss.:
COUNTY OF              )

ABC..., __________________________, __________________________ and
______________________________, the Testator and witnesses, respectively, whose names are
signed to the forgoing instrument, being first duly sworn, do hereby declare to the undersigned
authority that the Testator signed and executed this instrument as his Last Will and Testament,
and that he signed it willingly, and that he executed it as his free and voluntary act for the
purposes therein expressed, and that each witness states that he or she signed the Will as witness
in the presence and hearing of the Testator and that to the best of his or her knowledge, the
Testator was at that time eighteen or more years old, of sound mind, and under no constraint or
undue influence.

________________________________
ABC..., Testator

________________________________
Witness

________________________________
Witness

________________________________
Witness

Subscribed, sworn to and acknowledged before me by ABC..., the Testator, and subscribed and
sworn to before me by __________________________, __________________________ and
______________________________, the witnesses, this ___ day of ______________, 2019.

________________________________
Notary Public
State of New Jersey
My Commission Expires
IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of ____________, 2003.

__________________________________________ (L.S.)

XYZ...

The foregoing instrument was signed, sealed, published and declared by XYZ..., the Testatrix named therein, as and for her Last Will and Testament, in our joint presence, and we, at the same time, at her request, in her presence, and in the presence of each other, hereunto subscribe our names and residences as attesting witnesses.

__________________________________________ residing at ______________________________

__________________________________________

__________________________________________ residing at ______________________________

__________________________________________

__________________________________________ residing at ______________________________

__________________________________________

__________________________________________ residing at ______________________________

__________________________________________
STATE OF NEW JERSEY )
 ) ss.:
COUNTY OF )

XYZ..., __________________________, __________________________ and
______________________________, the Testatrix and witnesses, respectively, whose names are
signed to the forgoing instrument, being first duly sworn, do hereby declare to the undersigned
authority that the Testatrix signed and executed this instrument as her Last Will and Testament,
and that she signed it willingly, and that she executed it as her free and voluntary act for the
purposes therein expressed, and that each witness states that he or she signed the Will as witness
in the presence and hearing of the Testatrix and that to the best of his or her knowledge, the
Testatrix was at that time eighteen or more years old, of sound mind, and under no constraint or
undue influence.

______________________________
XYZ..., Testatrix

______________________________
Witness

______________________________
Witness

______________________________
Witness

Subscribed, sworn to and acknowledged before me by XYZ..., the Testatrix, and subscribed and
sworn to before me by ____________________________, ____________________________, the
witnesses, this _____ day of _____________, 2003.

______________________________
Notary Public
State of New Jersey
My Commission Expires
SIGNED, SEALED, PUBLISHED AND DECLARED by the above-named Testator, as and for his LAST WILL AND TESTAMENT, in the presence of us, who, at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as attesting witnesses the day and year last above mentioned.

__________________________  residing at

__________________________  residing at

__________________________  residing at
Each of the undersigned, individually and severally, being duly sworn, deposes and says:

The within Will dated __________________, 20___, was subscribed in our presence and sight at the end thereof by ABC..., the within named Testator, at .

Said Testator, at the time of making such subscription, declared the instrument so subscribed to be his last Will.

Each of the undersigned thereupon signed his/her name as a witness at the end of said Will, at the request of said Testator and in his presence and sight and in the presence and sight of each other.

Said Testator was, at the time of so executing said Will, over the age of eighteen years, and, in the respective opinions of the undersigned, of sound mind, memory and understanding and not under any restraint or in any respect incompetent to make a will.

Said Testator, in the respective opinions of the undersigned, could read, write and converse in the English language and was suffering from no defect of sight, hearing or speech, or from any other physical or mental impairment which would affect his capacity to make a valid will. The Will was executed as a single, original instrument and was not executed in counterparts.

Each of the undersigned was acquainted with said Testator at such time, and makes this affidavit at his request.
The within original Will was shown to the undersigned at the time this affidavit was made, and was examined by each of them as to the signatures of said Testator and of the undersigned.

The foregoing instrument was executed by said Testator and witnessed by each of the undersigned affiants under the supervision of ____________________, an attorney-at-law.


Severally sworn to before me this

_____ day of ____________, 2003.

Notary Public
KNOW ALL MEN AND WOMEN BY THESE PRESENTS, that I, abc, residing at …, County of …, State of New Jersey, have made, constituted and appointed, and by these presents do make, constitute and appoint xyz, residing at …, County of …, State of New Jersey, my true and lawful attorney, severally and not jointly, to act in, manage, and conduct all my estate and all my affairs, and for that purpose for me and in my name, place and stead, and for my use and benefit, and as my act and deed, to do and execute, or to concur with the persons jointly interested with myself therein the doing or executing of, all or any of the following acts, deeds, and things, that is to say:

(1) To buy, receive, lease, accept, or otherwise acquire, to sell, convey, mortgage, hypothecate, pledge, quitclaim, or otherwise encumber or dispose of, or to contract or agree for the acquisition, sale, conveyance, disposal or encumbrance of, any property whatsoever and wheresoever situated, be it in my name or not, be it real, personal, or mixed, or any custody, possession, interest, or right therein or pertaining thereto, upon such terms as my attorney shall think proper, including but not limited to the right to transfer or otherwise convey that certain real property located at …, and designated as Block …, Lot …, in the … of …, County of …, State of New Jersey, and to execute any and all documents reasonably necessary or required to effectuate such transfer of title to said real estate, including but not limited to execution of a contract for sale, deed, affidavit of title, HUD-1 Settlement Statement (RESPA), mortgage documents, releases or other similar documents;

(2) To take, hold, possess, invest, lease, or let, or otherwise manage any or all of my real, personal, or mixed property, or any interest therein or pertaining thereto, to reject, remove or relieve tenants or other persons from, and recover possession of, such property by all lawful means, and to maintain, protect, preserve, insure, remove, store, transport, repair, rebuild, modify, or improve the same or any part thereof;

(3) To conduct banking transactions as set forth in Section 2 of P.L. 1991, C.95 (C. 46:2B-11) of the State of New Jersey;
(4) To make, do, and transact all and every kind of business of whatever kind or nature, including the receipt, recovery, collection, payment, compromise, settlement, and adjustment of all accounts, legacies, bequests, interests, annuities, rents, claims, demands, debts, taxes, and obligations, which may now or hereafter be due, owing or payable by me or to me;

(5) To make, endorse, accept, receive, sign, seal, execute, acknowledge, and deliver deeds, bills of sale, mortgages, assignments, agreements, contracts, certificates, hypothecations, checks, notes, bonds, vouchers, receipts, releases, documents relating to life or other insurance policies, settlement statements, affidavits, and such other instruments in writing of whatever kind and nature, as may be necessary or convenient;

(6) To make deposits or investments in, or withdrawals from, any account, holding, or interest which I may now or hereafter have, or be entitled to, in any bank, trust, or investment institution, including postal savings, depository offices, credit unions, savings and loan associations, and similar institutions, including a national chartered bank or a state chartered bank, to exercise any right, option or privilege pertaining thereto, to open or establish accounts, holdings, or interests of whatever kind or nature, with any such institution, and to endorse any funds received from the disposal, sale or other conveyance of any or all of any real, personal or mixed property and direct such funds to be applied towards the satisfaction or payment of any debt in my name or in my said attorney's name, or in our names jointly, either with or without right of survivorship;

(7) To institute, prosecute, defend, compromise, arbitrate, and dispose of legal, equitable, or administrative hearings, actions, suits, attachments, arrests, distresses or other proceedings, or otherwise engage in litigation in which I may be involved or subject to;

(8) To act as my attorney or proxy in respect to any stocks, shares, bonds, or other investments, rights or interests, I may now or hereafter hold;

(9) To engage and dismiss agents, counsel, and employees, and to appoint and remove at pleasure any substitute for, or agent of, my said attorney, in respect to all or any of the matters or things herein mentioned, and upon such terms as my attorney shall think fit, including without limitation legal counsel to represent my attorney in fact or me in all matters relating to my affairs, including any guardianship proceeding brought by any person with respect to me, and to compensate such legal counsel independently from any Court rule or statute regarding the costs of such proceedings;

(10) To prepare, execute and file gift, income and other tax returns, claims for refund covering all or a portion of any taxes paid and other governmental reports, declarations, applications, requests and documents;

(11) To appear for me and represent me before the Treasury Department or any other governmental agencies, in connection with any matter involving federal gift, income or other taxes for any year to which I am party, giving my said attorney full power to do everything
whatsoever requisite and necessary to accomplish the foregoing, including without limitation, to receive confidential information, to receive refund checks, to execute waivers of the statute of limitations and to execute closing agreements as fully as the undersigned might do if personally present, giving my said attorney authority to appoint attorneys to represent my said attorney in connection therewith with full power of substitution and revocation at any time;

(12) To enter any safe deposit box or other place of safekeeping or deposit which I may now or hereafter occupy or possess;

(13) To make gifts of my property, in such amounts, outright or subject to such trusts, revocable or irrevocable, to any one or more persons or entities, in a manner consistent with my estate planning, to create, modify or revoke a trust for my benefit, to make additions to an existing trust for my benefit, to disclaim, renounce or release any interest in property, to renounce fiduciary positions, to withdraw and receive the income or corpus of a trust, to handle and engage in transactions regarding interests in estates and trusts, to add, delete or otherwise change the beneficiaries of any life insurance policies or other qualified or nonqualified benefit plans, to create, modify or terminate joint interests in property, including bank or securities accounts and totten trust accounts, and to and to pursue such estate, gift and income tax planning opportunities as may be available to me, as my said attorney in his or her absolute discretion may determine;

(14) To receive and endorse for deposit in any account any payments that I receive from any branch or department of the United States or other government, including without limitation, Social Security payments, Department of Veterans Affairs payments or grants, Medicare or Medicaid payments, and tax refunds;

(15) To receive and open my mail, change my mailing address, and otherwise represent me in any matter concerning the U.S. Postal Service;

(16) To apply for, fund, modify, withdraw from, or terminate a qualified tuition plan authorized under 26 USC §529, or its successor provisions, for any of my descendants, including the right to combine accounts, to transfer an account from one state to another, to redirect the investment of the account (to the extent permitted by law), or to change the designated beneficiary of the plan;

(17) To demand, obtain, review, and release to others medical records or other documents protected by the patient-physician privilege, attorney-client privilege, or any similar privilege, including all records subject to, and protected by, the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA") (I designate my attorney-in-fact as my personal representative under HIPAA);

(18) To file or process claims for any medical bills with all insurance companies through which I have coverage, including but not limited to Medicare and Medicaid, and to receive from Blue Cross/Blue Shield or any other insurer information obtained in the
adjudication of any claim in regard to services furnished to me under Title 18 of the Social Security Act;

(19) To create, fund, and maintain an Income Trust pursuant to 42 USC §1396(d)(4)(B) in order to qualify me for Medicaid or any other public assistance benefits;

(20) To maintain my present domicile or to adopt a new domicile for me appropriate to my living arrangements from time to time; and

(21) To delegate any one or more of the foregoing powers to such one or more persons or entities as my attorney in fact may, in his or her absolute discretion, determine to be necessary or appropriate, in the exercise of reasonable care, skill and caution.

Giving and granting unto my said attorney full power and authority to do and perform any and every act, deed, matter, and thing whatsoever in and about my estate, property, and affairs as fully and effectually to all intents and purposes as I might or could do in my own proper person if personally present, the above specially enumerated powers being in aid and exemplification of the fully, complete and general power herein granted, and not in limitation or definition thereof, and hereby ratifying all that my said attorney shall lawfully do or cause to be done by virtue of these presents.

In the event that my said attorney in fact is not available to act by reason of death of disability, or in the event my said attorney in fact chooses to delegate any or all of the foregoing powers as evidenced by a signed writing to the successor[s] named herein, then I by these presents do hereby make, constitute and appoint … residing at …, as successor as my true and lawful attorney, severally and not jointly, to act in, manage, and conduct all my estate and all my affairs, and for that purpose for me and in my name, place and stead, and for my use and benefit, and as my act and deed, to do and execute, or to concur with the persons jointly interested with myself therein the doing or executing of, all or any of the foregoing acts, deeds, and things.

In appointing an attorney in fact to act as my agent as provided herein, it is not my intention to impose on any person acting hereunder any liability for any loss in the value of my assets that does not arise either from the failure to use reasonable care in actions actually taken or from the breach of my agent’s fiduciary duties to act loyally for my benefit, to act within the scope of the authority granted herein, and to keep records of transactions in which my attorney in fact actually engages. I understand that any such person may nonetheless be subject to liability for actions taken outside of the scope of the relationship created by this instrument.

THIS POWER OF ATTORNEY IS EFFECTIVE NOW AND SHALL NOT BE AFFECTED BY THE DISABILITY OR INCAPACITY OF THE UNDERSIGNED PRINCIPAL, ABC, OR THE LAPSE OF TIME.

The undersigned principal shall be under a disability if the principal is unable to manage his or her property and affairs effectively for any reason whatsoever, including without
limitation, mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance.

In all references herein to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

Any third party to whom the within power of attorney is presented may retain and rely upon a photocopy of the original signed document, or may retain and rely upon a certified copy of the original.

IN WITNESS WHEREOF, I, ABC, have hereunto set my hand and seal this ________ day of ______________, 2019.

___________________________________
ABC

___________________________________
Social Security Number
STATE OF )
  ) S.S.
COUNTY OF )

BE IT REMEMBERED, that on this __________ day of __________ 2013, before me, Notary Public, personally appeared ABC, who, I am satisfied, is the grantor named in the within Power of Attorney; and I having made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as and for his voluntary act and deed, for the uses and purposes therein expressed.

___________________________________
Notary Public
State of New Jersey
My Commission Expires

STATE OF )
  ) S.S.
COUNTY OF )

BE IT REMEMBERED, that on this __________ day of __________ 2019, before me, Notary Public, personally appeared ABC, who, I am satisfied, is the grantor named in the within Power of Attorney; and I having made known to her the contents thereof, she did acknowledge that she signed, sealed and delivered the same as and for her voluntary act and deed, for the uses and purposes therein expressed.

___________________________________
Notary Public
State of New Jersey
My Commission Expires
ADVANCE DIRECTIVE FOR HEALTH CARE

(LIVING WILL)

This Advance Directive is one of many forms of advance directives which are available; others are equally valid. Completion of an advance directive is voluntary. Your medical care is not contingent upon your completion of an advance directive. Please consider whatever advance directive you may choose carefully. It is important that each person completing an advance directive be fully informed as to its meaning and implications.

To my Family, Doctors and others concerned with my care:

A.  I, ABC..., being of sound mind, hereby declare and make known my instructions and wishes for future health care in the event that for reasons due to physical or mental incapacity, I am unable to participate in decisions regarding my care.

B.  Please initial the statement or statements with which you agree: (select #1 or #2, but not both)

1.  ___ I direct that all medically appropriate measures be provided to sustain my life, regardless of my physical or mental condition.

2.  ___ If I experience extreme mental or physical deterioration such that there is no reasonable expectation of recovery or regaining a meaningful quality of life, then life-prolonging measures should not be initiated; or if they have been, they should be discontinued. Those life-sustaining procedures or treatments that may be withheld or withdrawn include but are not limited to cardiac resuscitation, respiratory support (ventilator) and artificially administered fluids and nutrition.

3.  ___ I direct that I be given appropriate medical care to alleviate pain and keep me comfortable.

C.  Additional Comments or Instructions

________________________________________________________________________

________________________________________________________________________
D. I authorize my attending physicians and any hospital or other health care professional or institution providing health care to me to provide and release to my Health Care Representatives designated herein and any member of my immediate family, or if no member of my immediate family is then living, my next of kin, my medical reports and any diagnoses, prognoses, medical records or other documents protected by the patient-physician privilege, attorney-client privilege, or any similar privilege, including all records subject to, and protected by, the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA") (I designate my health care representative named below as my personal representative under HIPAA).

E. Designation of a Health Care Representative

I hereby designate:

Name: __________________________ Relationship: __________________________

Address: __________________________

City: ______________ State: ___________ Telephone: ___________

as my Health Care Representative to make health care decisions about accepting, refusing or withdrawing treatment in accordance with my wishes as stated in this document. In the event my wishes are not clear, or a situation arises that I did not anticipate, my Health Care Representative is authorized to make health care decisions in my best interests, based upon what is known of my wishes.

F. Alternative Representative: If the person I have designated above is unable, unwilling or unavailable to act as my Health Care Representative, I hereby designate the following person(s) to do so, to act in the order in which his and/or her name is set forth:

1. Name: __________________________ Relationship: __________________________

Address: __________________________

City: ______________ State: ___________ Telephone: ___________

2. Name: __________________________ Relationship: __________________________

Address: __________________________

City: ______________ State: ___________ Telephone: ___________
I have discussed my wishes with these persons and trust their judgment on my behalf. I understand the purpose and effect of this document, and I sign it knowingly, voluntarily and after careful deliberation.

Signature _______________________________ Date _______________________________

G. Witnesses (cannot be Health Care Representative or Alternative Representative listed above in E or F)

I declare that the person who signed this document, or asked another to sign this document on her behalf, did so in my presence, that she is personally known to me, and that she appears to be of full age, sound mind and free of undue influence.

Witness ___________________________ Date ________________________________

Witness ___________________________ Date ________________________________

STATE OF NEW JERSEY   )
COUNTY OF            )  S.S.

BE IT REMEMBERED, that on this _______ day of ______________, 2019, before me, a Notary Public for the State of New Jersey, personally appeared ABC..., who, I am satisfied, is the person named in the within instrument, and who did acknowledge that she executed the same as and for her voluntary act and deed, for the uses and purposes set forth therein.

__________________________________________
Notary Public
My Commission Expires:
State of New Jersey
ETHICAL ISSUES THAT ARISE FROM SOCIAL MEDIA USE IN COURTROOMS

Sharon R. Klein, Angelo A. Stio III, Brian Zurich

With the rampant expansion of social media and online technologies over the past decade, it is no surprise that Facebook, MySpace, Twitter, Instagram, YouTube and blogs have made their way into the courtroom, pervaded the jury box, and even pierced the veil of judges' chambers. This expansion of social media technologies has raised many questions about the use of the information that can be obtained and the ways attorneys go about obtaining that information. This article addresses some of the ethical issues that can arise when an attorney turns to social media platforms or online technology during a trial.

Social media research has been described as the wild West by some legal commentators, and for this reason bar associations throughout the country have started establishing parameters for ethical online social media research at trial. About a year ago, during the summer of 2012, the New York State Bar Association Committee on Professional Ethics issued Formal Opinion No. 2012-2, titled “Jury Research and Social Media.” To date, the opinion appears to be the most comprehensive analysis of the subject.

Formal Opinion 2012-2 addresses the ethical restrictions that apply to an attorney's use of social media websites to research potential or sitting jurors. The starting point for this analysis was the New York Rules of Professional Conduct (RPCs) and in particular, RPC 3.5, which addresses the maintenance and partiality of tribunals and jurors. Among other things, RPC 3.5 states that “a lawyer shall not ... (4) communicate or cause another to communicate with a member of the jury venire from which the jury will be selected for the trial of a case or, during the trial of a case, with any member of the jury unless authorized to do so by law or court order.”

This rule is similar to New Jersey RPC 3.5, titled “Impartiality and Decorum of the Tribunal.” Under New Jersey RPC 3.5(c) a lawyer shall not communicate ex parte with a juror or prospective juror except as permitted by law.

Social Media Research of Jurors During the Jury Selection Process

In light of the language in New Jersey’s and New York's versions of RPC 3.5, one of the ethical issues that arises most often involves the use of social media research during the jury selection process. Formal Opinion 2012-2 analyzed this issue and found that “[i]f a juror were to (i) receive a ‘friend’ request (or similar invitation to share information on a social network site) as a result of an attorney's research, or (ii) otherwise to learn of the attorney’s viewing or attempted viewing of the juror's pages, posts, or comments, that would constitute a prohibited communication if the attorney was aware that her actions would cause the juror to receive such message or notification.”

Formal Opinion 2012-2 found that the same attempts to research a juror might constitute a prohibited communication even if inadvertent or unintended, because NY RPC 3.5 does not contain a mens rea requirement. The same appears to be true with
NJ RPC 3.5, which does not contain a mens rea requirement, and by its express terms prohibits all ex parte communications with jurors, even if inadvertent.

Thus, if an attorney does not know the functionality of a social media platform, he or she should proceed with caution in conducting research, and should keep in mind the possibility that even an accidental, automated notice to the juror could be considered a violation of the rules of professional conduct. Fortunately, most search engines for social media platforms do not permit registered members to learn who accessed their information. LinkedIn, however, allows its registered members to learn of individuals who viewed their profiles, and attorneys should understand the functionality of the LinkedIn search engine and other similar search engines to minimize the risk of unintended communications with prospective jurors.

Although some attorneys may question if Internet research on jurors is even permissible during voir dire, the New Jersey Appellate Division found the practice acceptable. In Carino v. Muenzen, a medical malpractice action, the plaintiff's counsel was using Google to conduct research on potential jurors in the venire. When this was brought to the attention of the trial judge, the court prohibited the research because: 1) the plaintiff's counsel did not provide advance notice to the court and opposing counsel, and 2) the judge wanted to create an “even playing field,” since the defendant's counsel was not conducting the same research.

On appeal, the plaintiff's counsel argued that the trial court abused its discretion during jury selection by precluding him from accessing the Internet to obtain information on prospective jurors. The Appellate Division noted that no authority exists for the trial court's determination that counsel is required to notify an adversary and the court in advance of accessing the Internet during jury selection or any other part of a trial. The Appellate Division also criticized the trial court's effort to create an “even playing field,” noting that Internet access was open to both counsel. It thus concluded that the trial court acted unreasonably in preventing use of the Internet by the plaintiff's counsel, but nevertheless affirmed the judgment because the plaintiff's counsel had not demonstrated any prejudice resulting from the failure to use Internet research on potential jurors.

Assuming access to the Internet is available, Carino v. Muenzen provides support for the principle that online research of potential jurors is permissible in New Jersey courts.

A federal court in the Eastern District of New York recently issued a similar ruling in U.S. v. Watts. There, the defendant's counsel in a criminal matter filed a motion to permit a jury consulting firm to perform Internet research on potential jurors. The initial application to the court requested the name of jurors in the jury pool in advance of when the venire appeared, so research could be performed in advance. This portion of the application was denied. The court, however, allowed the parties to conduct Internet research on potential jurors during the venire, on the following three conditions: 1) the parties could not make unauthorized or improper direct contact with prospective or current jurors, including using social networking platforms that would leave a record with the account holder of having been searched; 2) the parties were barred from informing jurors that Internet searches were being conducted regarding them; and 3) if any party had reason to believe a juror may have neglected to disclose information bearing on his or her fitness to serve as a juror, that party was required to inform the court and opposing counsel immediately. On this last restriction, the court noted that an “attorney's duty to inform the court about suspected juror misconduct trumps all other professional obligations, including those owed a client.”

Not all courts, however, agree that Internet research on jurors is permissible or even beneficial. Recently, a judge in Montgomery County, Maryland, denied a request to allow a defense attorney in a child sex abuse case to use the Internet to research potential jurors during the jury selection process. The judge believed Internet research on potential jurors was totally inappropriate and could have a chilling effect on jury service if individuals knew they were going to be “Googled” as soon as they walked into the courthouse.
Social Media Research of Jurors During Trial

A second issue that arises with social media research is whether attorneys can continue to research and monitor the actions of sitting jurors during a trial. In this regard, the same ethical restrictions that apply to communications with potential jurors also apply to sitting jurors. These restrictions include the prohibition on an attorney communicating directly and indirectly with a sitting juror. Despite these restrictions, attorneys are well served to engage in unobtrusive monitoring of jurors during trial to ensure an unbiased, independent jury. Indeed, in a recent survey by the Federal Judicial Center, 79 percent of judges who responded said they had no way of knowing whether jurors had violated a social media ban. As such, social media monitoring is often left in the hands of counsel and, in some higher profile cases, the media. This was the case in the corruption trial of former Baltimore Mayor Sheila Dixon. There, a newspaper reported that certain members of the jury were communicating with each other about the case via Facebook. This report served as one of the bases for the mayor to seek a new trial. Before the court could rule on the application, however, a plea was entered. Nevertheless, the juror conduct and media attention underscore the need to monitor sitting jurors.

Another instance of jurors' use of social media and the need for monitoring occurred in *Sluss v. Commonwealth of Kentucky*. In *Sluss*, the defendant was convicted of murder and several other criminal counts arising from a motor vehicle death following a highly publicized trial. After the trial, it came to light that two of the jurors were Facebook friends with the victim's mother. The defendant appealed the conviction and argued, among other things, that the trial court erred in denying his motion for a new trial based on juror misconduct. The defendant contended that the jurors being Facebook friends with the victim's mother was evidence of misconduct. On appeal, the Kentucky Supreme Court addressed the issue of who on Facebook is actually a friend, as opposed to a mere negligible connection who blindly accepts a friend request and has no real relationship. While opining that a juror who is a Facebook friend with a family member of a victim, standing alone, is probably not enough evidence to presume juror bias sufficient for a new trial, the Court remanded the matter for further inquiry to address “the extent of the interaction and the scope of the relationship” between the two jurors and the victim's mother, and whether juror misconduct occurred. In so concluding, the Court stated that “it is the closeness of the relationship and the information that a juror knows that frames whether that juror could reasonably be viewed as biased.”

Another example of a juror's misuse of social media was discussed in *U.S. v. Fumo*, which involved the highly publicized prosecution of Pennsylvania State Senator Vincent Fumo. The portion of the appeal relevant to social media involved a juror posting various comments on Facebook. After it was reported by the media that a juror had been posting on Facebook about the trial, the juror deleted the comments from his Facebook page. The most discussed post involved the juror's comment that “This is it ... no looking back now!” As a result, the court reviewed the Facebook posts and held an in camera review in which it asked the juror about his activity and general media consumption. The juror claimed he had accidentally seen the news report regarding his Facebook posts when a program he had been watching on television ended and the news began, but otherwise indicated he took his responsibilities and obligations as a juror seriously. Based on this review, the trial court concluded that most of the Facebook posts involved what the court deemed “ramblings” that were “so vague as to be virtually meaningless.” It thus concluded that the juror's Facebook posts were not substantially prejudicial.

On appeal, the Third Circuit affirmed, finding the trial court did not abuse its discretion in denying the defendants' motion for a new trial. It largely agreed that the juror's Facebook posts were “nothing more than harmless ramblings having no prejudicial effect,” and there was no evidence his extra-jury misconduct had any prejudicial effects on the defendants.
Nonetheless, the implications of jurors' improper use of social media during a trial are high. As noted by the Third Circuit in *Fumo*, “a juror who comments about a case on social media may engender responses that include extraneous information about the case or attempts by third-parties to exercise persuasion or influence.” When attorneys are aware of a juror's use of social media in a manner they believe is improper, they have an obligation to report the misconduct to the court and their adversary. And, once reported, a court has a number of remedies at its disposal.

In New Jersey, these remedies could include imprisonment and/or civil fine. These remedies were discussed in the recent decision issued by Assignment Judge Peter Doyne in *In re Daniel Kaminsky*. *Kaminsky* involved contempt proceedings against a juror for conducting Internet research during deliberations, in direct violation of the court's explicit instructions not to conduct such research. The situation came to light after two of the charged juror's fellow jury members reported they thought the research tainted the deliberations, which ultimately resulted in a hung jury. In a well-reasoned opinion outlining the implications of the ease of Internet research on modern juries, Judge Doyne held the juror in contempt and fined him $500. In so holding, Judge Doyne stated, “a clear message apparently need[s] be sent [that] the offense of contemptuously violating a court's instruction concerning internet use is serious, with consequential ramifications.”

Similarly, in *Juror Number One v. Sup. Ct. of Sacramento*, a California court, upon receiving a report that a juror posted items on his Facebook account concerning a criminal trial while it was in progress, ordered the juror to execute a consent form authorizing Facebook to release for in camera review all items he posted during the trial. The juror filed a petition for writ of prohibition that challenged the order on the basis that it was in violation of the Stored Communications Act, his Fourth and Fifth Amendment rights and his rights to privacy. The court made short work of the arguments and found a juror had no expectation of privacy in his or her Facebook posts and, in any event, privacy rights do not trump the litigants' rights to a fair trial free from juror misconduct.

Courts in Florida and Texas also have sent a clear message to jurors who engage in the improper use of social media during a trial. One Florida juror was held in contempt and sentenced to three days in jail when it came to light that he ‘friended’ a defendant in a personal injury case. Similarly, a Texas man was sentenced to two days of community service for friending a plaintiff.

**Social Media Research to Impeach a Witness During Trial**

A third issue that arises from social media research at trial involves whether counsel can use this technology to obtain information to impeach a witness. In analyzing this issue, it is important for an attorney to understand that social media platforms are no different than direct or indirect communication with any individual. Accordingly, attorneys should re-familiarize themselves with NJ RPC 4.1, 4.2, 8.4(c) and 8.4(d) before conducting a social media search for impeachment evidence. These Rules of Professional Conduct provisions prevent, among other things, attorneys from doing the following:

1. making materially false statements of fact or law to a third person, NJ RPC 4.1;

2. communicating with a person the lawyer knows or should know is represented by counsel, NJ RPC 4.2;

3. engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, NJ RPC 8.4(c); and

4. engaging in conduct that is prejudicial to the administration of justice, NJ RPC 8.4(d).

In light of these RPC provisions and other authorities, it is wholly permissible for an attorney to access and review the public social network pages of a witness at trial to search for impeachment material. A lawyer also can engage in truthful friending of an unrepresented party in a manner that does not involve trickery or deception to obtain information.
What an attorney cannot do is mislead a witness or potential witness in order to obtain information about them. Two defense attorneys recently were charged with ethics violations by the Office of Attorney Ethics of the Supreme Court of New Jersey for allegedly causing their paralegal to friend the plaintiff in a personal injury case in order to access information on the plaintiff's Facebook page that was not otherwise available to the public. The attorneys contended they never instructed the paralegal to friend the plaintiff, but simply instructed her to conduct online social media research on him.

In light of this story, if an attorney is going to conduct research on Facebook or another social media platform in order to obtain non-public information, it is important the attorney disclose his or her true identity and the truthful reason for the connection request.

Social Media Use by Attorneys

Finally, it goes without saying that attorneys, like everyone else, should be cognizant of their own use of social media. At least one judge in Galveston, Texas, utilized Facebook to catch an attorney who requested a continuance, allegedly because of the death of her father. The attorney, however, had recently posted a string of status updates on Facebook portraying a week of drinking and partying. In a separate incident, the same judge caught another attorney griping about having to handle a motion before her. Thus, just as attorneys are well advised to instruct their clients to maintain private Facebook pages, they too must be cognizant of their social media footprint and their obligation of candor toward a tribunal.

While some readers may seek to avoid the ethical issues discussed in this article entirely, by not using social media at all, this may not be the right answer. At least one court has held that an attorney may be under a limited obligation to use certain new technologies.

In Johnson v. McCullough, the Supreme Court of Missouri arguably created a limited duty for lawyers to research members of the venire. During voir dire, the plaintiff's counsel asked if any of the panelists had been involved in prior litigation. While many panelists responded, one member did not, and she eventually became a sitting juror. After the jury returned the verdict for the defendant, the plaintiff's counsel searched a litigation database and found the non-responsive juror had been a defendant in multiple debt collection cases and a personal injury case. The plaintiff filed a motion for a new trial, alleging jury non-disclosure based on the juror's failure to disclose her involvement in prior litigation. The trial court granted the motion, and the Supreme Court of Missouri affirmed.

The Missouri Supreme Court stated that “[w]ith the relative present day ease of procuring the venire member's prior litigation experiences, via Case.net, “[w]e encourage counsel to make such challenges before submission of a case whenever practicable.” The Court further noted that, “to preserve the issue of a juror's non-disclosure, a party must use reasonable efforts to examine the litigation history on Case.net of those jurors selected but not empanelled and present to the trial court any relevant information prior to trial.”

While most courts have not gone as far as the Missouri Supreme Court, a lawyer who fails to acquire at least a basic understanding of these new technologies does so at his or her--or perhaps more importantly, his or her client's--own peril.

Conclusion

In sum, social media has become a particularly effective arrow in the quiver of technologically savvy attorneys. While social media use in the litigation context continues to evolve, it is important that attorneys keep in mind the potential ethical implications of its use, for research or otherwise, and to avoid any action by them or their subordinates that could be construed as dishonest or deceitful.
Footnotes

Sharon R. Klein is a partner in the corporate and securities practice group of Pepper Hamilton LLP and the chair of the firm's privacy, security and data protection practice. Angelo A. Stio III is a partner in the firm's litigation and dispute resolution department and counsels corporate, financial services and educational institution clients on data privacy issues. Brian Zurich is an associate in the firm's litigation and dispute resolution department and a former law clerk for U.S. Magistrate Judge Earl S. Hines of the U.S. District Court for the Eastern District of Texas.

2. Id. at *6.
4. Id. at *9-10.
5. Id.
7. Id. at *103-104.
8. Id. at *104 (quoting United States v. Daugerdas, 867 F. Supp. 2d 445, 484 (S.D.N.Y. 2012)). While some attorneys may be skeptical of social media research on prospective jurors, the benefits of such research are potentially immense. For example, a trial consultant in Philadelphia stated that in a product liability case in which her client was representing the defendant, she discovered through online research that a juror had posted on Facebook that one of the juror's heroes was Erin Brokovich. This research helped the trial consultant's client decide to remove the juror from the panel. B. Grow, Internet v. Courts: Googling for the Perfect Juror, Reuters (Feb. 17, 2011). Likewise, in a case in the Circuit Court of Jackson, Mississippi, Khoury v. Conagra, social media research enabled attorneys for the defendant, Conagra, to have a juror dismissed for anti-corporate sentiments after it was discovered he maintained a corporate blog called “The Insane Citizen: Ramblings of a Political Madman,” which included statements such as “F --- McDonald's.’D’. Id.; see also Khoury v. Conagra Foods, Inc., 368 S.W.3d 189 (Mo. Ct. App. 2012).
10. Id.
11. But see U.S. v. Kilpatrick, 2012 U.S. Dist. LEXIS 110165 (E.D. Mich. Aug. 7, 2012) (during the high-profile prosecution of Detroit's former mayor, the court impaneled an anonymous jury and held that parties were not permitted to monitor jurors' social media use, but the court would do so).
12. S. Eder, Jurors' Tweets Upend Trials, Wall Street Journal (March 5, 2012). Interestingly, as pointed out by Judge Peter E. Doyne in In re Daniel Kaminsky, 2012 N.J. Super. Unpub. LEXIS 539, *5-9 n.3 (March 9, 2012), which is discussed in greater detail infra, Judge Shira A. Scheindlin of the Southern District of New York attempts to prevent the problem of juror Internet research by requiring jurors to sign, under penalty of perjury, a pledge agreeing to obey the court's Internet use instructions in highly publicized criminal trials.
15. Id. at 223.
16. Ibid.
17. 655 F.3d 288 (3d Cir. 2011).
18. Id. at 299.
See Formal Opinion 2012-2, supra, note 1; NJ RPC 3.3; U.S. v. Watts, 2013 U.S. Dist. LEXIS 42242, *104 (E.D.N.Y. March 22, 2013). Additionally, it appears to be a well-settled concept that a sitting juror commits misconduct by violating her oath, or by failing to follow the instructions and admonitions given by the trial court. As such, a juror may well have an obligation to report fellow juror misconduct either by accepting the oath or, perhaps more pointedly, if instructed by the court to do so.

See Eder, supra, note 10; see also R. Eckhart, Juror Jailed over Facebook Friend Request, Sarasota Herald-Tribune (Feb. 16, 2012).

An attorney cannot friend a party the attorney knows or should know is represented by counsel. NJ RPC 4.2.


In Sept. 2012, before the ethics hearings began, the two lawyers filed suit against the Office of Attorney Ethics in the Superior Court of New Jersey seeking declaratory and injunctive relief. See M. Gallagher, Facebook Case Tests Courts’ Power To Review Ethics Tribunals’ Actions, N.J. Law Journal (July 2, 2013). On Jan. 22, 2013, the lower court dismissed the case, Robertelli v. OAE, for lack of jurisdiction. Id. The case is pending in the Appellate Division. Id.


See M. McDonough, Facebooking Judge Catches Lawyer in Lie, Sees Ethical Breaches, A.B.A. Chicago (July 31, 2009).

306 S.W.3d 551 (Mo. 2010).

Id. at 558.

Id. at 559.
SOCIAL MEDIA ETHICS GUIDELINES

OF THE

COMMERCIAL AND FEDERAL LITIGATION SECTION

OF THE

NEW YORK STATE BAR ASSOCIATION

UPDATED MAY 11, 2017

Mark A. Berman, Section Chair
Ignatius A. Grande, Co-Chair of the Social Media Committee
Ronald J. Hedges, Co-Chair of the Social Media Committee

Opinions expressed are those of the Section preparing these Guidelines and do not represent those of the New York State Bar Association unless and until the report has been adopted by the Association’s House of Delegates or Executive Committee.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members of the Social Media Committee</td>
<td>i</td>
</tr>
<tr>
<td>Table of Contents</td>
<td>ii</td>
</tr>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td><strong>1. ATTORNEY COMPETENCE</strong></td>
<td>3</td>
</tr>
<tr>
<td>No. 1.A: Attorneys’ Social Media Competence</td>
<td>3</td>
</tr>
<tr>
<td><strong>2. ATTORNEY ADVERTISING</strong></td>
<td>6</td>
</tr>
<tr>
<td>No. 2.A: Applicability of Advertising Rules</td>
<td>6</td>
</tr>
<tr>
<td>No. 2.B: Prohibited Use of Term “Specialists” on Social Media</td>
<td>9</td>
</tr>
<tr>
<td>No. 2.C: Lawyer’s Responsibility to Monitor or Remove Social Media</td>
<td>10</td>
</tr>
<tr>
<td>Content by Others on a Lawyer’s Social Media Page</td>
<td></td>
</tr>
<tr>
<td>No. 2.D: Attorney Endorsements</td>
<td>11</td>
</tr>
<tr>
<td>No. 2.E: Positional Conflicts in Attorney Advertising</td>
<td>12</td>
</tr>
<tr>
<td><strong>3. FURNISHING OF LEGAL ADVICE THROUGH SOCIAL MEDIA</strong></td>
<td>13</td>
</tr>
<tr>
<td>No. 3.A: Provision of General Information</td>
<td>13</td>
</tr>
<tr>
<td>No. 3.B: Public Solicitation is Prohibited through “Live” Communication</td>
<td>13</td>
</tr>
<tr>
<td>No. 3.C: Retention of Social Media Communications with Clients</td>
<td>16</td>
</tr>
<tr>
<td><strong>4. REVIEW AND USE OF EVIDENCE FROM SOCIAL MEDIA</strong></td>
<td>18</td>
</tr>
<tr>
<td>No. 4.A: Viewing a Public Portion of a Social Media Website</td>
<td>18</td>
</tr>
<tr>
<td>No. 4.B: Contacting an Unrepresented Party and/or Requesting to View a Restricted Social Media Website</td>
<td>18</td>
</tr>
<tr>
<td>No. 4.C: Contacting a Represented Party and/or Viewing Restricted Social Media Website</td>
<td>20</td>
</tr>
<tr>
<td>No. 4.D: Lawyer’s Use of Agents to Contact a Represented Party</td>
<td>21</td>
</tr>
<tr>
<td><strong>5. COMMUNICATING WITH CLIENTS</strong></td>
<td>22</td>
</tr>
<tr>
<td>No. 5.A: Removing Existing Social Media Information</td>
<td>22</td>
</tr>
</tbody>
</table>
No. 5.B: Adding New Social Media Content ................................................................. 23
No. 5.C: False Social Media Statements ................................................................. 24
No. 5.D: A Lawyer’s Use of Client-Provided Social Media Information ................. 24
No. 5.E: Maintaining Client Confidences and Confidential Information .................. 25

6. RESEARCHING JURORS AND REPORTING JUROR MISCONDUCT ...................... 29
   No. 6.A: Lawyers May Conduct Social Media Research ........................................ 29
   No. 6.B: A Juror’s Social Media Profile May Be Viewed as Long as There Is No Communication with the Juror ................................................................. 30
   No. 6.C: Deceit Shall Not Be Used to View a Juror’s Social Media ......................... 32
   No. 6.D: Juror Contact During Trial .................................................................... 33
   No. 6.E: Juror Misconduct .................................................................................. 34

7. USING SOCIAL MEDIA TO COMMUNICATE WITH A JUDICIAL OFFICER .......... 36

Appendix ......................................................................................................................... 38
INTRODUCTION

Social media networks such as LinkedIn, Twitter and Facebook are becoming indispensable tools for legal professionals and the people with whom they communicate. As use of social media by lawyers and clients continues to grow and as social media networks proliferate and become more sophisticated, so too do the ethics issues facing lawyers. Accordingly, the Commercial and Federal Litigation Section of the New York State Bar Association is updating these social media guidelines – which were first issued in 2014 – to include new ethics opinions as well as additional guidelines where the Section believes ethical guidance is needed (the “Guidelines”). In particular, these Guidelines add new content on lawyers’ competence, the retention of social media by lawyers, client confidences, potential positional conflicts of interest associated with social media posts, the tracking of client social media use, communications by lawyers with judges, and lawyers’ use of social media platforms, such as LinkedIn, to communicate with selected audiences, or with the public in general.

These Guidelines should be read as guiding principles rather than as “best practices.” The world of social media is rapidly changing and “best practices” will continue to evolve to keep pace with such developments. Since there are multiple ethics codes that govern attorney conduct throughout the United States, these Guidelines do not attempt to define a universal set of “best practices” that will apply in every jurisdiction. In fact, even where different jurisdictions have enacted nearly-identical ethics rules, their individual ethics opinions on the same topic may differ due to different social mores, the priorities of different demographic populations, and the historical approaches to ethics rules and opinions in different localities.

In New York State, ethics opinions are issued by the New York State Bar Association and also by local bar associations located throughout the State. These Guidelines are predicated upon the New York Rules of Professional Conduct (“NYRPC”) and ethics opinions interpreting those rules that have been issued by New York bar associations. In addition, illustrative ethics opinions from other jurisdictions are referenced throughout where, for example, a New York ethics opinion has not addressed a certain situation or where another jurisdiction’s ethics opinion differs from the interpretation of the NYRPC by New York ethics authorities.

1. The Social Media Ethics Guidelines were most recently updated in June 2015.

2. A breach of an ethics rule is not enforced by bar associations, but by the appropriate disciplinary bodies. Ethics opinions are not binding in disciplinary proceedings, but they may be used as a defense in certain circumstances.

3. NY RULES OF PROF’L CONDUCT (NYRPC) (NY STATE UNIFIED CT. SYS. 2013). (These Rules of Professional Conduct were promulgated as Joint Rules of the Appellate Divisions of the Supreme Court In addition, the New York State Bar Association has promulgated comments regarding particular rules, but these comments, which are referenced in these Guidelines have not been adopted by the Appellate Divisions of the Supreme Court).
Social media communications that reach across multiple jurisdictions may implicate other states’ ethics rules. Those rules may differ from the NYRPC. Lawyers should consider the controlling ethical requirements the jurisdictions in which they practice.

The ethical issues discussed in the NYRPC frequently arise in the information gathering phase prior to, or during, litigation. One of the best ways for lawyers to investigate and obtain information about a party, witness, juror or another person, without having to engage in formal discovery, is to review that person’s social media account, profile, or posts. Lawyers must remember, however, that ethics rules and opinions govern whether and how a lawyer may view such social media. For example, when a lawyer conducts research, unintended social media communications or electronic notifications received by the user of a social media account revealing such lawyer’s research may have ethical consequences.

Further, because social media communications are often not just directed at a single person but at a large group of people, or even the entire Internet “community,” attorney advertising rules and other ethical rules must be considered when a lawyer uses social media. For example, it is not always readily apparent whether a lawyer’s social media communications constitute regulated “attorney advertising.” Similarly, privileged or confidential information can be unintentionally divulged beyond the intended recipient if a lawyer communicates to a group using social media. In addition, lawyers must be careful to avoid creating an unintended attorney-client relationship when communicating through social media. Finally, certain ethical obligations arise when a lawyer counsels a client about the client’s own social media posts and the removal or deletion of those posts, especially if such posts are subject to litigation or regulatory preservation obligations. These ethical obligations will also be discussed herein.

Throughout these Guidelines, the terms “website,” “account,” “profile,” and “post” are referenced in order to highlight sources of electronic data that might be viewed by a lawyer. The definition of these terms no doubt will change and new ones will be created as technology advances. However, for purposes of complying with these Guidelines, these terms are interchangeable, and a reference to one should be viewed as a reference to all for ethical considerations.

References to the applicable provisions of the NYRPC and references to relevant ethics opinions are noted after each Guideline, and definitions of important terms used in the Guidelines are set forth in the Appendix.
1. ATTORNEY COMPETENCE

Guideline No. 1.A: Attorneys’ Social Media Competence

A lawyer has a duty to understand the benefits, risks and ethical implications associated with social media, including its use for communication, advertising and research and investigation.

NYRPC 1.1(a) and (b).

Comment: NYRPC 1.1(a) provides: “[a] lawyer should provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

As Guideline No. 1 recognizes – and the Guidelines discuss throughout – a lawyer may choose to use social media for a multitude of reasons. Lawyers, however, need to be conversant with, at a minimum, the basics of each social media network that a lawyer uses in connection with the practice of law or that his or her client may use if it is relevant to the purpose or purposes for which the lawyer was retained.

Maintaining this level of understanding is a serious challenge that lawyers need to appreciate and cannot take lightly. As American Bar Association (“ABA”) Formal Opinion 466 (2014) states:

As indicated by [ABA Rule of Professional Conduct] Rule 1.1, Comment 8, it is important for a lawyer to be current with technology. While many people simply click their agreement to the terms and conditions for use of an [electronic social media] network, a lawyer who uses an [electronic social media] network in his practice should review the terms and conditions, including privacy features – which change frequently – prior to using such a network.

A lawyer must “understand the functionality and privacy settings of any [social media] service she wishes to utilize for research, and to be aware of any changes in the platforms’ settings or policies.” The ethics opinion also holds that


5. Id. Competence may require understanding the often lengthy and unclear “terms of service” of a social media platform and ascertaining whether the platform’s features raise ethical issues. It also may require reviewing other materials, such as articles, comments, and blogs posted about how such social media platform functions.

“[i]f an attorney cannot ascertain the functionality of a website, the attorney must proceed with great caution in conducting research on that particular site...”

Indeed, a lawyer cannot be competent absent a working knowledge of the benefits and risks associated with the lawyer’s use of social media. In fact, Comment 8 to Rule 1.1 of the Model Rules of Professional Conduct of the ABA was amended to provide:

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Commentary to Rule 1.1 of the NYRPC, which is offered by the New York State Bar Association as informal guidance to practitioners, has also been amended to provide:

To maintain the requisite knowledge and skill, a lawyer should (i) keep abreast of changes in substantive and procedural law relevant to the lawyer’s practice, (ii) keep abreast of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit confidential information, and (iii) engage in continuing study and education and comply with all applicable continuing legal education requirements under 22 N.Y.C.R.R. Part 1500.

Many other states have also adopted a duty of competence in technology in their ethical codes. Although a lawyer may not delegate his or her obligation to be competent, he or she may rely, as appropriate, on other lawyers or professionals in the field of electronic discovery and social media to assist in obtaining such competence. As NYRPC 1.1 (b) requires, “[a] lawyer shall not handle a legal matter that the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.”

---


8. NYRPC 1.1 cmt. 8.

9. As of this writing, 27 states have included a duty of competence in technology in their ethical codes. See Robert Ambrogi, 27 States Have Adopted Ethical Duty of Technology Competence, LAWSITES (retrieved on April 30, 2017).
For a discussion of eDiscovery competence in general, see ethics opinions issued by the New York County Lawyers Association Professional Ethics Committee\(^\text{10}\) and the State Bar of California’s Committee on Professional Responsibility and Conduct.\(^\text{11}\)


2. ATTORNEY ADVERTISING

Guideline No. 2.A: Applicability of Advertising Rules

A lawyer’s social media profile that is used only for personal purposes is not subject to attorney advertising and solicitation rules. However, a social media profile, posting or blog a lawyer primarily uses for the purpose of the retention of the lawyer or his law firm is subject to such rules. Hybrid accounts may need to comply with attorney advertising and solicitation rules if used for the primary purpose of the retention of the lawyer or his law firm.

NYRPC 1.0, 7.1, 7.3., 7.4, 7.5, 8.4(c)

Comment: It is clear that a social media profile that is used for work purposes is subject to attorney advertising and solicitation rules. In the case of a lawyer’s profile on a hybrid account that is used for business and personal purposes, given the differing views on whether the attorney advertising and solicitation rules would apply, it would be prudent for the lawyer to assume that they do.

The nature of the information posted on a lawyer’s LinkedIn profile may require that the profile be deemed “attorney advertising.” In general, a profile that contains basic biographical information, such as “only one’s education and a list of one’s current and past employment” does not constitute attorney advertising. According to NYCLA Formal Op. 748, a lawyer’s LinkedIn profile that “includes subjective statements regarding an attorney’s skills, areas of practice, endorsements, or testimonials from clients or colleagues, however, is likely to be considered advertising.”

The NYCLA ethics opinion states that if an attorney’s LinkedIn profile includes a detailed description of practice areas and types of work done in prior employment, the user should include the words “Attorney Advertising” on the lawyer’s LinkedIn profile. If an attorney also includes (1) statements that are reasonably likely to create an expectation about results the lawyer can achieve; (2)

12. NYRPC 1.0(a) defines “Advertisement” as “any public or private communication made by or on behalf of a lawyer or law firm about that lawyer or law firm’s services, the primary purpose of which is for the retention of the lawyer or law firm. It does not include communications to existing clients or other lawyers.”


statements that compare the lawyer’s services with the services of other lawyers; (3) testimonials or endorsements of clients; or (4) statements describing or characterizing the quality of the lawyer’s or law firm’s services, the attorney should also include the disclaimer “Prior results do not guarantee a similar outcome.”

The NYCLA opinion provides that attorneys who allow “Endorsements” from other users and “Recommendations” to appear on one’s profile fall within Rule 7.1(d), and therefore must include the disclaimer set forth in Rule 7.1(e). Also, the NYCLA opinion noted that if an attorney claims to have certain skills, they must also include this disclaimer because a description of one’s skills – even where those skills are chosen from fields created by LinkedIn – constitutes a statement “characterizing the quality of the lawyer’s services” under Rule 7.1(d).

After NYCLA Formal Opinion 748 was issued, the New York City Bar Association issued Opinion 2015-7 addressing attorney advertising. The New York City Bar opinion addressed attorney advertising in a different manner and provides that an attorney’s LinkedIn profile may constitute attorney advertising only if it meets the following five criteria:

(a) it is a communication made by or on behalf of the lawyer;
(b) the primary purpose of the LinkedIn content is to attract new clients to retain the lawyer for pecuniary gain; (c) the LinkedIn content relates to the legal services offered by the lawyer; (d) the LinkedIn content is intended to be viewed by potential new clients; and (e) the LinkedIn content does not fall within any recognized exception to the definition of attorney advertising.

The New York City Bar Association opinion notes that it should not be presumed that an attorney who posts information about herself on LinkedIn is doing so for the primary purpose of attracting paying clients. If someone merely includes a list of “Skills,” a description of one’s practice areas, or displays “Endorsements” or “Recommendations,” without more on their LinkedIn account, this does not, by itself, constitute attorney advertising.

---

16. Id.
17. NYRPC 7.1(e)(3) provides: “[p]rior results do not guarantee a similar outcome.”
20. Id.
21. Id.
New York City Bar Formal Op. 2015-7 also notes that if an attorney’s LinkedIn profile meets the five-pronged attorney advertising definition, he or she must comply with requirements of Article 7 of the NYRPC, which include, but are not limited to:

(1) labeling the LinkedIn content “Attorney Advertising”;  
(2) including the name, principal law office address and telephone number of the lawyer; (3) pre-approving any content posted on LinkedIn; (4) preserving a copy for at least one year; and  
(5) refraining from false, deceptive or misleading statements.  
These are only some of the requirements associated with attorney advertising.22

Attorneys practicing in New York should be aware of both opinions when complying with New York’s attorney advertising rules. An attorney’s ethical obligations apply to all forms of covered communications, including social media. If a post on Twitter (a “tweet”) is deemed attorney advertising, the rules require that a lawyer must include disclaimers similar to those described in NYCLA Formal Op. 748.23

Utilizing the disclaimer “Attorney Advertising” given the confines of Twitter’s 140 character limit (which in practice may be even less than 140 characters when including links, user handles or hashtags) may be impractical or not possible. Yet, such structural limitation does not provide a justification for not complying with the ethical rules governing attorney advertising. Thus, attorneys should consider only posting tweets that would not be categorized as attorney advertising to avoid having to comply with the attorney advertising rules within the Twitter environment.24

Rule 7.1(k) of the NYRPC provides that all advertisements “shall be pre-approved by the lawyer or law firm.” It requires that a copy of an advertisement “shall be retained for a period of not less than three years following its initial dissemination,” but specifies a one-year retention period for advertisements contained in a “computer-accessed communication” and yet another retention scheme for websites.25  Rule 1.0(c) of the NYRPC defines “computer-accessed communication” as any communication made by or on behalf of a lawyer or law


25. Id.
firm that is disseminated through “the use of a computer or related electronic device, including, but not limited to, web sites, weblogs, search engines, electronic mail, banner advertisements, pop-up and pop-under advertisements, chat rooms, list servers, instant messaging, or other internet presences, and any attachments or links related thereto.” Thus, social media posts that are deemed “advertisements,” are “computer-accessed communications, and their retention is required only for one year.”

In accordance with NYSBA, Op. 1009, to the extent that a social media post is found to be a “solicitation,” it is subject to filing requirements if directed to recipients in New York. Social media posts, like tweets, may or may not be prohibited “real-time or interactive” communications. This would depend on whether they are broadly distributed and/or whether the communications are more akin to asynchronous email or website postings or in functionality closer to prohibited instant messaging or chat rooms involving “real-time” or “live” responses. Practitioners are advised that both the social media platforms and ethical guidance in this area are evolving and care should be used when using any potentially “live” or real-time tools.

Guideline No. 2.B: Prohibited Use of Term “Specialists” on Social Media

Lawyers shall not advertise areas of practice under headings in social media platforms that include the terms “specialist,” unless the lawyer is certified by the appropriate accrediting body in the particular area.

NYRPC 7.1, 7.4.

Comment: Although LinkedIn’s headings no longer include the term “Specialties,” lawyers still need to be cognizant of the prohibition on claiming to be a “specialist” when creating a social media profile. To avoid making prohibited statements about a lawyer’s qualifications under a specific heading or otherwise, a lawyer should use objective information and language to convey information about the lawyer’s experience. Examples of such information include the number of years in practice and the number of cases handled in a particular field or area.

26. Id.
27. Id.
29. One court has found that the prohibition on the words “expertise” and “specialty” in relation to attorney advertising is unconstitutional; see Searcy v. Florida Bar, 140 F. Supp. 3d 1290 (N.D. Fla. 2015).
A lawyer shall not list information under the ethically prohibited heading of “specialist” in any social media network unless appropriately certified as such. Skills or practice areas listed on a lawyer’s profile under the headings “Experience” or “Skills,” do not constitute a claim by a lawyer to be a specialist under NYRPC Rule 7.4.31 A lawyer may include information about the lawyer’s experience elsewhere, such as under another heading or in an untitled field that permits biographical information to be included. Certain states have issued ethics opinions prohibiting lawyers from listing their practice areas not only under “specialist,” but also under headings such as “expert.”

A limited exception to identification as a specialist may exist for lawyers who are certified “by a private organization approved for that purpose by the American Bar Association” or by an “authority having jurisdiction over specialization under the laws of another state or territory.” For example, identification of such traditional titles as “Patent Attorney” or “Proctor in Admiralty” are permitted for lawyers entitled to use them.32

Guideline No. 2.C: Lawyer’s Responsibility to Monitor or Remove Social Media Content by Others on a Lawyer’s Social Media Page

A lawyer who maintains a social media profile must be mindful of the ethical restrictions relating to solicitation by her and the recommendations of her by others, especially when inviting others to view her social media account, blog or profile.33

A lawyer is responsible for all content that the lawyer posts on her social media website or profile. A lawyer also has a duty to periodically monitor her social media profile(s) or blog(s) for comments, endorsements and recommendations to ensure that such third-party posts do not violate ethics rules. If a person who is not an agent of the lawyer unilaterally posts content to the lawyer’s social media, profile or blog that violates the ethics rules, the lawyer must remove or hide such content if such removal is within the lawyer’s control and, if not within the lawyer’s control, she may wish to ask that person to remove it.34

NYRPC 7.1, 7.2, 7.3, 7.4.

32. See NYRPC 7.4.
33. See Fl. Bar Standing Comm. on Advertising, Guidelines for Networking Sites (revised May 9, 2016); see also Peter Geraghty, Social Media Endorsements: Undue Flattery Will Get You Nowehere, YOURABA (July 2016).
Comment: While a lawyer is not responsible for a post made by a person who is not his agent, a lawyer’s obligation not to disseminate, use or participate in the dissemination or use of advertisements containing misleading, false or deceptive statements includes a duty to remove information from the lawyer’s social media profile where that information does not comply with applicable ethics rules. If a post cannot be removed, consideration must be given as to whether a curative post needs to be made. Although social media communications tend to be far less formal than traditional forms of communication to which the ethics rules apply, these rules apply with the same force and effect to social media postings.

Guideline No. 2.D: Attorney Endorsements

A lawyer must ensure the accuracy of third-party legal endorsements, recommendations, or online reviews posted to the lawyer’s social media profile. To that end, a lawyer must periodically monitor and review such posts for accuracy and must correct misleading or incorrect information posted by clients or other third-parties.

NYRPC 7.1, 7.2, 7.3, 7.4.

Comment: Although lawyers are not responsible for content that third-parties and non-agents of the lawyer post on social media, lawyers must monitor and verify that posts about them made to profiles they control are accurate. “Attorneys should periodically monitor their LinkedIn pages at reasonable intervals to ensure that others are not endorsing them as specialists,” as well as to confirm the accuracy of any endorsements or recommendations. A lawyer may not passively allow misleading endorsements as to her skills and expertise to remain on a profile that she controls, as that is tantamount to accepting the endorsement. Rather, a lawyer needs to remain conscientious in avoiding the publication of false or misleading statements about the lawyer and her services. Certain social media websites, such as LinkedIn, allow users to approve endorsements, thereby providing lawyers with a mechanism to promptly review, and then reject or approve, endorsements. A lawyer may also hide or delete endorsements, which, under those circumstances, may obviate the ethical obligation to periodically monitor and review such posts.

When an attorney provides information on social media related to successful results she has achieved for a client, she should be careful to avoid disclosing confidential information about her client and the matter. The risk of disclosure of confidential

35. Lawyers should also be cognizant of such websites as Yelp, Google and Avvo, where third parties may post public comments about lawyers.


information can also arise when a lawyer deems it necessary to correct adverse comments made by clients or former clients about the lawyer’s legal skills made on social media (known as “reverse advertising”). New York has not addressed the issue, but the Texas Center for Legal Ethics recently opined that in such a situation, a lawyer may post a “proportional and restrained response that does not reveal any confidential information or otherwise violate the Texas Disciplinary Rules of Professional Conduct.”

Guideline No. 2.E: Positional Conflicts in Attorney Advertising

When communicating and stating positions on issues and legal developments, via social media or traditional media, a lawyer should attempt to avoid situations where her communicated positions on issues and legal developments are inconsistent with those advanced on behalf of her clients and the clients of her firm.

NYRPC 1.7, 1.8

Comment: While commenting on issues and legal developments can certainly assist in advertising a lawyer’s particular knowledge and strengths, a position stated by a lawyer on a social media site in an attempt to market her legal services could inadvertently create a business conflict with a client. A lawyer needs to be cognizant of the fact that conflicts are imputed to the lawyer’s firm.

While no New York ethics opinion has addressed the issue, the D.C. Bar Legal Ethics Committee recently provided guidance on this subject stating, “Consideration must also be given to avoid the acquisition of uninvited information through social media sites that could create actual or perceived conflicts of interest for the lawyer or the lawyer’s firm. Caution should be exercised when stating positions on issues, as those stated positions could be adverse to an interest of a client, thus inadvertently creating a conflict. [D.C. Rule of Professional Conduct] 1.7(b)(4) states that an attorney shall not represent a client with respect to a matter if ‘the lawyer's professional judgment on behalf of the client will be or reasonably may be adversely affected by . . . the lawyer’s own financial, business, property or personal interests,’ unless the conflict is resolved in accordance with [D.C. Rule of Professional Conduct] 1.7(c). Content of social media posts made by attorneys may contain evidence of such conflicts.”

38. Tex. Ctr. Legal Ethics Op. 662 (Aug. 2016); see also Kurt Orzech, Texas Attys Can Use Rivals in Ad Keywords, Ethics Panel Says, LAW360 (Aug. 1, 2016) (discussing the Panel’s decision to allow use of competing attorneys or firms in a lawyer’s online advertising).

3. FURNISHING OF LEGAL ADVICE THROUGH SOCIAL MEDIA

Guideline No. 3.A: Provision of General Information

A lawyer may provide general answers to legal questions asked on social media. A lawyer, however, cannot provide specific legal advice on a social media network because a lawyer’s responsive communications may be found to have created an attorney-client relationship, and legal advice also may impermissibly disclose information protected by the attorney-client privilege.

NYRPC 1.0, 1.4, 1.6, 7.1, 7.3.

Comment: A client and lawyer must knowingly enter into an attorney-client relationship. Informal communications over social media may unintentionally result in a client believing that such a relationship exists. If an attorney-client relationship exists, then ethics rules concerning, among other things, the disclosure over social media of information protected by the attorney-client privilege to individuals other than to the client would apply.

Guideline No. 3.B: Public Solicitation is Prohibited through “Live” Communications

Due to the “live” nature of real-time or interactive computer-accessed communications, which includes, among other things, instant messaging and communications transmitted through a chat room, a lawyer may not “solicit” business from the public through such means.

40. “Computer-accessed communication” as defined by NYRPC 1.0(c) means “any communication made by or on behalf of a lawyer or law firm that is disseminated through the use of a computer or related electronic device, including, but not limited to, web sites, weblogs, search engines, electronic mail, banner advertisements, pop-up and pop-under advertisements, chat rooms, list servers, instant messaging, or other internet presences, and any attachments or links related thereto.” Comment 9 to NYRPC 7.3 advises: “Ordinary email and web sites are not considered to be real-time or interactive communication. Similarly, automated pop-up advertisements on a website that are not a live response are not considered to be real-time or interactive communication. Instant messaging, chat rooms, and other similar types of conversational computer-accessed communication are considered to be real-time or interactive communication.”

41. “Solicitation” as defined by NYRPC 7.3(b) means “any advertisement initiated by or on behalf of a lawyer or law firm that is directed to, or targeted at, a specific recipient or group of recipients, or their family members or legal representatives, the primary purpose of which is the retention of the lawyer or law firm, and a significant motive for which is pecuniary gain. It does not include a proposal or other writing prepared and delivered in response to a specific request of a prospective client.”

If a potential client\textsuperscript{43} initiates a specific request seeking to retain a lawyer during real-time social media communications, a lawyer may respond to such request. However, such response must be sent through non-public means and must be kept confidential, whether the communication is electronic or in some other format.\textsuperscript{44} Emails and attorney communications via a website or over social media platforms, such as Twitter,\textsuperscript{45} may not be considered real-time or interactive communications. This Guideline does not apply if the recipient is a close friend, relative, former client, or existing client.\textsuperscript{46}

NYRPC 1.0, 1.4, 1.6, 1.7, 1.8, 7.1, 7.3.

*Comment:* Answering general questions\textsuperscript{47} on the Internet is analogous to writing for any publication on a legal topic.\textsuperscript{48} “Standing alone, a legal question posted by a member of the public on real-time interactive Internet or social media sites

\textsuperscript{43} Individuals attempting to defraud a lawyer by posing as potential clients are not owed a duty of confidentiality. See \textit{NYCBA, Formal Op. 2015-3} (“An attorney who discovers that he is the target of an Internet-based trust account scam does not have a duty of confidentiality towards the individual attempting to defraud him, and is free to report the individual to law enforcement authorities, because that person does not qualify as a prospective or actual client of the attorney. However, before concluding that an individual is attempting to defraud the attorney and is not owed the duties normally owed to a prospective or actual client, the attorney must exercise reasonable diligence to investigate whether the person is engaged in fraud.”).

\textsuperscript{44} “If a lawyer subject to the D.C. Rules of Professional Conduct engages in chat room communications of sufficient particularity and specificity to give rise to an attorney-client relationship under the substantive law of a state with jurisdiction to regulate the communication, that lawyer must comply with the full array of D.C. Rules governing attorney-client relationships.” D.C. Ethics Op. 316.

\textsuperscript{45} Whether a Twitter or Reddit communication is a “real-time or interactive” computer-accessed communication is dependent on whether the communication becomes akin to a prohibited blog or chat room communication. See \textit{NYSBA, Op. 1009}.

\textsuperscript{46} NYRPC 7.3(a)(1).

\textsuperscript{47} Where “the inquiring attorney has ‘become aware of a potential case, and wants to find plaintiffs,’ and the message the attorney intends to post will be directed to, or intended to be of interest only to, individuals who have experienced the specified problem. If the post referred to a particular incident, it would constitute a solicitation under the Rules, and the attorney would be required to follow the Rules regarding attorney advertising and solicitation, see Rules 7.1 & 7.3. In addition, depending on the nature of the potential case, the inquirer’s post might be subject to the blackout period (i.e., cooling off period) on solicitations relating to ‘a specific incident involving potential claims for personal injury or wrongful death…’” \textit{NYSBA, Op. 1049 (2015)}.

\textsuperscript{48} See \textit{NYSBA, Op. 899}.  

14
cannot be construed as a ‘specific request’ to retain the lawyer.” 49 In responding to questions,50 a lawyer may not provide answers that appear applicable to all apparently similar individual problems because variations in underlying facts might result in a different answer.51

Moreover, a lawyer should be careful in responding to an individual question on social media as it might establish an attorney-client relationship, probably one created without a conflict check, and, if the response over social media is viewed by others beyond the intended recipient, it may disclose privileged or confidential information.52

A lawyer is permitted to accept employment that results from participating in “activities designed to educate the public to recognize legal problems.”53 As such, if a potential client initiates a specific request to retain the lawyer resulting from real-time Internet communication, the lawyer may respond to such request as noted above.54 However, such communications should be sent solely to that potential client. If, however, the requester does not provide his or her personal contact information when seeking to retain the lawyer or law firm, consideration should be given by the lawyer to respond in two steps: first, ask the requester to contact the lawyer directly, not through a real-time communication, but instead by

49. See id.

50. See NYSBA, Op. 1049 (“We further conclude that a communication that merely discussed the client’s legal problem would not constitute advertising either. However, a communication by the lawyer that went on to describe the services of the lawyer or his or her law firm for the purposes of securing retention would constitute “advertising.” In that case, the lawyer would need to comply with Rule 7.1, including the requirements for labeling as “advertising” on the “first page” of the post or in the subject line, retention for one-year (in the case of a computer-accessed communication) and inclusion of the law office address and phone number. See Rule 7.1(f), (h), (k).”).

51. Id.

52. In addition, when “answering general questions on the Internet, specific answers or legal advice can lead to … the unauthorized practice of law in a forum where the lawyer is not licensed.” Paul Ragusa & Stephanie Diehl, Social Media and Legal Ethics—Practical Guidance for Prudent Use, BAKER BOTTS LLP (Nov. 1, 2016).

53. See NYRPC 7.1(f), (h), (k).

54. See NYSBA, Op. 1049 (“When a potential client requests contact by a lawyer, either by contacting a particular lawyer or by broadcasting a more general request to unknown persons who may include lawyers, any ensuing communication by a lawyer that complies with the terms of the invitation was not initiated by the lawyer within the meaning of Rule 7.3(b). Thus, if the potential client invites contact by Twitter or email, the lawyer may respond by Twitter or email. But the lawyer could not respond by telephone, since such contact would not have been initiated by the potential client. See NYSBA, Op. 1014 (2014). If the potential client invites contact by telephone or in person, the lawyer’s response in the manner invited by the potential client would not constitute ‘solicitation.’”).
email, telephone, etc., and second, the lawyer’s actual response should not be made through a real-time communication.\textsuperscript{55}

**Guideline No. 3.C: Retention of Social Media Communications with Clients**

If an attorney utilizes social media to communicate with a client relating to legal representation, the attorney should retain records of those communications, just as she would if the communications were memorialized on paper.

NYRPC 1.1, 1.15.

*Comment:* A lawyer’s file relating to client representation includes both paper and electronic documents. The ABA Model Rules of Professional Conduct defines a “writing” as “a tangible or electronic record of a communication or representation...”\textsuperscript{56} NYRPC 1.0(x), the definition of “writing,” was expanded in late 2016 to specifically include a range of electronic communications.\textsuperscript{57}

The NYRPC “does not explicitly identify the full panoply of documents that a lawyer should retain relating to a representation.”\textsuperscript{58} The only NYRPC provision requiring maintenance of client documents is NYRPC 1.15(i). The NYRPC, however, implicitly imposes on lawyers an obligation to retain documents. For example, NYRPC 1.1 requires that “A lawyer should provide competent representation to a client.” NYRPC 1.1(a) requires “skill, thoroughness and preparation.”

The lawyer must take affirmative steps to preserve those emails and social media communications, which the lawyer believes need to be saved.\textsuperscript{59} However, due to the ephemeral nature of social media communications, “saving” such communications in electronic form may pose technical issues, especially where, under certain circumstances, the entire social media communication may not be saved, may be deleted automatically or after a period of time, or may be deleted

\textsuperscript{55} Id.

\textsuperscript{56} NYRPC 1.0(n), Terminology.

\textsuperscript{57} NYRPC 1.0(x): “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photocopying, photography, audio or video recording, email or other electronic communication or any other form of recorded communication or recorded representation. 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.


\textsuperscript{59} Id.
by the counterparty to the communication without the knowledge of the lawyer.\textsuperscript{60} Casual communications may be deleted without impacting ethical rules.\textsuperscript{61}

\textbf{NYCBA, Formal Op. 2008-1} sets out certain considerations for preserving electronic materials:

As is the case with paper documents, which e-mails and other electronic documents a lawyer has a duty to retain will depend on the facts and circumstances of each representation. Many e-mails generated during a representation are formal, carefully drafted communications intended to transmit information, or other electronic documents, necessary to effectively represent a client, or are otherwise documents that the client may reasonably expect the lawyer to preserve. These e-mails and other electronic documents should be retained. On the other hand, in many representations a lawyer will send or receive casual e-mails that fall well outside the guidelines in [ABCNY Formal Op. 1986-4]. No ethical rule prevents a lawyer from deleting those e-mails.

We also expect that many lawyers may retain e-mails and other electronic documents beyond those required to be retained under [ABCNY Formal Op. 1986-4]. For example, some lawyers and law firms may retain all paper and electronic documents, including e-mails, relating in any way to a representation, as a measure to protect against a malpractice claim. Such a broad approach to document retention may at times be prudent, but it is not required by the Code.\textsuperscript{62}

A lawyer shall not deactivate a social media account, which contains communications with clients, unless those communications have been appropriately preserved.

\textsuperscript{60} \textit{Id.; see also Pennsylvania Bar Assn., Ethics Comm., Formal Op. 2014-300} (the Pennsylvania Bar Assn. has opined that, under the Pennsylvania Rules of Professional Conduct, which are different from the NYRPC, an attorney “should retain records of those communications containing legal advice.”)

\textsuperscript{61} \textit{Id.}

\textsuperscript{62} \textit{NYCBA, Op. 623} opines that, “with respect to documents belonging to the lawyer, a lawyer may destroy all those documents without consultation or notice to the client, (i) except to the extent that the law may otherwise require, and (ii) in the absence of extraordinary circumstances manifesting a client’s clear and present need for such documents.”
4. REVIEW AND USE OF EVIDENCE FROM SOCIAL MEDIA

Guideline No. 4.A: Viewing a Public Portion of a Social Media Website

A lawyer may view the public portion of a person’s social media profile or public posts even if such person is represented by another lawyer.

NYRPC 4.1, 4.2, 4.3, 5.3, 8.4.

*Comment:* A lawyer is ethically permitted to view the public portion of a person’s social media website, profile or posts, whether represented or not, for the purpose of obtaining information about the person, including impeachment material for use in litigation.

This allowance is based, in part, on case law that holds that a person is said to have very little expectation of privacy with respect to their social media content, let alone those that are specifically designated as “public.”

Guideline No. 4.B: Contacting an Unrepresented Party and/or Requesting to View a Restricted Social Media Website

A lawyer may communicate with an unrepresented party and also request permission to view a restricted portion of the party’s social media website or profile. However, the lawyer must use her full name and an accurate profile, and may not create a different or false profile in order to mask her identity. If the unrepresented party asks for additional information from the lawyer in response to the communication or access request, the lawyer must accurately provide the information requested by the person or otherwise cease all further communications and withdraw the request if applicable.

NYRPC 4.1, 4.3, 8.4.

---

63. A lawyer should be aware that certain social media networks may send an automatic message to the person whose account is being viewed which identifies the person viewing the account as well as other information about such person.


65. Romano v. Steelcase Inc., 30 Misc.3d 426 (Sup. Ct. Suffolk Cty. 2010) (“She consented to the fact that her personal information would be shared with others, notwithstanding her privacy setting. Indeed that is the very nature and purpose of these social networking sites else they would cease to exist.”)

66. For example, this may include: (1) sending a “friend” request on Facebook, 2) requesting to be connected to someone on LinkedIn; or 3) following someone on Instagram.
Comment: It is permissible for a lawyer to join a social media network solely for the purpose of obtaining information concerning a witness.67 The New York City Bar Association has opined, however, that a lawyer shall not “friend” an unrepresented individual using any form of “deception.”68

In New York, no “deception” occurs when a lawyer utilizes his or her “real name and profile” to contact an unrepresented person to send a “friend” request to obtain information from that person’s account.69 In New York, the lawyer is not required to initially disclose the reasons for the communication or “friend” request.70

However, other states require that a lawyer’s initial “friend” request must contain additional information to fully apprise the witness of their true identity and intention. For example, the New Hampshire Bar Association, holds that an attorney must “inform the witness of the lawyer’s involvement in the disputed or litigated matter,” the disclosure of the “lawyer by name as a lawyer” and the identification of “the client and the matter in litigation.”71 The Massachusetts and San Diego Bar Associations simply require disclosure of the lawyer’s “affiliation and the purpose for the request.”72 The Philadelphia Bar Association notes that failure to disclose the attorney’s true intention constitutes an impermissible omission of a “highly material fact.”73

In Oregon, there is an opinion that if the person being sought out on social media “asks for additional information to identify [the l]awyer, or if [the l]awyer has some other reason to believe that the person misunderstands her role, [the l]awyer must provide the additional information or withdraw the request.”74

69. Id.
70. See id.
Guideline No. 4.C: Contacting a Represented Party and/or Viewing Restricted Social Media Website

A lawyer shall not contact a represented person or request access to review the restricted portion of the person’s social media profile unless express consent has been furnished by the person’s counsel.

NYRPC 4.1, 4.2.

Comment: It is significant to note that, unlike an unrepresented individual, the ethics rules are different when the person being contacted in order to obtain private social media content is “represented” by a lawyer, and such a communication is categorically prohibited.

The Oregon State Bar Committee has noted that “[a]bsent actual knowledge that the person is represented by counsel, a direct request for access to the person’s non-public personal information is permissible.”75

Caution should be used by a lawyer before deciding to view a potentially private or restricted social media account or profile of a represented person that the lawyer has a “right” to view, such as a professional group where both the lawyer and represented person are members or as a result of being a “friend” of a “friend” of such represented person.

Note that there is an apparent gap in authority with respect to whether a represented party’s receipt of an automatic notification from a social media platform constitutes an impermissible communication with an attorney, as opposed to within the juror context, which has been covered by several jurisdictions.

Nevertheless, in New York, drawing upon those opinions addressing jurors, receipt of an automatic notification can be considered an improper communication with someone who is represented by counsel, particularly where “the attorney is aware that their actions would cause the juror to receive such message or notification.”76

Conversely, ABA, Formal Op. 466 opined that, at least within the juror context, an automatically generated notification does not constitute an impermissible communication since “the ESM service is communicating with the


juror based on a technical feature of the ESM,” and the lawyer is not involved. 77
This view has also been adopted by the DC and Colorado Bar Associations. 78

Guideline No. 4.D: Lawyer’s Use of Agents to Contact a Represented Party

As it relates to viewing a person’s social media account, a lawyer shall not order or
direct an agent to engage in specific conduct, or with knowledge of the specific conduct by
such person, ratify it, where such conduct if engaged in by the lawyer would violate any
ethics rules.

NYRPC 5.3, 8.4.

Comment: This would include, inter alia, a lawyer’s investigator, trial preparation
staff, legal assistant, secretary, or agent 79 and could, as well, apply to the lawyer’s
client. 80

77. See American Bar Ass’n Comm. on Ethics & Prof’l Responsibility, Formal Op. 14-466 (Apr. 24,
2014).

78. See D.C. Bar Ethics Formal Op. 371, Social Media II: Use of Social Media in Providing Legal
Services (Nov. 2016); Colorado Bar Ass’n Ethics Comm., Formal Op. 127 (Nov. 2015).


5. COMMUNICATING WITH CLIENTS

Guideline No. 5.A: Removing Existing Social Media Information

A lawyer may advise a client as to what content may be maintained or made non-public on her social media account, including advising on changing her privacy and/or security settings. A lawyer may also advise a client as to what content may be “taken down” or removed, whether posted by the client or someone else. However, the lawyer must be cognizant of preservation obligations applicable to the client and/or matter, such as a statute, rule, regulation, or common law duty relating to the preservation of information, including legal hold obligations. Unless an appropriate record of the social media content is preserved, a party or nonparty may not delete information from a social media account that is subject to a duty to preserve.

NYRPC 3.1, 3.3, 3.4, 4.1, 4.2, 8.4.

Comment: A lawyer must ensure that potentially relevant information is not destroyed “once a party reasonably anticipates litigation” or where preservation is required by common law, statute, rule, regulation or other requirement. Failure to do so may result in sanctions or other penalties. “[W]here litigation is anticipated, a duty to preserve evidence may arise under substantive law. But provided that such removal does not violate the substantive law regarding the destruction or spoliation of evidence, there is no ethical bar to ‘taking down’ such material from social media publications, or prohibiting a client’s lawyer from advising the client to do so, particularly inasmuch as the substance of the posting is generally preserved in cyberspace or on the user’s computer.” When litigation is not pending or “reasonably anticipated,” a lawyer may more freely advise a client on what to maintain or remove from her social media profile. Nor is there any ethical bar to advising a client to change her privacy or security settings to be more restrictive, whether before or after litigation has commenced.

81. “Content” may, as appropriate, include metadata.
82. Mark A. Berman, Counseling a Client to Change Her Privacy Settings on Her Social Media Account, NEW YORK LEGAL ETHICS REPORTER (Feb. 2015).
85. See Phil. Bar Ass’n, Prof’l Guidance Comm. Op. 2014-5 (noting that, a lawyer “must make reasonable efforts to obtain a photograph, link or other content about which the lawyer is aware if the lawyer knows or reasonably believes it has not been produced by the client.”).
as long as social media is appropriately preserved in the proper format and such is not a violation of law or a court order.\textsuperscript{87}

A lawyer should be aware that the act of deleting electronically stored information does not mean that such information cannot be recovered through the use of forensic technology or other means. Similarly, a post or other data shared with others may have been copied by another user or in other online accounts not controlled by the client.

Guideline No. 5.B: Adding New Social Media Content

A lawyer may advise a client with regard to posting new content on social media, as long as the proposed content is not known to be false by the lawyer. A lawyer also may not “direct or facilitate the client's publishing of false or misleading information that may be relevant to a claim.”\textsuperscript{88}

NYRPC 3.1, 3.3, 3.4, 4.1, 4.2, 8.4.

\textit{Comment:} A lawyer may review what a client plans to publish on social media in advance of posting\textsuperscript{89} and guide the client, including formulating a policy on social media usage. Subject to ethics rules, a lawyer may, for example, counsel the client to publish truthful information favorable to the client; discuss the significance and implications of social media posts (including their content and advisability); review how the posts may be perceived; and discuss how such posts might be used in a litigation, including cross-examination. A lawyer may advise a client that social media content or data that the client considers highly private or personal, even if not shared with other social media users, may be reviewed by opposing parties, judges and others due to court order, compulsory process, government searches, data breach, sharing by others or unethical conduct. A lawyer may advise a client to refrain from or limit social media posts, including during the course of a litigation or investigation.


\textsuperscript{89} A lawyer may consider periodically following or checking her client’s social media activities, especially in matters where posts may be relevant to her client’s claims or defenses. Monitoring a client’s social media posts could provide the lawyer with the opportunity, among other things, to advise on the impact of the client’s posts on existing or future litigation or on their implication(s) for other issues relating to the lawyer’s representation of the client. An attorney may wish to notify a client if he or she plans to closely monitor a client’s social media postings.

Pa. Bar Ass’n Ethics Comm., Formal Op. 2014-300 (2014) (noting that “tracking a client’s activity on social media may be appropriate for an attorney to remain informed about the developments bearing on the client’s legal dispute” and “an attorney can reasonably expect that opposing counsel will monitor a client’s social media account.”).
Guideline No. 5.C: False Social Media Statements

A lawyer is prohibited from proffering, supporting, or using false statements if she learns from a client’s social media posting that a client’s lawsuit involves the assertion of material false factual statements or evidence supporting such a conclusion and if proper inquiry of the client does not negate that conclusion.90

NYRPC 3.1, 3.3, 3.4, 4.1, 8.4.

Comment: A lawyer has an ethical obligation not to “bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous.”91 Frivolous conduct includes the knowing assertion of “material factual statements that are false.”92

Guideline No. 5.D. A Lawyer’s Use of Client-Provided Social Media Information

A lawyer may review a represented person’s non-public social media information provided to the lawyer by her client, as long as the lawyer did not cause or assist the client to: (i) inappropriately obtain non-public information from the represented person; (ii) invite the represented person to take action without the advice of his or her lawyer; or (iii) otherwise overreach with respect to the represented person.

NYRPC 4.2.

Comment: One party may always seek to communicate with another party. Where a “client conceives the idea to communicate with a represented party,” a lawyer is not precluded “from advising the client concerning the substance of the communication” and the “lawyer may freely advise the client so long as the lawyer does not assist the client inappropriately to seek confidential information or invite the nonclient to take action without the advice of counsel or otherwise to overreach the nonclient.”93 New York interprets “overreaching” as prohibiting “the lawyer from converting a communication initiated or conceived by the client into a vehicle for the lawyer to communicate directly with the nonclient.”94

NYRPC Rule 4.2(b) provides that, notwithstanding the prohibition under Rule 4.2(a) that a lawyer shall not “cause another to communicate about the subject of the representation with a party the lawyer knows to be represented,”

91. NYRPC 3.1(a).
92. NYRPC 3.1(b)(3).
94. Id.
a lawyer may cause a client to communicate with a represented person... and may counsel the client with respect to those communications, provided the lawyer gives reasonable advance notice to the represented person’s counsel that such communications will be taking place.

Thus, lawyers need to use caution when communicating with a client about her connecting to or “friending” a represented person and obtaining private information from that represented person’s social media site.

A New Hampshire opinion states that a lawyer’s client may, for instance, send a friend request or request to follow a private Twitter feed of a person, and then provide the information to the lawyer, but the ethical propriety “depends on the extent to which the lawyer directs the client who is sending the [social media] request,” and whether the lawyer has complied with all other ethical obligations.95 In addition, the client’s profile needs to “reasonably reveal[] the client’s identity” to the other person.96

The American Bar Association opines that a “lawyer may give substantial assistance to a client regarding a substantive communication with a represented adversary. That advice could include, for example, the subjects or topics to be addressed, issues to be raised and strategies to be used. Such advice may be given regardless of who – the lawyer or the client – conceives of the idea of having the communication . . . . [T]he lawyer may review, redraft and approve a letter or a set of talking points that the client has drafted and wishes to use in her communications with her represented adversary.”97

**Guideline No. 5.E: Maintaining Client Confidences and Confidential Information**

Subject to the attorney-client privilege rules, a lawyer is prohibited from disclosing client confidences and confidential information relating to the legal representation of a client, unless the client has provided informed consent. Social media activities and a lawyer’s website or blog must comply with these limitations.98

A lawyer should also be aware of potential risks created by social media services, tools or practices that seek to create new user connections by importing contacts or connecting platforms. A lawyer should understand how the service, tool or practice

96. Id.
98. See NYRPC 1.6.
operates before using it and consider whether any activity places client information and confidences at risk.99

Where a client has posted an online review of the lawyer or her services, the lawyer’s response, if any, shall not reveal confidential information relating to the representation of the client. Where a lawyer uses a social media account to communicate with a client or otherwise store client confidences, the lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure or use of, or unauthorized access to, such an account.100

99. D.C. Bar Legal Ethics Comm., Op. 370 (2016) explains one risk of services that import email contacts to generate connections: “For attorneys, these connection services could potentially identify clients or divulge other information that a lawyer might not want an adversary or a member of the judiciary to see or information that the lawyer is obligated to protect from disclosure.”

Similarly, a lawyer’s request to connect to a person who is represented by opposing counsel may be embarrassing or raise questions regarding NYRPC 4.2 (Communication with Persons Represented by Counsel).

100. NYRPC 1.6(c). The New York Rules of Professional Conduct were amended on November 10, 2016 and Rule 1.6(c) was modified to address a lawyer’s use of technology. See Davis, Anthony, Changes to NY RPCs and an Ethics Opinion On Withdrawing for Non-Payment of Fees, NEW YORK LAW JOURNAL (January 9, 2017).

NYSBA Comment 16 to NYRPC 1.6 provides:

Paragraph (c) imposes three related obligations. It requires a lawyer to make reasonable efforts to safeguard confidential information against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are otherwise subject to the lawyer’s supervision. See Rules 1.1, 5.1 and 5.3. Confidential information includes not only information protected by Rule 1.6(a) with respect to current clients but also information protected by Rule 1.9(c) with respect to former clients and information protected by Rule 1.18(b) with respect to prospective clients. Unauthorized access to, or the inadvertent or unauthorized disclosure of, information protected by Rules 1.6, 1.9, or 1.18, does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the unauthorized access or disclosure. Factors to be considered in determining the reasonableness of the lawyer’s efforts include, but are not limited to: (i) the sensitivity of the information; (ii) the likelihood of disclosure if additional safeguards are not employed; (iii) the cost of employing additional safeguards; (iv) the difficulty of implementing the safeguards; and (v) the extent to which the safeguards adversely affect the lawyer’s ability to represent clients (e.g., by making a device or 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 to forgo security measures that would otherwise be required by this Rule. For a lawyer’s duties when sharing information with nonlawyers inside or outside the lawyer’s own firm, see Rule 5.3, Comment [2].
**Comment:** A lawyer is prohibited, absent a recognized exception, from disclosing client confidential information. Additionally, under NYRPC **Rule 1.9(c),** a lawyer is generally prohibited from using or revealing confidential information of a former client. There is, however, a “self-defense” exception to the duty of confidentiality set forth in **Rule 1.6**, which, as to former clients, is incorporated by Rule 1.9(c). Rule 1.6(b)(5)(i) provides that a lawyer “may reveal or use confidential information to the extent that the lawyer reasonably believes necessary … to defend the lawyer or the lawyer’s employees and associates against an accusation of wrongful conduct.”101 NYSBA Ethics Opinion 1032 indicates that the self-defense exception applies to “claims” and “charges” in formal proceedings or a “material threat of a proceeding,” which “typically suggest the beginning of a lawsuit, criminal inquiry, disciplinary complaint, or other procedure that can result in a sanction” but not to a “negative web posting.”102 As such, a lawyer cannot disclose confidential information about a client when responding to a negative post concerning herself on platforms such as Avvo, Yelp or Facebook.103

A lawyer is permitted to respond to online reviews, but such replies must be accurate and truthful and shall not contain confidential information or client confidences. Pennsylvania Bar Association Ethics Committee Opinion 2014-300

Comment 17 further provides:

When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. Paragraph (c) does not ordinarily require that the lawyer use special security measures if the method of communication affords a reasonable expectation of confidentiality. However, a lawyer may be required to take specific steps to safeguard a client’s information to comply with a court order (such as a protective order) or to comply with other law (such as state and federal laws or court rules that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information). For example, a protective order may extend a high level of protection to documents marked “Confidential” or “Confidential – Attorneys’ Eyes Only”; the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) may require a lawyer to take specific precautions with respect to a client’s or adversary’s medical records; and court rules may require a lawyer to block out a client’s Social Security number or a minor’s name when electronically filing papers with the court. The specific requirements of court orders, court rules, and other laws are beyond the scope of these Rules.

101. **N.Y. City Bar Ass'n Comm. on Prof'l Ethics, Op. 1032 (2014).**

102. **N.Y. City Bar Ass'n Comm. on Prof'l Ethics, Op. 1032 (2014).**

103. See **Susan Michmerhuizen, Client reviews: Your Thumbs Down May Come Back Around, AMERICAN BAR ASSOCIATION (Mar. 3, 2015).**
(2014) opined that “[w]hile there are certain circumstances that would allow a lawyer to reveal confidential client information, a negative online client review is not a circumstance that invokes the self-defense exception.”\textsuperscript{104} Pennsylvania Bar Association Ethics Committee Opinion 2014-200 (2014) provides a suggested response for a lawyer replying to negative online reviews: “A lawyer’s duty to keep client confidences has few exceptions and in an abundance of caution I do not feel at liberty to respond in a point-by-point fashion in this forum. Suffice it to say that I do not believe that the post represents a fair and accurate picture of events.”\textsuperscript{105}

If a lawyer chooses to respond to a former client’s online review, a lawyer should consult the relevant definition of “confidential information” as the definition may be quite broad. For instance, pursuant to NYRPC 1.6(a), “confidential information” includes, but is not limited to “information gained during or relating to the representation of a client, whatever its source, that is . . . likely to be embarrassing or detrimental to the client if disclosed.” Similarly, Texas Disciplinary Rule of Professional Conduct 1.05(a) defines “confidential information” as including “…all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.” See also DC Bar Ethics Opinion 370 which states a “confidence” is “information protected by the attorney-client privilege” and a “secret” is “…other information gained in the professional relationship that the client has requested be held inviolate, or the disclosure of which would be embarrassing, or would be likely to be detrimental, to the client.”

Moreover, any response should be limited and tailored to the circumstances. Texas State Bar Ethics Opinion 662. See also DC Bar Ethics Opinion 370 (even self-defense exception for “specific” allegations by client against lawyer only allows disclosures no greater than the lawyer reasonably believes are necessary).


6. **RESEARCHING JURORS AND REPORTING JUROR MISCONDUCT**

**Guideline No. 6.A: Lawyers May Conduct Social Media Research**

A lawyer may research a prospective or sitting juror’s public social media profile, and posts.

NYRPC 3.5, 4.1, 5.3, 8.4.

*Comment:* “Just as the internet and social media appear to facilitate juror misconduct, the same tools have expanded an attorney’s ability to conduct research on potential and sitting jurors, and clients now often expect that attorneys will conduct such research. Indeed, standards of competence and diligence may require doing everything reasonably possible to learn about the jurors who will sit in judgment on a case.”

At this juncture, it is “not only permissible for trial counsel to conduct Internet research on prospective jurors, but [] it may even be expected.”

The ABA issued *Formal Opinion 466* noting that “[u]nless limited by law or court order, a lawyer may review a juror’s or potential juror’s Internet presence, which may include postings by the juror or potential juror in advance of and during a trial.” There is a strong public interest in identifying jurors who might be tainted by improper bias or prejudice.” However, Opinion 466 does not address “whether the standard of care for competent lawyer performance requires using Internet research to locate information about jurors.”


109. Id.

110. Id.
Guideline No. 6.B: A Juror’s Social Media Profile May Be Viewed as Long as There Is No Communication with the Juror

A lawyer may view the social media profile of a prospective juror or sitting juror provided that there is no communication (whether initiated by the lawyer, her agent or automatically generated by the social media network) with the juror.111

NYRPC 3.5, 4.1, 5.3, 8.4.

Comment: Lawyers need “always use caution when conducting [jury] research” to ensure that no communication with the prospective or sitting jury takes place.112

“Without express authorization from the court, any form of communication with a prospective or sitting juror during the course of a legal proceeding would be an improper communication.”113 For example, ABA, Formal Op. 466 opines that it would be a prohibited ex parte communication for a lawyer, or the lawyer’s agent, to send an “access request” to view the private portion of a juror’s or potential juror’s Internet presence.114 This type of communication would be “akin to driving down the juror’s street, stopping the car, getting out, and asking the juror for permission to look inside the juror’s house because the lawyer cannot see enough when just driving past.”115

NYCLA, Formal Op. 743 and NYCBA, Formal Op. 2012-2 have opined that even inadvertent contact with a prospective juror or sitting juror caused by an automatic notice generated by a social media network may be considered a technical ethical violation. New York ethics opinions also draw a distinction between public and private juror information.116 They opine that viewing the public portion of a social media profile is ethical as long as there is no automatic


115. Id.

116. Id.
message sent to the account owner of such viewing (assuming other ethics rules are not implicated by such viewing).\textsuperscript{117}

In contrast to the above New York opinions, \textit{ABA, Formal Op. 466} opined that “[t]he fact that a juror or a potential juror may become aware that a lawyer is reviewing his Internet presence when a network setting notifies the juror of such does not constitute a communication from the lawyer in violation” of the Rules of Professional Conduct (emphasis added).\textsuperscript{118} The ABA held that, as a general rule, an automatic notification represents a communication between the juror and a given ESM platform, as opposed to an impermissible communication between the lawyer and the attorney. The Colorado Bar Association and DC Bar have since adopted the ABA’s position, i.e., “such notification does not constitute a communication between the lawyer or prospective juror” as opposed to a “friend” request.\textsuperscript{119}

According to \textit{ABA, Formal Op. 466}, this type of notice is “akin to a neighbor’s recognizing a lawyer’s car driving down the juror’s street and telling the juror that the lawyer had been seen driving down the street.”\textsuperscript{120} Yet, this view has been criticized on the basis of the possible impact such communication might have on a juror’s state of mind and has been deemed more analogous to the improper communication where, for instance, “[a] lawyer purposefully drives down a juror’s street, observes the juror’s property (and perhaps the juror herself), and has a sign that says he is a lawyer and is engaged in researching the juror for the pending trial knowing that a neighbor will advise the juror of this drive-by and the signage.”\textsuperscript{121}

Under \textit{ABA, Formal Op. 466}, a lawyer must: (1) “be aware of these automatic, subscriber-notification procedures” and (2) make sure “that their review is purposeful and not crafted to embarrass, delay, or burden the juror or the

\textsuperscript{117} If a lawyer logs into LinkedIn and clicks on a link to a LinkedIn profile of a juror, an automatic message may be sent by LinkedIn to the juror whose profile was viewed advising of the identity of the LinkedIn subscriber who viewed the juror’s profile. In order for that reviewer’s profile not to be identified through LinkedIn, that person must change his or her settings so that he or she is anonymous or, alternatively, be fully logged out of his or her LinkedIn account.

\textsuperscript{118} See \textit{ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 14-466 (2014)}.


\textsuperscript{120} \textit{ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 14-466 (2014)}; see also \textit{Pa. Bar Ass’n Ethics Comm., Formal Op. 2014-300 (2014)} (“[t]here is no ex parte communications if the social networking website independently notifies users when the page has been viewed.”).

\textsuperscript{121} See \textit{Mark A. Berman, Ignatius A. Grande, & Ronald J. Hedges, Why American Bar Association Opinion on Jurors and Social Media Falls Short, NEW YORK LAW JOURNAL (May 5, 2014)}.
Moreover, ABA, Formal Op. 466 suggests that “judges should consider advising jurors during the orientation process that their backgrounds will be of interest to the litigants and that the lawyers in the case may investigate their backgrounds,” including a juror’s or potential juror’s social media presence.\textsuperscript{123}

New York guidance similarly holds that when reviewing social media to perform juror research, a lawyer needs to perform such research in a way that does not leave any “footprint” or notify the juror that the lawyer or her agent has been viewing the juror’s social media profile.\textsuperscript{124}

The New York opinions cited above draw a distinction between public and private juror information.\textsuperscript{125} They opine that viewing the public portion of a social media profile is ethical as long as there is no notice sent to the account holder indicating that a lawyer or her law firm viewed the juror’s profile and assuming other ethics rules are not implicated. However, such opinions have not taken a definitive position that such unintended automatic contact is subject to discipline.

The American Bar Association and New York opinions, however, have not directly addressed whether a lawyer may non-deceptively view a social media account that from a prospective or sitting juror’s view is putatively private, which the lawyer has a right to view, such as an alumni social network where both the lawyer and juror are members or whether access can be obtained, for instance, by being a “friend” of a “friend” of a juror on Facebook.

\textbf{Guideline No. 6.C: Deceit Shall Not Be Used to View a Juror’s Social Media}

A lawyer may not make misrepresentations or engage in deceit in order to be able to view the social media profile of a prospective juror or sitting juror, nor may a lawyer direct others to do so.

NYRPC 3.5, 4.1, 5.3, 8.4.

\textit{Comment:} An “attorney must not use deception—such as pretending to be someone else—to gain access to information about a juror that would otherwise be unavailable.”\textsuperscript{126}

\begin{enumerate}
  \item \textsuperscript{122} \textit{Id.}
  \item \textsuperscript{123} \textit{Id.}
  \item \textsuperscript{125} \textit{Id.}
  \item \textsuperscript{126} See \textit{N.Y. City Bar Ass'n Comm. on Prof'l Ethics, Formal Op. 2012-2 (2012).}
\end{enumerate}
“Subordinate lawyers and non-lawyers performing services for the lawyer must be instructed that they are prohibited from using deception to gain access” to portions of social media accounts not otherwise accessible to the lawyer.127

**Guideline No. 6.D: Juror Contact During Trial**

After a juror has been sworn in and throughout the trial, a lawyer may view or monitor the social media profile and posts of a juror provided that there is no communication (whether initiated by the lawyer, her agent or automatically generated by the social media network) with the juror.

NYRPC 3.5, 4.1, 5.3, 8.4.

*Comment:* The concerns and issues identified in the comments to Guideline No. 6.B are also applicable during the evidentiary and deliberative phases of a trial.

Yet, these later litigation phases present additional issues, such as a lawyer wishing to monitor juror social media profiles or posts in order to determine whether a juror is failing to follow court instructions or engaging in other improper behavior. However, the risks posed at this stage of litigation are greater than during the jury selection process and could result in a mistrial.128

While an inadvertent communication with a venire member may result in an embarrassing revelation to a court and a disqualified panelist, a communication with a juror during trial can cause a mistrial. The Committee therefore re-emphasizes that it is the attorney’s duty to understand the functionality of any social media service she chooses to utilize and to act with the utmost caution.129

ABA, Formal Op. 466 permits passive review of juror social media postings, in which an automated response is sent to the juror, of a reviewer’s Internet “presence,” even during trial absent court instructions prohibiting such conduct.130

In one New York case, the review by a lawyer of a juror’s LinkedIn profile during a trial almost led to a mistrial. During the trial, a juror became aware that an attorney from a firm representing one of the parties had looked at the juror’s LinkedIn profile. The juror brought this to the attention of the court stating “the defense was checking on me on social media” and also asserted, “I feel intimidated and don’t feel I can be


128. Rather than risk inadvertent contact with a juror, a lawyer wanting to monitor juror social media behavior might consider seeking a court order clarifying what social media may be accessed.


objective.”131 This case demonstrates that a lawyer must take caution in conducting social media research of a juror because even inadvertent communications with a juror presents risks.132

It might be appropriate for counsel to ask the court to advise both prospective and sitting jurors that their social media activity may be researched by attorneys representing the parties. Such instruction might include a statement that it is not inappropriate for an attorney to view jurors’ public social media. As noted in ABA, Formal Op. 466, “[d]iscussion by the trial judge of the likely practice of trial lawyers reviewing juror ESM during the jury orientation process will dispel any juror misperception that a lawyer is acting improperly merely by viewing what the juror has revealed to all others on the same network.”133

Guideline No. 6.E: Juror Misconduct

In the event that a lawyer learns of possible juror misconduct, whether as a result of reviewing a sitting juror’s social media profile or posts, or otherwise, she must promptly bring it to the court’s attention.134 NYRPC 3.5, 8.4.

Comments: An attorney faced with potential juror misconduct is advised to review the ethics opinions issued by her controlling jurisdiction, as the extent of the duty to report juror misconduct varies among jurisdictions. For example, ABA, Formal Op. 466 pertains only to criminal or fraudulent conduct by a juror, rather than the broader concept of improper conduct. Opinion 466 requires a lawyer to take remedial steps, “including, if necessary, informing the tribunal when the lawyer discovers that a juror has engaged in criminal or fraudulent conduct related to the proceeding.”135

New York, however, provides that “a lawyer shall reveal promptly to the court improper conduct by a member of the venire or a juror, or by another toward a member of the venire or a juror or a member of her family of which the lawyer

131. See Richard Vanderford, LinkedIn Search Nearly Upends BofA Mortgage Fraud Trial, LAW360 (Sept. 27, 2013).
132. Id.
has knowledge."136 If a lawyer learns of “juror misconduct” due to social media research, he or she “must” promptly notify the court.137 “Attorneys must use their best judgment and good faith in determining whether a juror has acted improperly; the attorney cannot consider whether the juror’s improper conduct benefits the attorney.”138

The DC Bar opines that the determination of “[w]hether and how such misconduct must or should be disclosed is beyond the scope” of precise ethical guidance, except in instances “clearly establishing that a fraud has been perpetrated upon the tribunal.”139

136. NYRPC 3.5(d).


USING SOCIAL MEDIA TO COMMUNICATE WITH A JUDICIAL OFFICER

A lawyer shall not communicate with a judicial officer over social media if the lawyer intends to influence the judicial officer in the performance of his or her official duties.

NYRPC 3.5, 8.2 and 8.4.

Comment: There are few New York ethical opinions addressing lawyers’ communication with judicial officers over social media, and ethical bodies throughout the country are not consistent when opining on this issue. However, lawyers should consider that any such communication can be problematic because the “intent” of such communication by a lawyer will be judged under a subjective standard, including whether reposting a judge’s posts would be improper.

A lawyer may connect or communicate with a judicial officer on “social media websites provided the purpose is not to influence the judge, and reasonable efforts are taken to ensure that there is no ex parte or other prohibited communication,”140 which is consistent with NYRPC 3.5(a)(1) which forbids a lawyer from “seek[ing] to or caus[ing] another person to influence a judge, official or employee of a tribunal.”141

It should be noted that New York Advisory Opinion 08-176 (Jan. 29, 2009) provides that a judge who otherwise complies with the Rules Governing Judicial Conduct “may join and make use of an Internet-based social network. A judge choosing to do so should exercise an appropriate degree of discretion in how he/she uses the social network and should stay abreast of the features of any such service he/she uses as new developments may impact his/her duties under the Rules.”142 New York Advisory Committee on Judicial Ethics Opinion 08-176 further opines that:

[A] judge also should be mindful of the appearance created when he/she establishes a connection with an attorney or anyone else appearing in the judge’s court through a social network. In some ways, this is no different from adding the person’s contact information into the judge’s Rolodex or address book or speaking to them in a public setting. But, the public nature of such a link (i.e., other users can normally see the judge’s friends or connections) and the increased access that the person would have to any personal information the judge chooses to post on his/her own profile page establish, at least, the appearance of a stronger

141. NYRPC 3.5(a)(1).
bond. A judge must, therefore, consider whether any such online connections, alone or in combination with other facts, rise to the level of a “close social relationship” requiring disclosure and/or recusal.

See New York Advisory Committee on Judicial Ethics Opinion 13-39 (May 28, 2013) (“the mere status of being a ‘Facebook friend,’ without more, is an insufficient basis to require recusal. Nor does the committee believe that a judge's impartiality may reasonably be questioned (see 22 NYCRR 100.3[E][1]) or that there is an appearance of impropriety (see 22 NYCRR 100.2[A]) based solely on having previously ‘friended’ certain individuals who are now involved in some manner in a pending action.”).
APPENDIX – Social Media Definitions

This appendix contains a collection of popular social technologies and terminology, both general and platform-specific, and is designed for attorneys seeking a basic understanding of the social media landscape.

A. Social Technologies

Facebook: an all-purpose platform that connects users with friends, family, and businesses from all over the world and enables them to post, share, and engage with a variety of content such as photos and status updates. Founded in 2004, the site now has in excess of 1.5 billion active monthly users.

Instagram: a visually-focused platform that allows users to post photos and videos. Created in 2010, and later purchased by Facebook, it has approximately 500 million active monthly users.

LinkedIn: an employment-based networking platform which focuses on engagement with individuals in their respective professional capacities. Launched in 2002, it now boasts roughly 100 million active monthly users.

Periscope: a video-streaming mobile application that allows users to broadcast live video. Created in 2014, and purchased by Twitter shortly thereafter, it has in excess of 10 million active monthly users.

Pinterest: a platform that essentially functions as a social scrapbook, allowing users to save and collect links to share with other users. Started in 2010, it has in excess of 100 million active monthly users, majority of whom are female.

Reddit: a social news and entertainment website where all content is user-submitted and the popularity of each post is voted upon by the user base itself. Created in 2005, it has more than 240 million active monthly visitors.
Snapchat: an image messaging application that allows users to send and receive photos and videos known as "snaps," which are hidden from the recipients once the time limit expires. Officially released in September 2011, it has in excess of 200 million active monthly users.

Tumblr: a microblogging platform that allows users to post text, images, video, audio, links, and quotes to their blogs. It was created in 2007 and has more than 500 million active monthly users.

Twitter: a real-time social network that allows users to share updates that are limited to 140 characters. Founded in 2006, it has more than 315 million active monthly users.

Venmo: a peer-to-peer payment system where users send money from their bank or credit/debit card to another member. Introduced in 2009, and acquired by PayPal in 2013, it handles approximately 10 billion dollars of social transactions per year.

Waze: a social-based GPS platform that is based upon crowd sourcing of events such as accidents and traffic jams from its user base. Founded in 2008, and purchased by Google in 2013, it has 50 million active users.

WhatsApp: a cross-platform instant messaging service that allows users to exchange text, images, video, and audio messages for free. Launched in January 2010, and acquired by Facebook in 2014, it now has more than 1 billion users.

B. Social Terminologies

Add: process on Snapchat of subscribing to another user’s account in order to receive access to their content. This is a “unilateral connection” that does not provide dual-access to both users’ content or require the second user to expressly approve or deny the first user’s access.
Automatic Notification: an automatic message sent by the social media platform to the person whose account is being viewed by another. This message may indicate the identity of the person viewing the account as well as other information about such person.

Bilateral Connection: a two-way connection between users. That is, for one user to connect with a second, the second user must expressly accept or deny the first user’s access.

Block: refers to a user’s option to restrict another’s ability to interact with the user and/or the user’s content on a given platform.

Connections: term used on LinkedIn to describe the relationship between two users, indicated by varying degrees.

- **1st Degree Connection**: those who have bilaterally agreed to share and receive exclusive content from one another beyond those available to the LinkedIn community at large.

- **2nd Degree Connection**: those who share a mutual 1st degree connection but are not themselves directly connected.

- **3rd Degree Connection**: those who share a mutual 2nd degree connection but are not themselves directly connected.

Cover Photo: a large, horizontal image at the top of a user’s Facebook profile. Similar to a profile photo, a cover photo is public.

Direct Message: private conversations that occur on Twitter. Both parties must be following one another in order to send or receive messages.

Facebook Live: a feature on Facebook that allows users to stream live video and interact with viewers in real-time.

Fan: a user who follows and receives updates from a particular Facebook page. The user must “like” the page in order to become a fan of it.

Favorite: an indication that someone “likes” a user’s post on Twitter, given by clicking the star icon.

Filter: an aesthetic overlay that can be applied to a photo or video.

Follow: process of subscribing to another user in order to receive access to their content. This is a unilateral connection as it does not provide access to one’s own content.

Follower: refers to a user who subscribes to another user’s account and thereby receives access to the latter’s content.

Following: refers to those accounts that a particular user has subscribed to in order to view and/or receive updates about the content of those accounts.
**Friend**: refers to those users on Facebook who bilaterally agreed to provide access to each other’s account beyond those privileges afforded to the Facebook community at large. “Friend” may also create a publicly viewable identification of the relationship between the two users. “Friending” is the term used by Facebook, but other social media networks use analogous concepts such as “Follower” on Twitter or “Connections” on LinkedIn.

**Friending**: The process through which the member of a social media network designates another person as a “friend” in response to a request to access Restricted Information. “Friending” may enable a member’s “friends” to view the member’s restricted content.

**Geofilter**: a type of Snapchat filter that is specific to a certain location or event and is only available to users within a certain proximity to said location or event.

**Handle**: a unique name used to refer to a user’s account on a given platform.

**Hashtag**: mechanism used to group posts under the same topic by using a specific word preceded by the # symbol.

**Home Page**: section of Instagram users’ accounts where they can see all the latest updates from those who they are following.

**Lenses**: used on Snapchat to allow users to add animated masks to their postings and stories.

**Like**: an understood expression of support for content. The amount of likes received is generally tied to the popularity of a given post.

**News Feed**: section of Facebook users’ accounts where they can see all the latest updates from those accounts which they are subscribed to, e.g., their friends.

**Notification**: a message sent by a given platform to a user to indicate the presence of new social media activity.

**Pinboard**: the term used on Pinterest for a collection of “pins” that can be organized by any theme of a user’s choosing.

**Posting or Post**: Uploading content to a social media network. A post contains information provided by the person, and specific social media networks may use their own term equivalent to a post (e.g., “Tweets” on Twitter).

**Privacy Settings**: allow a user to determine what content other users are able to view and who is able to contact them.

**Private**: state of a social media account (or a particular post) that, because of heightened privacy settings, is hidden from the general public.

**Profile**: Accessible information about a specific social media member. Some social media networks restrict access to members while other networks permit a member to restrict, in varying degrees, a person’s ability to view specified aspects of a member’s account or profile. A profile...
contains, among other things, biographical and personal information about the member. Depending on the social media network, a profile may include information provided by the member, other members of the social media network, the social media network, or third-party databases.

**Public**: Information available to anyone viewing a social media network without the need for permission from the person whose account is being viewed. Public information includes content available to all members of a social media network and content that is accessible to non-members.

**Repin**: on Pinterest, where a user saves another’s pin to their own board. Similar to a “retweet” on Twitter.

**Restricted ("private")**: Information that is not available to a person viewing a social media account because an existing on-line relationship between the account holder and the person seeking to view it is lacking (whether directly, e.g., a direct Facebook “friend,” or indirectly, e.g., a Facebook “friend of a friend”). Note that content intended to be “restricted” may be “public” through user error in seeking to protect such content, through re-posting by another member of that social media network, or as a result of how the content is made available by the social media network or due to technological change.

**Retweet**: a Twitter user sharing another’s “tweet” with their own followers.

**Snap**: the term used to describe an image posted to the Snapchat platform.

**Social Media (also called a social network)**: An Internet-based service allowing people to share content and respond to postings by others. Social media may be viewed via websites, mobile or desktop applications, text messaging or other electronic means.

**Social Network**: online space consisting of those who personally know one another or otherwise have agreed to provide them with access to their content.

**Social Profile**: a personal page within a social network that generally displays posts from that person as well as the person’s interests, education, and employment, and identifies those accounts that have access to their content.

**Status**: the term for a user posting to the user’s own page which is simultaneously published on the home page of a particular site, e.g., Facebook’s News Feed.

**Story**: the term used on Snapchat and Instagram for a designated string of images or videos that only are accessible for a period of 24 hours.

**Subreddit**: a smaller sub-category within Reddit that is dedicated to a specific topic or theme. These are defined by the symbol “/r/”.

**Tag**: a keyword added to a social media post with the original purpose of categorizing related content. A tag can also refer to the act of tagging someone in a post, which creates a link to that person’s social media profile and associates the person with the content.
**Timeline**: section of Twitter users' accounts where they can see all the latest updates from those whom they are following.

**Tweet**: the term for a user’s post on Twitter that can contain up to 140 characters of text, as well as photos, videos, and links.

**Unfollow**: the action of unsubscribing from receiving updates from another user.

**Unfriending**: the action of terminating access privileges as and between two users.

**Unilateral connection**: a one-way connection between users. That is, a user may connect with a second without the second user connecting with the first or requiring the second to expressly approve or deny the first’s request.

**Verified**: this refers to a social media account that a platform has confirmed to be authentic. This is indicated by a blue checkmark and is generally reserved for brands and public figures as a way of preventing fraud and protecting the integrity of the person or company behind the account.

**Views**: this simply refers to the amount of people who have watched a certain video or story.

**Wall**: the space on a Facebook profile or fan page where users can share posts, photos and links.
**Formal Opinion 2012-2:**

**JURY RESEARCH AND SOCIAL MEDIA**

**TOPIC:** Jury Research and Social Media

**DIGEST:** Attorneys may use social media websites for juror research as long as no communication occurs between the lawyer and the juror as a result of the research. Attorneys may not research jurors if the result of the research is that the juror will receive a communication. If an attorney unknowingly or inadvertently causes a communication with a juror, such conduct may run afoul of the Rules of Professional Conduct. The attorney must not use deception to gain access to a juror’s website or to obtain information, and third parties working for the benefit of or on behalf of an attorney must comport with all the same restrictions as the attorney. Should a lawyer learn of juror misconduct through otherwise permissible research of a juror’s social media activities, the lawyer must reveal the improper conduct to the court.

**RULES:** 3.5(a)(4); 3.5(a)(5); 3.5(d); 8.4

**QUESTION:** What ethical restrictions, if any, apply to an attorney’s use of social media websites to research potential or sitting jurors?

**OPINION**

I. **Introduction**

*Ex parte* attorney communication with prospective jurors and members of a sitting jury has long been prohibited by state rules of professional conduct (*see* American Bar Association Formal Opinion 319 (“ABA 319”)), and attorneys have long sought ways to gather information about potential jurors during voir dire (and perhaps during trial) within these proscribed bounds. However, as the internet and social media have changed the ways in which we all communicate, conducting juror research while complying with the rule prohibiting juror communication has become more complicated.

In addition, the internet appears to have increased the opportunity for juror misconduct, and attorneys are responding by researching not only members of the venire but sitting jurors as well. Juror misconduct over the internet is problematic and has even led to mistrials. Jurors have begun to use social media services as a platform to communicate about a trial, during the trial (*see* WSJ Law Blog (March 12, 2012), [http://blogs.wsj.com/law/2012/03/12/jury-files-the-temptation-of-twitter/](http://blogs.wsj.com/law/2012/03/12/jury-files-the-temptation-of-twitter/), and jurors also turn to the internet to conduct their own out of court research. For example, the Vermont Supreme Court recently overturned a child sexual assault conviction because a juror conducted his own research on the cultural significance of the alleged crime in Somali Bantu culture. *State v. Abdi*, No. 2012-255, 2012 WL 231555 (Vt. Jan. 26, 2012). In a case in Arkansas, a murder conviction was overturned because a juror tweeted during the trial, and in a Maryland corruption trial in 2009, jurors used Facebook
to discuss their views of the case before deliberations.  (*Juror’s Tweets Upend Trials*, Wall Street Journal, March 2, 2012.) Courts have responded in various ways to this problem. Some judges have held jurors in contempt or declared mistrials (see *id.* and other courts now include jury instructions on juror use of the internet. (*See* New York Pattern Jury Instructions, Section III, *infra.*). However, 79% of judges who responded to a Federal Judicial Center survey admitted that “they had no way of knowing whether jurors had violated a social-media ban.” (*Juror’s Tweets, supra.*). In this context, attorneys have also taken it upon themselves to monitor jurors throughout a trial.

Just as the internet and social media appear to facilitate juror misconduct, the same tools have expanded an attorney”s ability to conduct research on potential and sitting jurors, and clients now often expect that attorneys will conduct such research. Indeed, standards of competence and diligence may require doing everything reasonably possible to learn about the jurors who will sit in judgment on a case. However, social media services and websites can blur the line between independent, private research and interactive, interpersonal “communication.” Currently, there are no clear rules for conscientious attorneys to follow in order to both diligently represent their clients and to abide by applicable ethical obligations. This opinion applies the New York Rules of Professional Conduct (the “Rules”), specifically Rule 3.5, to juror research in the internet context, and particularly to research using social networking services and websites.¹

The Committee believes that the principal interpretive issue is what constitutes a “communication” under Rule 3.5. We conclude that if a juror were to (i) receive a “friend” request (or similar invitation to share information on a social network site) as a result of an attorney”s research, or (ii) otherwise to learn of the attorney”s viewing or attempted viewing of the juror”s pages, posts, or comments, that *would* constitute a prohibited communication if the attorney was aware that her actions would cause the juror to receive such message or notification. We further conclude that the same attempts to research the juror *might* constitute a prohibited communication even if inadvertent or unintended. In addition, the attorney must not use deception—such as pretending to be someone else—to gain access to information about a juror that would otherwise be unavailable. Third parties working for the benefit of or on behalf of an attorney must comport with these same restrictions (as it is always unethical pursuant to Rule 8.4 for an attorney to attempt to avoid the Rule by having a non-lawyer do what she cannot). Finally, if a lawyer learns of juror misconduct through a juror”s social media activities, the lawyer must promptly reveal the improper conduct to the court.

¹ Rule 3.5(a)(4) states: “a lawyer shall not . . . (4) communicate or cause another to communicate with a member of the jury venire from which the jury will be selected for the trial of a case or, during the trial of a case, with any member of the jury unless authorized to do so by law or court order.”
II. Analysis Of Ethical Issues Relevant To Juror Research

A. Prior Authority Regarding An Attorney’s Ability To Conduct Juror Research Over Social Networking Websites

Prior ethics and judicial opinions provide some guidance as to what is permitted and prohibited in social media juror research. First, it should be noted that lawyers have long tried to learn as much as possible about potential jurors using various methods of information gathering permitted by courts, including checking and verifying voir dire answers. Lawyers have even been chastised for not conducting such research on potential jurors. For example, in a recent Missouri case, a juror failed to disclose her prior litigation history in response to a voir dire question. After a verdict was rendered, plaintiff’s counsel investigated the juror’s civil litigation history using Missouri’s automated case record service and found that the juror had failed to disclose that she was previously a defendant in several debt collection cases and a personal injury action.2 Although the court upheld plaintiff’s request for a new trial based on juror nondisclosure, the court noted that “in light of advances in technology allowing greater access to information that can inform a trial court about the past litigation history of venire members, it is appropriate to place a greater burden on the parties to bring such matters to the court’s attention at an earlier stage.” Johnson v. McCullough, 306 S.W.3d 551, 558-59 (Mo. 2010). The court also stated that “litigants should endeavor to prevent retrials by completing an early investigation.” Id. at 559.

Similarly, the Superior Court of New Jersey recently held that a trial judge “acted unreasonably” by preventing plaintiff’s counsel from using the internet to research potential jurors during voir dire. During jury selection in a medical malpractice case, plaintiff’s counsel began using a laptop computer to obtain information on prospective jurors. Defense counsel objected, and the trial judge held that plaintiff’s attorney could not use her laptop during jury selection because she gave no notice of her intent to conduct internet research during selection. Although the Superior Court found that the trial court’s ruling was not prejudicial, the Superior Court stated that “there was no suggestion that counsel’s use of the computer was in any way disruptive. That he had the foresight to bring his laptop computer to court, and defense counsel did not, simply cannot serve as a basis for judicial intervention in the name of „fairness” or maintaining „a level playing field.” The „playing field” was, in fact, already „level” because internet access was open to both counsel.” Carino v. Muenzen, A-5491-08T1, 2010 N.J. Super. Unpub. LEXIS 2154, at *27 (N.J. Sup. Ct. App. Div. Aug. 30, 2010).3

2 Missouri Rule of Professional Conduct 3.5 states: “A lawyer shall not: (a) seek to influence a judge, juror, prospective juror, or other official by means prohibited by law; (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order.”

3 The Committee also notes that the United States Attorney for the District of Maryland recently requested that a court prohibit attorneys for all parties in a criminal case from conducting juror research using social media, arguing that “if the parties were permitted to conduct additional research on the prospective jurors by using social media or any other outside sources prior to the
Other recent ethics opinions have also generally discussed attorney research in the social media context. For example, San Diego County Bar Legal Ethics Opinion 2011-2 (“SDCBA 2011-2”) examined whether an attorney can send a “friend request” to a represented party. SDCBA 2011-2 found that because an attorney must make a decision to “friend” a party, even if the “friend request [is] nominally generated by Facebook and not the attorney, [the request] is at least an indirect communication” and is therefore prohibited by the rule against ex parte communications with represented parties. In addition, the New York State Bar Association (“NYSBA”) found that obtaining information from an adverse party’s social networking personal webpage, which is accessible to all website users, “is similar to obtaining information that is available in publicly accessible online or print media, or through a subscription research service as Niexi or Factiva and that is plainly permitted.” (NYSBA Opinion 843 at 2) (emphasis added).

And most recently, the New York County Lawyers’ Association (“NYCLA”) published a formal opinion on the ethics of conducting juror research using social media. NYCLA Formal Opinion 743 (“NYCLA 743”) examined whether a lawyer may conduct juror research during voir dire and trial using Twitter, Facebook and other similar social networking sites. NYCLA 743 found that it is “proper and ethical under Rule 3.5 for a lawyer to undertake a pretrial search of a prospective juror’s social networking site, provided there is no contact or communication with the prospective juror and the lawyer does not seek to „friend” jurors, subscribe to their Twitter accounts, send jurors tweets or otherwise contact them. During the evidentiary or deliberation phases of a trial, a lawyer may visit the publicly available Twitter, Facebook or other social networking site of a juror but must not „friend” the juror, email, send tweets or otherwise communicate in any way with the juror or act in any way by which the juror becomes aware of the monitoring.” (NYCLA 743 at 4.) The opinion further noted the importance of reporting to the court any juror misconduct uncovered by such research and found that an attorney must notify the court of any impropriety “before taking any further significant action in the case.” Id. NYCLA concluded that attorneys cannot use knowledge of juror misconduct to their advantage but rather must notify the court.

As set forth below, we largely agree with our colleagues at NYCLA. However, despite the guidance of the opinions discussed above, the question at the core of applying Rule 3.5 to social media—what constitutes a communication—has not been specifically addressed, and the Committee therefore analyzes this question below.

in court voir dire, the Court’s supervisory control over the jury selection process would, as a practical matter, be obliterated.” (Aug. 30, 2011 letter from R. Rosenstein to Hon. Richard Bennet.) The Committee is unable to determine the court’s ruling from the public file.

4 California Rule of Profession Conduct 2-100 states, in part: “(A) While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer.”
B. An Attorney May Conduct Juror Research Using Social Media Services And Websites But Cannot Engage In Communication With A Juror

1. Discussion of Features of Various Potential Research Websites

Given the popularity and widespread usage of social media services, other websites and general search engines, it has become common for lawyers to use the internet as a tool to research members of the jury venire in preparation for jury selection as well as to monitor jurors throughout the trial. Whether research conducted through a particular service will constitute a prohibited communication under the Rules may depend in part on, among other things, the technology, privacy settings and mechanics of each service.

The use of search engines for research is already ubiquitous. As social media services have grown in popularity, they have become additional sources to research potential jurors. As we discuss below, the central question an attorney must answer before engaging in jury research on a particular site or using a particular service is whether her actions will cause the juror to learn of the research. However, the functionality, policies and features of social media services change often, and any description of a particular website may well become obsolete quickly. Rather than attempt to catalog all existing social media services and their ever-changing offerings, policies and limitations, the Committee adopts a functional definition.\(^5\)

We understand “social media” to be services or websites people join voluntarily in order to interact, communicate, or stay in touch with a group of users, sometimes called a “network.” Most such services allow users to create personal profiles, and some allow users to post pictures and messages about their daily lives. Professional networking sites have also become popular. The amount of information that users can view about each other depends on the particular service and also each user’s chosen privacy settings. The information the service communicates or makes available to visitors as well as members also varies. Indeed, some services may automatically notify a user when her profile has been viewed, while others provide notification only if another user initiates an interaction. Because of the differences from service to service and the high rate of change, the Committee believes that it is an attorney’s duty to research and understand the properties of the service or website she wishes to use for jury research in order to avoid inadvertent communications.

2. What Constitutes a “Communication”?\(^5\)

Any research conducted by an attorney into a juror or member of the venire’s background or behavior is governed in part by Rule 3.5(a)(4), which states: “a lawyer shall not . . . (4)

---

\(^5\) As of the date of this writing, May 2012, three of the most common social media services are Facebook, LinkedIn and Twitter.
communicate or cause another to communicate with a member of the jury venire from which the jury will be selected for the trial of a case or, during the trial of a case, with any member of the jury unless authorized to do so by law or court order.” The Rule does not contain a *mens rea* requirement; by its literal terms, it prohibits *all* communication, even if inadvertent. Because of this, the application of Rule 3.5(a)(4) to juror research conducted over the internet via social media services is potentially more complicated than traditional juror communication issues. Even though the attorney’s purpose may not be to communicate with a juror, but simply to gather information, social media services are often designed for the very purpose of communication, and automatic features or user settings may cause a “communication” to occur even if the attorney does intend not for one to happen or know that one may happen. This raises several ethical questions: is every visit to a juror’s social media website considered a communication? Should the intent to research, not to communicate, be the controlling factor? What are the consequences of an inadvertent or unintended communications? The Committee begins its analysis by considering the meaning of “communicate” and “communication,” which are not defined either in the Rule or the American Bar Association Model Rules.  

Black’s Law Dictionary (9th Ed.) defines “communication” as: “1. The expression or exchange of information by speech, writing, gestures, or conduct; the process of bringing an idea to another's perception. 2. The information so expressed or exchanged.” The Oxford English Dictionary defines “communicate” as: “To impart (information, knowledge, or the like) (to a person; also formerly with); to impart the knowledge or idea of (something), to inform a person of; to convey, express; to give an impression of, put across.” Similarly, Local Rule 26.3 of the United States District Courts for the Southern and Eastern Districts of New York defines “communication” (for the purposes of discovery requests) as: “the transmittal of information (in the form of facts, ideas, inquiries or otherwise).”

Under the above definitions, whether the communicator intends to “impart” a message or knowledge is seemingly irrelevant; the focus is on the effect on the receiver. It is the “transmission of,” “exchange of” or “process of bringing” information or ideas from one person to another that defines a communication. In the realm of social media, this focus on the transmission of information or knowledge is critical. A request or notification transmitted through a social media service may constitute a communication even if it is technically generated by the service rather than the attorney, is not accepted, is ignored, or consists of nothing more than an automated message of which the “sender” was unaware. In each case, at a minimum, the researcher imparted to the person being researched the knowledge that he or she is being investigated.

---

6 Although the New York City Bar Association Formal Opinion 2010-2 (“NYCBA 2010-2”) and SDCBA 2011-2 (both addressing social media “communication” in the context of the “No Contact” rule) were helpful precedent for the Committee’s analysis, the Committee is unaware of any opinion setting forth a definition of “communicate” as that term is used in Rule 4.2 or any other ethics rule.
3. An Attorney May Research A Juror Through Social Media Websites As Long As No Communication Occurs

The Committee concludes that attorneys may use search engines and social media services to research potential and sitting jurors without violating the Rules, as long as no communication with the juror occurs. The Committee notes that Rule 3.5(a)(4) does not impose a requirement that a communication be willful or made with knowledge to be prohibited. In the social media context, due to the nature of the services, unintentional communications with a member of the jury venire or the jury pose a particular risk. For example, if an attorney views a juror’s social media page and the juror receives an automated message from the social media service that a potential contact has viewed her profile—even if the attorney has not requested the sending of that message or is entirely unaware of it—the attorney has arguably “communicated” with the juror. The transmission of the information that the attorney viewed the juror’s page is a communication that may be attributable to the lawyer, and even such minimal contact raises the specter of the improper influence and/or intimidation that the Rules are intended to prevent. Furthermore, attorneys cannot evade the ethics rules and avoid improper influence simply by having a non-attorney with a name unrecognizable to the juror initiate communication, as such action will run afoul of Rule 8.4 as discussed in Section II(C), infra.

Although the text of Rule 3.5(a)(4) would appear to make any “communication”—even one made inadvertently or unknowingly—a violation, the Committee takes no position on whether such an inadvertent communication would in fact be a violation of the Rules. Rather, the Committee believes it is incumbent upon the attorney to understand the functionality of any social media service she intends to use for juror research. If an attorney cannot ascertain the functionality of a website, the attorney must proceed with great caution in conducting research on that particular site, and should keep in mind the possibility that even an accidental, automated notice to the juror could be considered a violation of Rule 3.5.

More specifically, and based on the Committee’s current understanding of relevant services, search engine websites may be used freely for juror research because there are no interactive functions that could allow jurors to learn of the attorney’s research or actions. However, other services may be more difficult to navigate depending on their functionality and each user’s particular privacy settings. Therefore, attorneys may be able to do some research on certain sites but cannot use all aspects of the sites’ social functionality. An attorney may not, for example, send a chat, message or “friend request” to a member of the jury or venire, or take any other action that will transmit information to the juror because, if the potential juror learns that the attorney seeks access to her personal information then she has received a communication. Similarly, an attorney may read any publicly-available postings of the juror but must not sign up to receive new postings as they are generated. Finally, research using services that may, even unbeknownst to the attorney, generate a message or allow a person to determine that
their webpage has been visited may pose an ethical risk even if the attorney did not intend or know that such a “communication” would be generated by the website.

The Committee also emphasizes that the above applications of Rule 3.5 are meant as examples only. The technology, usage and privacy settings of various services will likely change, potentially dramatically, over time. The settings and policies may also be partially under the control of the person being researched, and may not be apparent, or even capable of being ascertained. In order to comply with the Rules, an attorney must therefore be aware of how the relevant social media service works, and of the limitations of her knowledge. It is the duty of the attorney to understand the functionality and privacy settings of any service she wishes to utilize for research, and to be aware of any changes in the platforms’ settings or policies to ensure that no communication is received by a juror or venire member.

C. An Attorney May Not Engage in Deception or Misrepresentation in Researching Jurors on Social Media Websites

Rule 8.4(c), which governs all attorney conduct, prohibits deception and misrepresentation. In the jury research context, this rule prohibits attorneys from, for instance, misrepresenting their identity during online communications in order to access otherwise unavailable information, including misrepresenting the attorney’s associations or membership in a network or group in order to access a juror’s information. Thus, for example, an attorney may not claim to be an alumnus of a school that she did not attend in order to view a juror’s personal webpage that is accessible only to members of a certain alumni network.

Furthermore, an attorney may not use a third party to do what she could not otherwise do. Rule 8.4(a) prohibits an attorney from violating any Rule “through the acts of another.” Using a third party to communicate with a juror is deception and violates Rule 8.4(c), as well as Rule 8.4(a), even if the third party provides the potential juror only with truthful information. The attorney violates both rules whether she instructs the third party to communicate via a social network or whether the third party takes it upon herself to communicate with a member of the jury or venire for the attorney’s benefit. On this issue, the Philadelphia Bar Association Professional Guidance Committee Opinion 2009-02 (“PBA 2009-02”) concluded that if an attorney uses a third party to “friend” a witness in order to access information, she is guilty of deception because “[this action] omits a highly material fact, namely, that the third party who asks to be allowed access to the witness’ pages is doing so only because she is intent on obtaining information and sharing it with a lawyer for use in a lawsuit.” (PBA 2009-02 at 3.) New York City Bar Association Formal Opinion 2010-2 similarly held that a lawyer may not gain access to a social networking website under false pretenses, either directly or through an agent,

7 Rule 8.4 prohibits “conduct involving dishonesty, fraud, deceit or misrepresentation,” and also states “a lawyer or law firm shall not: (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 or another.” (Rule 8.4(c),(a).)
and NYCLA 743 also noted that Rule 8.4 governs juror research and an attorney therefore cannot use deception to gain access to a network or direct anyone else to “friend” an adverse party. (NYCLA 743 at 2.) We agree with these conclusions; attorneys may not shift their conduct or assignments to non-attorneys in order to evade the Rules.

D. The Impact On Jury Service Of Attorney Use Of Social Media Websites For Research

Although the Committee concludes that attorneys may conduct jury research using social media websites as long as no “communication” occurs, the Committee notes the potential impact of jury research on potential jurors’ perception of jury service. It is conceivable that even jurors who understand that many of their social networking posts and pages are public may be discouraged from jury service by the knowledge that attorneys and judges can and will conduct active research on them or learn of their online—albeit public—social lives. The policy considerations implicit in this possibility should inform our understanding of the applicable Rules.

In general, attorneys should only view information that potential jurors intend to be—and make—public. Viewing a public posting, for example, is similar to searching newspapers for letters or columns written by potential jurors because in both cases the author intends the writing to be for public consumption. The potential juror is aware that her information and images are available for public consumption. The Committee notes that some potential jurors may be unsophisticated in terms of setting their privacy modes or other website functionality, or may otherwise misunderstand when information they post is publicly available. However, in the Committee’s view, neither Rule 3.5 nor Rule 8.4(c) prohibit attorneys from viewing public information that a juror might be unaware is publicly available, except in the rare instance where it is clear that the juror intended the information to be private. Just as the attorney must monitor technological updates and understand websites that she uses for research, the Committee believes that jurors have a responsibility to take adequate precautions to protect any information they intend to be private.

E. Conducting On-Going Research During Trial

Rule 3.5 applies equally with respect to a jury venire and empanelled juries. Research permitted as to potential jurors is permitted as to sitting jurors. Although there is, in light of the discussion in Section III, infra, great benefit that can be derived from detecting instances when jurors are not following a court’s instructions for behavior while empanelled, researching jurors mid-trial is not without risk. For instance, while an inadvertent communication with a venire member may result in an embarrassing revelation to a court and a disqualified panelist, a communication with a juror during trial can cause a mistrial. The Committee therefore re-emphasizes that it is the attorney’s duty to understand the functionality of any social media service she chooses to utilize and to act with the utmost caution.
III. An Attorney Must Reveal Improper Juror Conduct to the Court

Rule 3.5(d) provides: “a lawyer shall reveal promptly to the court improper conduct by a member of the venire or a juror, or by another toward a member of the venire or a juror or a member of her family of which the lawyer has knowledge.” Although the Committee concludes that an attorney may conduct jury research on social media websites as long as “communication” is avoided, if an attorney learns of juror misconduct through such research, she must promptly notify the court. Attorneys must use their best judgment and good faith in determining whether a juror has acted improperly; the attorney cannot consider whether the juror’s improper conduct benefits the attorney.

On this issue, the Committee notes that New York Pattern Jury Instructions (“PJI”) now include suggested jury charges that expressly prohibit juror use of the internet to discuss or research the case. PJI 1:11 Discussion with Others - Independent Research states: “please do not discuss this case either among yourselves or with anyone else during the course of the trial. . . . It is important to remember that you may not use any internet service, such as Google, Facebook, Twitter or any others to individually or collectively research topics concerning the trial . . . For now, be careful to remember these rules whenever you use a computer or other personal electronic device during the time you are serving as juror but you are not in the courtroom.” Moreover, PJI 1:10 states, in part, “in addition, please do not attempt to view the scene by using computer programs such as Goggle Earth. Viewing the scene either in person or through a computer program would be unfair to the parties . . .” New York criminal courts also instruct jurors that they may not converse among themselves or with anyone else upon any subject connected with the trial. NY Crim. Pro. §270.40 (McKinney’s 2002).

The law requires jurors to comply with the judge’s charge and courts are increasingly called upon to determine whether jurors’ social media postings require a new trial. See, e.g., Smead v. CL Financial Corp., No. 06CC11633, 2010 WL 6562541 (Cal. Super. Ct. Sept. 15, 2010) (holding that juror’s posts regarding length of trial were not prejudicial and denying motion for new trial). However, determining whether a juror’s conduct is misconduct may be difficult in the realm of social media. Although a post or tweet on the subject of the trial, even if unanswered, can be considered a “conversation,” it may

---

8 New York City Bar Association Formal Opinion 2012-1 defined “promptly” to mean “as soon as reasonably possible.”

9 Although the Committee is not opining on the obligations of jurors (which is beyond the Committee’s purview), the Committee does note that if a juror contacts an attorney, the attorney must promptly notify the court under Rule 3.5(d).

10 People v. Clarke, 168 A.D.2d 686 (2d Dep’t 1990) (holding that jurors must comply with the jury charge).
not always be obvious whether a particular post is “connected with” the trial. Moreover, a juror may be permitted to post a comment “about the fact [of] service on jury duty.”

IV. Post-Trial

In contrast to Rule 3.4(a)(4), Rule 3.5(a)(5) allows attorneys to communicate with a juror after discharge of the jury. After the jury is discharged, attorneys may contact jurors and communicate, including through social media, unless “(i) the communication is prohibited by law or court order; (ii) the juror has made known to the lawyer a desire not to communicate; (iii) the communication involves misrepresentation, coercion, duress or harassment; or (iv) the communication is an attempt to influence the juror's actions in future jury service.” Rule 3.5(a)(5). For instance, NYSBA Opinion 246 found that “lawyers may communicate with jurors concerning the verdict and case.” (NYSBA 246 (interpreting former EC 7-28; DR 7-108(D)).) The Committee concludes that this rule should also permit communication via social media services after the jury is discharged, but the attorney must, of course, comply with all ethical obligations in any communication with a juror after the discharge of the jury. However, the Committee notes that “it [is] unethical for a lawyer to harass, entice, or induce or exert influence on a juror” to obtain information or her testimony to support a motion for a new trial. (ABA 319.)

V. Conclusion

The Committee concludes that an attorney may research potential or sitting jurors using social media services or websites, provided that a communication with the juror does not occur. “Communication,” in this context, should be understood broadly, and includes not only sending a specific message, but also any notification to the person being researched that they have been the subject of an attorney’s research efforts. Even if the attorney does not intend for or know that a communication will occur, the resulting inadvertent communication may still violate the Rule. In order to apply this rule to social media websites, attorneys must be mindful of the fact that a communication is the process of bringing an idea, information or knowledge to another’s perception—including the fact that they have been researched. In the context of researching jurors using social media services, an attorney must understand and analyze the relevant technology, privacy settings and policies of each social media service used for jury research. The attorney must also avoid engaging in deception or misrepresentation in...
conducting such research, and may not use third parties to do that which the lawyer cannot. Finally, although attorneys may communicate with jurors after discharge of the jury in the circumstances outlined in the Rules, the attorney must be sure to comply with all other ethical rules in making any such communication.
TOPIC: What advice is appropriate to give a client with respect to existing or proposed postings on social media sites.

DIGEST: It is the Committee’s opinion that New York attorneys may advise clients as to (1) what they should/should not post on social media, (2) what existing postings they may or may not remove, and (3) the particular implications of social media posts, subject to the same rules, concerns, and principles that apply to giving a client legal advice in other areas including RPC 3.1, 3.3 and 3.4.¹

RPC: 4.1, 4.2, 3.1, 3.3, 3.4, 8.4.

OPINION:

This opinion provides guidance about how attorneys may advise clients concerning what may be posted or removed from social media websites. It has been estimated that Americans spend 20 percent of their free time on social media (Facebook, Twitter, Friendster, Flickr, LinkedIn, and the like). It is commonplace to post travel logs, photographs, streams of consciousness, rants, and all manner of things on websites so that family, friends, or even the public-at-large can peer into one’s life. Social media enable users to publish information regionally, nationally, and even globally.

The personal nature of social media posts implicates considerable privacy concerns. Although all of the major social media outlets have password protections and various levels of privacy settings, many users are oblivious or indifferent to them, providing an opportunity for persons with adverse interests to learn even the most intimate information about them. For example, teenagers and college students commonly post photographs of themselves partying, binge drinking, indulging in illegal drugs or sexual poses, and the like. The posters may not be aware, or may not care, that these posts may find their way into the hands of family, potential employers, school admission officers, romantic contacts, and others. The content of a removed social media posting may continue to exist, on the poster’s computer, or in cyberspace.

¹ This opinion is limited to conduct of attorneys in connection with civil matters. Attorneys involved in criminal cases may have different ethical responsibilities.
That information posted on social media may undermine a litigant’s position has not been lost on attorneys. Rather than hire investigators to follow claimants with video cameras, personal injury defendants may seek to locate YouTube videos or Facebook photos that depict a “disabled” plaintiff engaging in activities that are inconsistent with the claimed injuries. It is now common for attorneys and their investigators to seek to scour litigants’ social media pages for information and photographs. Demands for authorizations for access to password-protected portions of an opposing litigant’s social media sites are becoming routine.

Recent ethics opinions have concluded that accessing a social media page open to all members of a public network is ethically permissible. New York State Bar Association Eth. Op. 843 (2010); Oregon State Bar Legal Ethics Comm., Op. 2005-164 (finding that accessing an opposing party’s public website does not violate the ethics rules limiting communications with adverse parties). The reasoning behind these opinions is that accessing a public site is conceptually no different from reading a magazine article or purchasing a book written by that adverse party. Oregon Op. 2005-164 at 453.

But an attorney’s ability to access social media information is not unlimited. Attorneys may not make misrepresentations to obtain information that would otherwise not be obtainable. In contact with victims, witnesses, or others involved in opposing counsel’s case, attorneys should avoid misrepresentations, and, in the case of a represented party, obtain the prior consent of the party’s counsel. New York Rules of Professional Conduct (RPC 4.2). See, NYCBA Eth. Op., 2010-2 (2012); NYSBA Eth. Op. 843. Using false or misleading representations to obtain evidence from a social network website is prohibited. RPC 4.1, 8.4(c).

Social media users may have some expectation of privacy in their posts, depending on the privacy settings available to them, and their use of those settings. All major social media allow members to set varying levels of security and “privacy” on their social media pages. There is no ethical constraint on advising a client to use the highest level of privacy/security settings that is available. Such settings will prevent adverse counsel from having direct access to the contents of the client’s social media pages, requiring adverse counsel to request access through formal discovery channels.

A number of recent cases have considered the extent to which courts may direct litigants to authorize adverse counsel to access the “private” portions of their social media postings. While a comprehensive review of this evolving body of law is beyond the scope of this opinion, the premise behind such cases is that social media websites may contain materials inconsistent with a party’s litigation posture, and thus may be used for impeachment. The newest cases turn on whether the party seeking such disclosure has laid a sufficient foundation that such impeachment material likely exists or whether the party is engaging in a “fishing expedition” and an invasion of privacy in the hopes of stumbling onto something that may be useful.\footnote{In Tapp v. N.Y.S. Urban Dev. Corp., 102 A.D.3d 620, 958 N.Y.S. 2d 392 (1st Dep’t 2013), the First Department held that a defendant’s contention that Facebook activities “may reveal daily activities that contradict or conflict with
Given the growing volume of litigation regarding social media discovery, the question arises whether an attorney may instruct a client who does not have a social media site not to create one: May an attorney pre-screen what a client posts on a social media site? May an attorney properly instruct a client to “take down” certain materials from an existing social media site?

Preliminarily, we note that an attorney’s obligation to represent clients competently (RPC 1.1) could, in some circumstances, give rise to an obligation to advise clients, within legal and ethical requirements, concerning what steps to take to mitigate any adverse effects on the clients’ position emanating from the clients’ use of social media. Thus, an attorney may properly review a client’s social media pages, and advise the client that certain materials posted on a social media page may be used against the client for impeachment or similar purposes. In advising a client, attorneys should be mindful of their ethical responsibilities under RPC 3.4. That rule provides that a lawyer shall not “(a)(1) suppress any evidence that the lawyer or the client has a legal obligation to reveal or produce... [nor] (3) conceal or knowingly fail to disclose that which the lawyer is required by law to reveal.”

Attorneys’ duties not to suppress or conceal evidence involve questions of substantive law and are therefore outside the purview of an ethics opinion. We do note, however, that applicable state or federal law may make it an offense to destroy material for the purpose of defeating its availability in a pending or reasonably foreseeable proceeding, even if no specific request to reveal or produce evidence has been made. Under principles of substantive law, there may be a duty to preserve “potential evidence” in advance of any request for its discovery. VOOM HD Holdings LLC v. EchoStar Satellite L.L.C., 93 A.D.3d 33, 939 N.Y.S. 2d 331 (1st Dep’t 2012) (“Once a party reasonably anticipates litigation, it must, at a minimum, institute an appropriate litigation hold to prevent the routine destruction of electronic data.”); QK Healthcare, Inc., v. Forest Laboratories, Inc., 2013 N.Y. Misc. LEXIS 2008; 2013 N.Y. Slip Op. 31028(U) (Sup. Ct. N.Y. Co., May 8, 2013); RPC 3.4, Comment [2]. Under some circumstances, where litigation is anticipated, a duty to preserve evidence may arise under substantive law. But provided that such removal does not violate the substantive law regarding destruction or spoliation of evidence, there is no ethical bar to “taking down” such material from social media publications, or prohibiting a client’s attorney from advising the client to do so, particularly insomuch as the substance of the posting is generally preserved in cyberspace or on the user’s computer.

An attorney also has an ethical obligation not to “bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous.”
RPC 3.1(a). Frivolous conduct includes the knowing assertion of “material factual statements that are false.” RPC 3.1(b)(3). Therefore, if a client’s social media posting reveals to an attorney that the client’s lawsuit involves the assertion of material false factual statements, and if proper inquiry of the client does not negate that conclusion, the attorney is ethically prohibited from proffering, supporting or using those false statements. See, also, RPC 3.3; 4.1 (“In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person.”)

Clients are required to testify truthfully at a hearing, deposition, trial, or the like, and a lawyer may not fail to correct a false statement of material fact or offer or use evidence the lawyer knows to be false. RPC 3.3(a)(1); 3.4(a)(4). Thus, a client must answer truthfully (subject to the rules of privilege or other evidentiary objections) if asked whether changes were ever made to a social media site, and the client’s lawyer must take prompt remedial action in the case of any known material false testimony on this subject. RPC 3.3 (a)(3).

We further conclude that it is permissible for an attorney to review what a client plans to publish on a social media page in advance of publication, to guide the client appropriately, including formulating a corporate policy on social media usage. Again, the above ethical rules and principles apply: An attorney may not direct or facilitate the client’s publishing of false or misleading information that may be relevant to a claim; an attorney may not participate in the creation or preservation of evidence when the lawyer knows or it is obvious that the evidence is false. RPC 3.4(a)(4). However, a lawyer may counsel the witness to publish truthful information favorable to the lawyer's client; discuss the significance and implications of social media posts (including their content and advisability); advise the client how social media posts may be received and/or presented by the client’s legal adversaries and advise the client to consider the posts in that light; discuss the possibility that the legal adversary may obtain access to “private” social media pages through court orders or compulsory process; review how the factual context of the posts may affect their perception; review the posts that may be published and those that have already been published; and discuss possible lines of cross-examination.

CONCLUSION:

Lawyers should comply with their ethical duties in dealing with clients’ social media posts. The ethical rules and concepts of fairness to opposing counsel and the court, under RPC 3.3 and 3.4, all apply. An attorney may advise clients to keep their social media privacy settings turned on or maximized and may advise clients as to what should or should not be posted on public and/or private pages, consistent with the principles stated above. Provided that there is no violation of the rules or substantive law pertaining to the preservation and/or spoliation of evidence, an attorney may offer advice as to what may be kept on “private” social media pages, and what may be “taken down” or removed.

3 We do not suggest that all information on Facebook pages would constitute admissible evidence; such determinations must be made as a matter of substantive law on a case by case basis.

172 F.Supp.3d 1100
United States District Court,
N.D. California.

Oracle America, Inc., Plaintiff,
v.
Google Inc., Defendant.
No. C 10–03561 WHA
Signed March 25, 2016

Synopsis
Background: Copyright owner brought action against alleged infringer for violation of owner's copyright in programming platform that alleged infringer used to compose operating system for mobile devices.

[ Holding: ] The District Court, William Alsup, J., held that if both parties were unable to consent to complete ban on internet and social research on venire or empaneled jury, parties would follow procedures regarding use and disclosure of such research to venire and jury.

Ordered accordingly.

West Headnotes (1)

[1] Jury
   Examination by court
Jury
   Rights and privileges of jurors

Court would order, in absence of complete agreement by both parties on ban against internet and social media research on venire members, that certain procedures would be followed at jury instruction to inform venire members about specific extent to which each party would use internet and social media searches to investigate and monitor jurors both during and after trial, so that venire members could adjust their privacy settings from mobile devices if they wished, and as trial progressed, each party would immediately report any apparent misconduct by a juror to the court and preserve an exact record of every search and all information viewed so that court and parties could see when objecting side of motion alleging juror misconduct first learned of a problem, and further, no personal appeals to particular jurors were allowed at any time during trial.

Cases that cite this headnote

Attorneys and Law Firms

Trial judges have such respect for juries—reverential respect would not be too strong to say—that it must pain them to contemplate that, in addition to the sacrifice jurors make for our country, they must suffer trial lawyers and jury consultants scouring over their Facebook and other profiles to dissect their politics, religion, relationships, preferences, friends, photographs, and other personal information.

In this high-profile copyright action, both sides requested that the Court require the venire to complete a two-page jury questionnaire. One side then wanted a full extra day to digest the answers, and the other side wanted two full extra days, all before beginning voir dire. Wondering about the delay allocated to reviewing two pages, the judge eventually realized that counsel wanted the names and residences from the questionnaire so that, during the delay, their teams could scrub Facebook and other profiles to dissect their politics, religion, relationships, preferences, friends, photographs, and other personal information.

An ordinary Google search on the venire would fetch hits, including links to many Facebook profiles, which, in turn, would at least display profile information classified as “public.” Counsel could uncover even more personal information by logging onto their own Facebook accounts and researching the specific venire persons. In this way, counsel could mine not only the “public” data but the details classified as “for friends only” or “friends of friends,” depending on the fortuity of friend listings. The same is true, more or less, for other social media sites.

The Court, of course, realizes that social media and Internet searches on the venire would turn up information useful to the lawyers in exercising their three peremptory challenges, and, might even, in a very rare case, turn up information concealed during voir dire that could lead to a for-cause removal. While the trial is underway, ongoing searches might conceivably reveal commentary about the case to or from a juror.

Nevertheless, in this case there are good reasons to restrict, if not forbid, such searches by counsel, their jury consultants, investigators, and clients.

The first reason is anchored in the danger that upon learning of counsel's own searches directed at them, our jurors would stray from the Court's admonition to refrain from conducting Internet searches on the lawyers and the case. This is a high-profile lawsuit, as stated, and dates back to 2010. Nearly one million hits (including tens of thousands of news results) appear in a Google search for "Oracle v. Google." These include strong opinions on both sides and at least the usual amount of inaccurate information. In this very case, we earlier learned that both sides hired online commentators who have promoted their respective litigation viewpoints on blogs and other web sites. Numerous of the top results for searches on counsel for either party (or for the undersigned judge) include discussions of this controversy and its national policy implications. As a result, we have an unusually strong need to prevent any member of our jury from yielding to the impulse to conduct Internet searches on our lawyers or our case or its history.

Our jury will, of course, be admonished to refrain from any Internet research about the lawsuit, the parties, the lawyers, or the judge—an admonition that will be regularly repeated. See Judicial Conference Committee on Court Administration and Case Management, Proposed Model Jury Instructions: The Use of Electronic Technology to Conduct Research on or Communicate about a Case (June 2012). Indeed, the entire venire will be told to refrain from any such research soon after it reaches the courtroom and well before the final jury is even selected.

Google is willing to accept an outright ban on Internet research about the venire and our jury, provided the ban applies equally to both sides. Oracle, however, will not. Oracle initially took a broad position on the scope of Internet research it intended to conduct, but it has since purported to scale back its plan. On numerous occasions, Oracle has supplied confusing answers to the Court's inquiries about its plan, and its responses make little sense in light of how the Court understands the most prominent social media sites to operate. For purposes of this order, it is unnecessary to pin Oracle down in its intentions, but it will be necessary for Oracle to pin down its specific search intentions by the time jury selection begins, as outlined below.

To return to the first concern, the apparent unfairness in allowing the lawyers to do to the venire what the venire cannot do to the lawyers will likely have a corrosive effect on fidelity to the no-research admonition. Once our venire learns of the lawyers' Internet searches (as the venire would via the instruction Oracle requests), a very serious risk will be presented that they will feel justified in doing to the lawyers (and to the case itself) what the lawyers are doing to them, namely, conducting Internet searches—despite the no-research admonition. The one-sidedness of Oracle's approach will be hard to accept and therein lies the danger. Given the massive volume of Internet commentary on the lawyers and the case, this presents a significant risk.

A second danger posed by allowing counsel to conduct research about the venire *1103 and the jury is that it will facilitate improper personal appeals to particular jurors via jury arguments and witness examinations patterned after preferences of jurors found through such Internet searches. For example, if a search found that a juror's favorite book is *To Kill A Mockingbird*, it wouldn't be hard for counsel to construct a copyright jury argument (or a line of expert questions) based on an analogy to that work and to play upon the recent death of Harper Lee, all in an effort to ingratiate himself or herself into the heartstrings of that juror. The same could be done with a favorite quote or with any number of other juror attitudes on free trade, innovation, politics, or history. Jury arguments may, of course, employ analogies and quotations, but it would be out of bounds to play up to a juror through such a calculated personal appeal, all the moreso since the judge, having no access to the dossiers, couldn't see what was really in play. See *United States v. Nobari*, 574 F.3d 1065, 1077 (9th Cir.2009).

A third reason is to protect the privacy of the venire. They are not celebrities or public figures. The jury is not a fantasy team composed by consultants, but good citizens commuting from all over our district, willing to serve our country, and willing to bear the burden of deciding a commercial dispute the parties themselves cannot resolve. Their privacy matters. Their privacy should yield only as necessary to reveal bias or a reluctance to follow the Court's instructions. It is a weak answer that venire persons, through their social media privacy settings, have chosen to expose their profiles to scrutiny, for navigating privacy settings and fully understanding default settings is more a matter of blind faith than conscious choice. (Otherwise, there would be no need for websites explaining the intricacies of privacy settings.)

For all these reasons, the Court has considered exercising its discretion to impose an outright ban preventing counsel and the parties from conducting social media and Internet searches on venire persons as well as on the final empaneled jury. Such a ban would be within the sound exercise of discretion to protect the integrity of our process and to curb unnecessary intrusions into juror privacy. A main problem in doing so, however, is that the lawyers would then be precluded from learning information readily available to the press and every member of the public in the gallery. That is, with an outright ban, everyone in the gallery could have more information about the venire persons and the empaneled jurors than the lawyers themselves. Of course, the Court cannot control those in the gallery, but it can control the trial teams. And, lawyer surveillance is what leads to the problems above, so such a ban on the trial teams would be logical. Still, the Court respects the excellent trial lawyers in this case and their burden in this trial and is reluctant to order them. Rather, the Court calls upon them to voluntarily consent to a ban against Internet research on the venire or our jury until the trial is over. If they will so agree, we will so advise the venire at the start of jury selection and this will surely have a positive effect on fidelity to the no-research admonition. If all counsel so agree, counsel will be given an enlargement of time to conduct extra voir dire themselves.

In the absence of complete agreement on a ban, the following procedure will be used. At the outset of jury
selection, each side shall inform the venire of the specific extent to which it (including jury consultants, clients, and other agents) will use Internet searches to investigate and to monitor jurors, including specifically searches on Facebook, LinkedIn, Twitter, and so on, including the extent to which they will log onto their own social media accounts to conduct searches and the extent to which they will perform ongoing searches while the trial is underway. Counsel shall not explain away their searches on the ground that the other side will do it, so they have to do it too. Nor may counsel intimate to the venire that the Court has allowed such searches and thereby leave the false impression that the judge approves of the intrusion. Counsel may simply explain that they feel obliged to their clients to consider all information available to the public about candidates to serve as jurors. Otherwise, counsel must stick to disclosing the full extent to which they will conduct searches on jurors. By this disclosure, the venire will be informed that the trial teams will soon learn their names and places of residence and will soon discover and review their social media profiles and postings, depending on the social media privacy settings in place. The venire persons will then be given a few minutes to use their mobile devices to adjust their privacy settings, if they wish. The venire persons will also be given the normal admonition that they cannot do any research about the case, the parties, or the lawyers and that they cannot speak to anyone about the case, including by making any social media postings about it. Only the names and places of residence of those called forward to the box shall be provided to counsel (so the identities of venire persons still in the gallery will remain private).

In this case, there is a further special point that both sides may wish to address with the venire. The very name of the defendant—Google—brings to mind Internet searches. On their own, prospective jurors are likely to wonder whether Google will be mining the histories of Internet searches by the venire persons to determine their interests in politics, careers, hobbies, dating, shopping, travel, or other intimate facts. Although Google has assured the Court that it has no intention to review such search histories, our venire will not know this (unless told) and may speculate. It would, therefore, be prudent to explain to our venire that neither party will resort to examining search histories on any search engine.

Thereafter, until the trial is over, each side will be permitted to view online whatever it told the venire it would review—but nothing more. If, as we proceed forward, either side detects any apparent misconduct by a juror, counsel must immediately report it to the Court and the other side regardless of whether the juror appears favorable to their side or not. Each side must preserve an exact record of every search and all information viewed so that if a motion is later made alleging misconduct by a juror, we will all be able to see when the objecting side first learned of the problem.

During voir dire, each prospective juror that has been called forward will be asked if he or she can still follow the usual prohibitions on research and public statements about the case despite the one-sidedness (that is, despite the fact that one or both trial teams will be trying to monitor each juror's social media postings). If the prospective juror cannot do so, he or she will be excused on that basis.

With regard to the problem of personal appeals, this order rules now that no personal appeals to any juror may be made. This prohibition bars witness examinations or jury arguments (or opening statements) exploiting information learned about a juror via searches, such as, without limitation, favorite books, texts, verses, songs, or analogies to likes or dislikes expressed on the Internet. This prohibition, of course, applies whether or not the name of the particular juror is called out.

In addition to the Court's own thorough voir dire, each side shall have twenty minutes of venire examination directed to bias or other for-cause challenges, subject to enlargement for good cause (but this may not be used for “conditioning the jury” or “extracting promises” or drawing out argumentative material from jurors to argue the case).

The Court would much prefer to fully protect the privacy of all venire persons from Internet searches and only reluctantly allows the foregoing.

* * *

This is an emerging and developing concern. To that end, this order will now step back and offer a snapshot of how some of today's prominent social media sites protect (or don't protect) personal information, which information
may be useful for other judges, lawyers, and academics in working through this concern:

• With regard to Facebook, typical profiles contain the following information: lists of personal connections (i.e., “friends”), pictures, videos, check-ins at real-world locations, scheduled events, posts dating back to the creation of the user's profile (including commentary on news stories and discussions with other “friends”), relationship status, work experience, educational background, current city, home town, contact information, and certain personal interests such as favorite quotes, membership in certain groups, hobbies, political preferences, religious views, sexual orientation, and preferred media. Access to segments of this information can be regulated by the account holder according to various privacy settings. The highest level of privacy keeps information accessible only to the user. This is rarely used, inasmuch as a key purpose of Facebook is to share information with other people using the platform. The next level of privacy allows a user to reveal information only to his or her “friends” (or to a more limited list). The next level allows access to “friends of friends,” which includes not only the user's friends but all of the friends of the user's friends, which can vastly multiply access. (For example, if someone has three hundred friends and each of them has three hundred different friends, access would expand to 90,000 viewers.) The most expansive setting is “public,” meaning at least everyone with a Facebook account. Certain “public” information, including a user's primary picture, list of likes, hometown, current city, education and work history, and favorite quote, is even available to Internet users without Facebook accounts or who have not logged onto their accounts. Generally, a Facebook user's post history (i.e., the stream of text, articles, discussions, pictures, and videos the user shares) is not available to searchers without a Facebook account. By default today, most information is accessible only to friends, although a default setting of “friends of friends” has been employed by Facebook in the past. This means that someone may log onto Facebook and automatically access all Facebook information (including post history) on a juror classified as “public,” as “friends of friends” (if there is a “friend” in common) or as “friends only” (if the investigator happens to be a Facebook “friend” of the juror). “Public” information (excluding post history) is accessible as well via ordinary Google searches without ever logging onto Facebook. Finally, Facebook does not notify its users when their profiles have been visited.

• With regard to Twitter, a typical user's profile includes that user's "tweet" history, which includes all posts made since the user created the account, the list of other Twitter accounts that user “follows” and the list of other users that “follow” that user's account. When one Twitter user “follows” another Twitter user, the latter's posts appear in the former's default real-time feed of tweets. Access to this information is regulated by a choice between two privacy settings. The default privacy setting keeps all of a user's tweets public, in which case anyone may view those tweets, even without ever logging onto a Twitter account. Additionally, anyone who is logged onto Twitter can view the list of a user's "followers" and the accounts that user “follows” if the user's tweets are made public. Alternatively, a user may elect to keep tweets "protected," in which case the above information is available only to other Twitter users whom the user has affirmatively approved to view that information. Twitter does not notify its users when their profiles have been visited.

• With regard to LinkedIn, a typical user's profile includes a picture, the user's employment and education history, contact information, a list of skills, publications, awards and interests, among other line items that might appear on a résumé. The profile also includes information such as a list of the "connections" the user has established on the site. (Two users “connect” once one user sends a request to connect and the other accepts the request, which opens up additional personal data and avenues of communication.) A user's profile also displays a list of groups established on the site that the user has joined. Users can post content, such as links to news articles or original writing. For each item on a user's profile (except for the list of "connections"), the user may elect to publish the item to his or her “public profile,” making it visible to everyone, including individuals who are not even logged onto LinkedIn, or to make it visible only to the user's “connections.” A user may further select whether to reveal his list of personal connections to other users. Unlike Facebook and Twitter, LinkedIn's default setting is to display a notification informing a user
each time his or her profile is visited by another LinkedIn user and identifying that visitor by name. A visitor may change that setting so that a visitee receives no notification, or so the notification only displays the visitor's place of employment without any further identifying information.

With regard to the case law, most of it discusses the problems of jurors using of social media and conducting Internet searches, thereby exposing jurors to commentary about the case. E.g., United States v. Feng Li, 630 Fed.Appx. 29, 33–34, 2015 WL 7005595, at *3 (2d Cir.2015); United States v. Fumo, 655 F.3d 288 (3d. Cir.2011); Dimas-Martinez v. State, 2011 Ark. 515, 385 S.W.3d 238 (2011). Several other decisions address whether a party waives arguments seeking to set aside a verdict based on a juror's apparent bias if that apparent bias could have been discovered through an Internet search of that juror before the verdict (where counsel were allowed and able to conduct such searches).


There are precious few decisions addressing our immediate problem, namely, whether counsel should be allowed to conduct Internet and social media research about prospective and empaneled jurors.

The American Bar Association issued an opinion that, within limits, it is ethical for counsel to conduct Internet searches on prospective jurors. Specifically, in Formal Opinion No. 466, the ABA considered the extent to which an attorney may conduct Internet searches of jurors and prospective jurors without running afoul of ABA Model Rule 3.5(b), which prohibits ex parte communication with jurors. That opinion determined that “passive review” of a juror's website or social media that is available without making an “access request” and of which the juror is unaware is permissible within ABA Model Rule 3.5(b). The ABA likened such review to “driving down the street where the prospective juror lives to observe the environs in order to glean publicly available information that could inform the lawyer's jury-selection decisions.” Access requests, such as friend requests on Facebook, “following” users on Twitter, or seeking to “connect” on LinkedIn, whether on one's own or through a jury consultant or other agent, constitute forbidden ex parte communications within the rule. That such searches are not unethical does not translate into an inalienable right to conduct them.

Although the ABA determined that a range of activities is permitted without violating a professional duty, it cautioned that judges may limit the scope of the searches that counsel could perform regarding the juror's social media “if a judge believes it to be necessary, under the circumstances of a particular matter....”

California has not promulgated a rule regarding the ethical scope of Internet research on jurors or prospective jurors, nor has the California State Bar issued an opinion on that subject. The California State Bar website provides a link to the ABA opinion discussed above as well as links to opinions from the Association of the Bar of the City of New York and the Oregon State Bar. Formal Opinion No. 2012–2, issued by the ABCNY, largely mirrors the ABA opinion, except that the ABCNY would prohibit any Internet research that notified the juror such research occurred (such as using LinkedIn in a manner that sent an automatic notification informing the user that another user had visited his or her profile). Formal Opinion No. 2013–189, issued by the Oregon State Bar provides, unlike the ABA or the ABCNY, that a lawyer may affirmatively request access to private aspects of a juror's social media profiles, provided the lawyer accurately represents his or her role in a case when asked by the juror. Neither the New York City opinion nor the Oregon opinion addressed the judge's discretion in prohibiting such searches or access requests.

In United States v. Norwood, No. 12–CR–20287, 2014 WL 1796644 (E.D.Mich. May 6, 2014) (Judge Mark A. Goldsmith), the defendants opposed a plan to empanel an anonymous jury (which would protect the jury from intimidation in a case involving a violent criminal enterprise). Defendants argued that their counsel needed access to the jurors' identifying information to monitor their social media accounts during the trial to ensure compliance with the no-discussion admonition. Judge Goldsmith rejected the defendants' argument because the proposed monitoring would “unnecessarily chill the willingness of jurors summoned from [the] community to serve as participants in our democratic system of justice.”

A jury questionnaire had also specifically asked prospective jurors whether they could abide by the judge's admonitions regarding Internet and social media. Thus, the defendants' interest in monitoring the jurors' social media postings could not overcome the interest in protecting the jurors from intimidation and violence, which interest was served by empaneling an anonymous jury.

In Carino v. Muenzen, No. A–5491–08T1, 2010 WL 3448071, at *10 (N.J.Super.App.Div. Aug. 30, 2010), a trial court in New Jersey prohibited the plaintiff's counsel from using the Internet to investigate the jurors because they had failed to notify opposing counsel that they would be conducting such searches, although the trial court cited no basis for requiring such notification. The New Jersey Appellate Division determined that the trial court abused its discretion by imposing such a prohibition “in the name of ‘fairness’ or maintaining a ‘level playing field.’” Ibid.

Oracle cites Sluss v. Commonwealth, 381 S.W.3d 215, 226–227 (Ky.2012), for the contention that counsel's lack of access to social media “effectively precluded” full voir dire, but that decision did not address a prohibition on social media and Internet searches. Rather, it addressed two jurors' false statements made during oral voir dire regarding their respective relationships to the victim's mother. A review of the jurors' respective Facebook profiles later revealed that both jurors were Facebook “friends” with the victim's mother. One of the jurors in question unequivocally denied having a Facebook account (which later proved false). Thus, the case was remanded for a hearing regarding the jurors' honesty and whether the true facts warranted for-cause removal.

Finally, in Steiner v. Superior Court, 220 Cal.App.4th 1479, 1493, 164 Cal.Rptr.3d 155 (2013), as modified on denial of rehearing (Nov. 26, 2013), the California Court of Appeal recognized that although certain tools are available to ensure that jurors do not conduct research about the attorneys or the case, a judge lacks the authority “to impose, as a prophylactic measure, an order requiring” defense counsel to remove pages from their website to ensure they could not be viewed by the jurors, which “constituted an unlawful prior restraint on [counsel's] constitutional right to free speech.”

Both sides shall inform the Court By MARCH 31 AT NOON, whether they will consent to a ban against Internet research on the venire or the empaneled jury until the trial is over.

IT IS SO ORDERED.
RULES OF PROFESSIONAL CONDUCT
(Includes all amendments through those effective September 10, 2019)

Table of Rules

RPC 1.0  TERMINOLOGY ........................................................................................................... 3
RPC 1.1  COMPETENCE ........................................................................................................... 4
RPC 1.2  SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT
AND LAWYER .......................................................................................................................... 4
RPC 1.3  DILIGENCE ............................................................................................................... 5
RPC 1.4  COMMUNICATION .................................................................................................... 5
RPC 1.5  FEES ........................................................................................................................... 6
RPC 1.6  CONFIDENTIALITY OF INFORMATION ..................................................................... 7
RPC 1.7  CONFLICT OF INTEREST: GENERAL RULE .......................................................... 10
RPC 1.8  CONFLICT OF INTEREST: CURRENT CLIENTS; SPECIFIC RULES ........................................ 10
RPC 1.9  DUTIES TO FORMER CLIENTS .................................................................................. 12
RPC 1.10  IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE ........................................ 13
RPC 1.11  SUCCESSIVE GOVERNMENT AND PRIVATE EMPLOYMENT ........................................ 15
RPC 1.12  FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL OR
LAW CLERK .................................................................................................................................. 17
RPC 1.13  ORGANIZATION AS THE CLIENT ............................................................................. 17
RPC 1.14  CLIENT UNDER A DISABILITY .................................................................................. 19
RPC 1.15  SAFEKEEPING PROPERTY ....................................................................................... 19
RPC 1.16  DECLINING OR TERMINATING REPRESENTATION .................................................. 20
RPC 1.17  SALE OF LAW PRACTICE ....................................................................................... 21
RPC 1.18  PROSPECTIVE CLIENT ............................................................................................ 22
RPC 2.1  ADVISOR ..................................................................................................................... 23
RPC 2.2 (RESERVED) ................................................................................................................ 23
RPC 2.3  EVALUATION FOR USE BY THIRD PERSONS ............................................................... 23
RPC 2.4  LAWYER SERVING AS THIRD-PARTY NEUTRAL ....................................................... 24
RPC 3.1  MERITORIOUS CLAIMS AND CONTENTIONS ............................................................. 24
RPC 3.2  EXPEDITING LITIGATION .......................................................................................... 25
RPC 3.3  CANDOR TOWARD THE TRIBUNAL ......................................................................... 25
RPC 3.4  FAIRNESS TO OPPOSING PARTY AND COUNSEL ................................................. 26
RPC 3.5  IMPARTIALITY AND DECORUM OF THE TRIBUNAL ................................................. 26
RPC 3.6  TRIAL PUBLICITY ....................................................................................................... 27
RPC 3.7  LAWYER AS WITNESS .............................................................................................. 28
RPC 3.8  SPECIAL RESPONSIBILITIES OF A PROSECUTOR .................................................. 29
RPC 3.9  ADVOCATE IN NONADJUDICATIVE PROCEEDINGS ............................................. 30
RPC 4.1  TRUTHFULNESS IN STATEMENTS TO OTHERS ......................................................... 30
RPC 4.2  COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL .............................. 31
RPC 4.3  DEALING WITH UNREPRESENTED PERSON; EMPLOYEE OF ORGANIZATION .......... 31
RPC 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS ................................................................. 32
RPC 5.1 RESPONSIBILITIES OF PARTNERS, SUPERVISORY LAWYERS, AND LAW FIRMS .......... 34
RPC 5.2 RESPONSIBILITIES OF A SUBORDINATE LAWYER .................................................. 34
RPC 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANCE .................................. 34
RPC 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER ....................................................... 36
RPC 5.5 LAWYERS NOT ADMITTED TO THE BAR OF THIS STATE AND THE LAWFUL PRACTICE OF LAW ................................................................................................................. 37
RPC 5.6 RESTRICTIONS ON RIGHT TO PRACTICE ................................................................... 39
RPC 6.1 VOLUNTARY PUBLIC INTEREST LEGAL SERVICE .................................................... 40
RPC 6.2 ACCEPTING APPOINTMENTS ....................................................................................... 40
RPC 6.3 MEMBERSHIP IN LEGAL SERVICES ORGANIZATION ................................................. 40
RPC 6.4 LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS ....................................... 41
RPC 6.5 NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICE PROGRAMS ............. 41
RPC 7.1 COMMUNICATIONS CONCERNING A LAWYER’S SERVICE ....................................... 41
RPC 7.2 ADVERTISING .................................................................................................................. 43
RPC 7.3 PERSONAL CONTACT WITH PROSPECTIVE CLIENTS .............................................. 43
RPC 7.4 COMMUNICATION OF FIELDS OF PRACTICE AND CERTIFICATION ...................... 47
RPC 7.5 FIRM NAMES AND LETTERHEADS .............................................................................. 47
RPC 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS ..................................................... 49
RPC 8.2 JUDICIAL AND LEGAL OFFICIALS .............................................................................. 49
RPC 8.3 REPORTING PROFESSIONAL MISCONDUCT ............................................................ 49
RPC 8.4 MISCONDUCT ................................................................................................................ 50
RPC 8.5 DISCIPLINARY AUTHORITY; CHOICE OF LAW .......................................................... 52
ATTORNEY ADVERTISING GUIDELINES (AS APPROVED BY THE SUPREME COURT OF NEW JERSEY) ............................................................................................................................... 53
ATTORNEY ADVERTISING GUIDELINE 1 .................................................................................. 53
ATTORNEY ADVERTISING GUIDELINE 2 .................................................................................. 53
ATTORNEY ADVERTISING GUIDELINE 3 .................................................................................. 53

NOTE: These rules shall be referred to as the Rules of Professional Conduct and shall be abbreviated as "RPC."
RPC 1.0 Terminology

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent."

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(h) "Primary responsibility" denotes actual participation in the management and direction of the matter at the policy-making level or responsibility at the operational level as manifested by the continuous day-to-day responsibility for litigation or transaction decisions.

(i) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(j) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(k) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(l) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely adoption and enforcement by a law firm of a written procedure pursuant to RPC 1.10(f) which is reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(m) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.
(n) "Tribunal" denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(o) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, electronic communication, and embedded information (metadata) in an electronic document. 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.

(p) “Metadata” is embedded information in electronic documents that is generally hidden from view in a printed copy of a document. It is generated when documents are created or revised on a computer. Metadata may reflect such information as the author of a document, the date or dates on which the document was revised, tracked revisions to the document, and comments inserted in the margins.

Note: Adopted November 17, 2003 to be effective January 1, 2004; paragraph (o) amended and new paragraph (p) adopted August 1, 2016 to be effective September 1, 2016.

RPC 1.1  Competence

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.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 1.2  Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) A lawyer shall abide by a client's decisions concerning the scope and objectives of representation, subject to paragraphs (c) and (d), and as required by RPC 1.4 shall consult with the client about the means to pursue them. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall consult with the client and, following consultation, shall abide by the client's decision on the plea to be entered, jury trial, and whether the client will testify.
(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel or assist a client in conduct that the lawyer knows is illegal, criminal or fraudulent, or in the preparation of a written instrument containing terms the lawyer knows are expressly prohibited by law, but a lawyer may counsel or assist a client in a good faith effort to determine the validity, scope, meaning or application of the law.

A lawyer may counsel a client regarding New Jersey's medical marijuana laws and assist the client to engage in conduct that the lawyer reasonably believes is authorized by those laws. The lawyer shall also advise the client regarding related federal law and policy.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption amended, paragraphs (a) and (c) amended, and paragraph (e) deleted and redesignated as RPC 1.4(d) November 17, 2003 to be effective January 1, 2004; paragraph (d) amended August 1, 2016 to be effective September 1, 2016.

RPC 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 1.4 Communication

(a) A lawyer shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer.

(b) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(c) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(d) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall advise the client of the relevant limitations on the lawyer's conduct.

Note: Adopted July 12, 1984 to be effective September 10, 1984; new paragraphs (a) and (d) adopted and former paragraphs (a) and (b) redesignated as paragraphs (b) and (c) November 17, 2003 to be effective January 1, 2004.
RPC 1.5 Fees

(a) A lawyer’s fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law or by these rules. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.
(e) Except as otherwise provided by the Court Rules, a division of fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer, or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; and

(2) the client is notified of the fee division; and

(3) the client consents to the participation of all the lawyers involved; and

(4) the total fee is reasonable.

Note: Adopted July 12, 1984 to be effective September 10, 1984; new subparagraph (e)(2) added and former subparagraphs (e)(2) and (e)(3) redesignated as subparagraphs (e)(3) and (e)(4) November 17, 2003 to be effective January 1, 2004.

RPC 1.6  Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for (1) disclosures that are impliedly authorized in order to carry out the representation, (2) disclosures of information that is generally known, and (3) as stated in paragraphs (b), (c), and (d).

(b) A lawyer shall reveal such information to the proper authorities, as soon as, and to the extent the lawyer reasonably believes necessary, to prevent the client or another person:

(1) from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm or substantial injury to the financial interest or property of another; or

(2) from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to perpetrate a fraud upon a tribunal.

(c) If a lawyer reveals information pursuant to RPC 1.6(b), the lawyer also may reveal the information to the person threatened to the extent the lawyer reasonably believes is necessary to protect that person from death, substantial bodily harm, substantial financial injury, or substantial property loss.

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

(1) to rectify the consequences of a client's criminal, illegal or fraudulent act in the furtherance of which the lawyer's services had been used;

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, or to establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer based upon the conduct in which the client was involved; or
(3) to prevent the client from causing death or substantial bodily harm to himself or herself;

(4) to comply with other law; or

(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.

(e) Reasonable belief for purposes of RPC 1.6 is the belief or conclusion of a reasonable lawyer that is based upon information that has some foundation in fact and constitutes prima facie evidence of the matters referred to in subsections (b), (c), or (d).

(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 (August 1, 2016)

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.

Paragraph (f) requires a lawyer to act competently to safeguard information, including electronically stored 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.

Official Comment (September 1, 2018)

The Court adopts the comment in the Restatement (Third) of the Law Governing Lawyers on confidential information, which states:

Whether information is "generally known" depends on all circumstances relevant in obtaining the information. Information contained in books or records in public libraries, public-record depositaries such as government offices, or in publicly accessible electronic-data storage is generally known if the particular information is obtainable through publicly available indexes and similar methods of access. Information is not generally known when a person interested in knowing the information could obtain it only by means of special knowledge or substantial difficulty or expense. Special knowledge includes information about the whereabouts or identity of a person or other source from which the information can be acquired, if those facts are not themselves generally known.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraphs (a) and (b) amended, new paragraph (c) added, former paragraph (c) redesignated as paragraph (d), and former paragraph (d) amended and redesignated as paragraph (e) November 17, 2003 to be effective January 1, 2004; former subparagraph (d)(3) redesignated as subparagraph (d)(4) and new subparagraph (d)(3) adopted July 19,
RPC 1.7   Conflict of Interest: General Rule

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved;

(2) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(3) the representation is not prohibited by law; and

(4) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

Note: Adopted July 12, 1984 to be effective September 10, 1984; text deleted and new text adopted November 17, 2003 to be effective January 1, 2004.

RPC 1.8   Conflict of Interest: Current Clients; Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
(1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) Except as permitted or required by these rules, a lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client after full disclosure and consultation, gives informed consent.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent, or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

   (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

   (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

   (3) a legal services or public interest organization, a law school clinical or pro bono program, or an attorney providing qualifying pro bono service as defined in R. 1:21-11(a), may provide financial assistance to indigent clients whom the organization, program, or attorney is representing without fee.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

   (1) the client gives informed consent;

   (2) there is no interference with the lawyer's independence of professional judgment or with the lawyer-client relationship; and
(3) information relating to representation of a client is protected as required by RPC 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or no contest pleas, unless each client gives informed consent after a consultation that shall include disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client fails to act in accordance with the lawyer's advice and the lawyer nevertheless continues to represent the client at the client's request. Notwithstanding the existence of those two conditions, the lawyer shall not make such an agreement unless permitted by law and the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advise of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may: (1) acquire a lien granted by law to secure the lawyer's fee or expenses, (2) contract with a client for a reasonable contingent fee in a civil case.

(j) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

(k) A lawyer employed by a public entity, either as a lawyer or in some other role, shall not undertake the representation of another client if the representation presents a substantial risk that the lawyer's responsibilities to the public entity would limit the lawyer's ability to provide independent advice or diligent and competent representation to either the public entity or the client.

(l) A public entity cannot consent to a representation otherwise prohibited by this Rule.

Note: Adopted September 10, 1984 to be effective immediately; paragraph (e) amended July 12, 2002 to be effective September 3, 2002; caption amended, paragraphs (a), (b), (c), (f), (g), (h) amended, former paragraph (i) deleted, former paragraph (j) redesignated as paragraph (i), former paragraph (k) deleted, and new paragraphs (j), (k) and (l) added November 17, 2003 to be effective January 1, 2004; subparagraph (e)(3) amended July 22, 2014 to be effective January 1, 2015.
**RPC 1.9   Duties to Former Clients**

(a) A lawyer who has represented a client in a matter shall not thereafter represent another client in the same or a substantially related matter in which that client's interests are materially adverse to the interests of the former client unless the former client gives informed consent confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client,

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer, while at the former firm, had personally acquired information protected by RPC 1.6 and RPC 1.9(c) that is material to the matter unless the former client gives informed consent, confirmed in writing.

Notwithstanding the other provisions of this paragraph, neither consent shall be sought from the client nor screening pursuant to RPC 1.10 permitted in any matter in which the attorney had sole or primary responsibility for the matter in the previous firm.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

(d) A public entity cannot consent to a representation otherwise prohibited by this Rule.

**Note:** Adopted July 12, 1984 to be effective September 10, 1984; caption amended, paragraphs (a) and (b) amended, and new paragraphs (c) and (d) added November 17, 2003 to be effective January 1, 2004.

**RPC 1.10   Imputation of Conflicts of Interest: General Rule**

(a) When lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by RPC 1.7 or RPC 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.
(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by RPC 1.6 and RPC 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under RPC 1.9 unless:

(1) the matter does not involve a proceeding in which the personally disqualified lawyer had primary responsibility;

(2) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(3) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

(d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in RPC 1.7.

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by RPC 1.11.

(f) Any law firm that enters a screening arrangement, as provided by this Rule, shall establish appropriate written procedures to insure that: (1) all attorneys and other personnel in the law firm screen the personally disqualified attorney from any participation in the matter, (2) the screened attorney acknowledges the obligation to remain screened and takes action to insure the same, and (3) the screened attorney is apportioned no part of the fee therefrom.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (b) corrected in Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201, 217-18 (1988); caption and paragraphs (a), (b), and (c) amended, paragraph (d) deleted, former paragraph (e) amended and redesignated as paragraph (d), new paragraphs (e) and (f) adopted November 17, 2003 to be effective January 1, 2004.
RPC 1.11   Successive Government and Private Employment

(a) Except as law may otherwise expressly permit, and subject to RPC 1.9, a lawyer who formerly has served as a government lawyer or public officer or employee of the government shall not represent a private client in connection with a matter:

(1) in which the lawyer participated personally and substantially as a public officer or employee, or

(2) for which the lawyer had substantial responsibility as a public officer or employee; or

(3) when the interests of the private party are materially adverse to the appropriate government agency, provided, however, that the application of this provision shall be limited to a period of six months immediately following the termination of the attorney's service as a government lawyer or public officer.

(b) Except as law may otherwise expressly permit, a lawyer who formerly has served as a government lawyer or public officer or employee of the government:

(1) shall be subject to RPC 1.9(c)(2) in respect of information relating to a private party or information that the lawyer knows is confidential government information about a person acquired by the lawyer while serving as a government lawyer or public officer or employee of the government, and

(2) shall not represent a private person whose interests are adverse to that private party in a matter in which the information could be used to the material disadvantage of that party.

(c) In the event a lawyer is disqualified under (a) or (b), the lawyer may not represent a private client, but absent contrary law a firm with which that lawyer is associated may undertake or continue representation if:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom, and

(2) written notice is given promptly to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(d) Except as law may otherwise expressly permit, a lawyer serving as a government lawyer or public officer or employee of the government:

(1) shall be subject to RPC 1.9(c)(2) in respect of information relating to a private party acquired by the lawyer while in private practice or nongovernmental employment,
(2) shall not participate in a matter (i) in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, or (ii) for which the lawyer had substantial responsibility while in private practice or nongovernmental employment, or (iii) with respect to which the interests of the appropriate government agency are materially adverse to the interests of a private party represented by the lawyer while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter or unless the private party gives its informed consent, confirmed in writing, and

(3) shall not negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially or for which the lawyer has substantial responsibility, except that a lawyer serving as a law clerk shall be subject to RPC 1.12(c).

(e) As used in this Rule, the term:

(1) "matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and any other matter covered by the conflict of interest rules of the appropriate government agency;

(2) "confidential government information" means information that has been obtained under governmental authority and that, at the time this rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and that is not otherwise available to the public.

Comment by Court (Regarding 2008 Amendment)

In In re ACPE Opinion 705, 192 N.J. 46 (2007), the Court deferred to the Legislature in the spirit of comity and held that the post-government employment restrictions imposed by the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-17, apply in the context of former State attorneys. The 2008 amendment to paragraph (c) implements that decision.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (a) amended, text of paragraph (b) deleted and new text adopted, new paragraph (c) adopted, former paragraphs (c) and (d) amended and redesignated as paragraphs (d) and (e), and former paragraph (e) merged into redesignated paragraph (e) November 17, 2003 to be effective January 1, 2004; paragraph (c) amended July 9, 2008 to be effective September 1, 2008.
RPC 1.12   Former Judge, Arbitrator, Mediator or Other Third-Party Neutral or Law Clerk

(a) Except as stated in paragraph (c), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator, mediator or other third-party neutral, or law clerk to such a person, unless all parties to the proceeding have given consent, confirmed in writing.

(b) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

1. the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

2. written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.

(c) A lawyer shall not negotiate for employment with any person who is involved as a party or as an attorney for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer, arbitrator, mediator, or other third-party neutral. A lawyer serving as law clerk to such a person may negotiate for employment with a party or attorney involved in a matter in which the law clerk is participating personally and substantially, but only after the lawyer has notified the person to whom the lawyer is serving as law clerk.

(d) An arbitrator selected by a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption and paragraph (a) amended, new paragraph (b) adopted, former paragraphs (b) and (c) amended and redesignated as paragraphs (c) and (d) November 17, 2003 to be effective January 1, 2004.

RPC 1.13   Organization as the Client

(a) A lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members, shareholders or other constituents. For the purposes of RPC 4.2 and 4.3, however, the organization's lawyer shall be deemed to represent not only the organizational entity but also the members of its litigation control group. Members of the litigation control group shall be deemed to include current agents and employees responsible for, or significantly involved in, the determination of the organization's legal position in the matter whether or not in litigation, provided, however, that "significant involvement" requires involvement greater, and other than, the supplying of factual information or data
respecting the matter. Former agents and employees who were members of the
litigation control group shall presumptively be deemed to be represented in the matter
by the organization’s lawyer but may at any time disavow said representation.

(b) If a lawyer for an organization knows that an officer, employee or other
person associated with the organization is engaged in action, intends to act or refuses
to act in a matter related to the representation that is a violation of a legal obligation to
the organization, or a violation of law which reasonably might be imputed to the
organization, and is likely to result in substantial injury to the organization, the lawyer
shall proceed as is reasonably necessary in the best interest of the organization. In
determining how to proceed, the lawyer shall give due consideration to the seriousness
of the violation and its consequences, the scope and nature of the lawyer's
representation, the responsibility in the organization and the apparent motivation of the
person involved, the policies of the organization concerning such matters and any other
relevant considerations. Any measures taken shall be designed to minimize disruption
of the organization and the risk of revealing information relating to the representation to
persons outside the organization. Such measures may include among others:

(1) asking reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for
presentation to appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if
warranted by the seriousness of the matter, referral to the highest authority that can act
in behalf of the organization as determined by applicable law.

(c) When the organization's highest authority insists upon action, or refuses to
take action, that is clearly a violation of a legal obligation to the organization, or a
violation of law which reasonably might be imputed to the organization, and is likely to
result in substantial injury to the organization, the lawyer may take further remedial
action that the lawyer reasonably believes to be in the best interest of the organization.
Such action may include revealing information otherwise protected by RPC 1.6 only if
the lawyer reasonably believes that:

(1) the highest authority in the organization has acted to further the
personal or financial interests of members of that authority which are in conflict with the
interests of the organization; and

(2) revealing the information is necessary in the best interest of the
organization.

(d) In dealing with an organization’s directors, officers, employees, members,
shareholders or other constituents, a lawyer shall explain the identity of the client when
the lawyer believes that such explanation is necessary to avoid misunderstanding on
their part.
(e) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of RPC 1.7. If the organization's consent to the dual representation is required by RPC 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented or by the shareholders.

(f) For purposes of this rule "organization" includes any corporation, partnership, association, joint stock company, union, trust, pension fund, unincorporated association, proprietorship or other business entity, state or local government or political subdivision thereof, or non-profit organization.

Note: Adopted September 10, 1984, to be effective immediately; amended June 28, 1996, to be effective September 1, 1996.

RPC 1.14 Client Under a Disability

(a) When a client's capacity to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by RPC 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under RPC 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraphs (a) and (b) amended and new paragraph (c) adopted November 17, 2003 to be effective January 1, 2004.

RPC 1.15 Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in a financial institution in New Jersey. Funds of the lawyer that are reasonably sufficient to pay bank charges may, however, be deposited therein. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property
shall be kept by the lawyer and shall be preserved for a period of seven years after the event that they record.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) A lawyer shall comply with the provisions of R. 1:21-6 ("Recordkeeping") of the Court Rules.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 1.16 Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;
(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law. No lawyer shall assert a common law retaining lien.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraphs (b), (c), and (d) amended November 17, 2003 to be effective January 1, 2004; paragraph (d) amended March 25, 2013 to be effective April 1, 2013.

RPC 1.17   Sale of Law Practice

A lawyer or law firm may sell or purchase a law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law in this jurisdiction.

(b) The entire practice is sold to one or more lawyers or law firms.

(c) Written notice is given to each of the seller's clients stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of the client's file and property; and that if no response to the notice is received within sixty days of the sending of such notice, or in the event the client's rights would be prejudiced by a failure to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client.
(1) If the seller is the estate of a deceased lawyer, the purchaser shall cause the notice to be given to the client and the purchaser shall obtain the written consent of the client provided that such consent shall be presumed if no response to the notice is received within sixty days of the date the notice was sent to the client's last known address as shown on the records of the seller, or the client's rights would be prejudiced by a failure to act during such sixty-day period.

(2) In all other circumstances, not less than sixty days prior to the transfer the seller shall cause the notice to be given to the client and the seller shall obtain the written consent of the client prior to the transfer, provided that such consent shall be presumed if no response to the notice is received within sixty days of the date of the sending of such notice to the client's last known address as shown on the records of the seller.

(3) The purchaser shall cause an announcement or notice of the purchase and transfer of the practice to be published in the New Jersey Law Journal and the New Jersey Lawyer at least thirty days in advance of the effective date of the transfer.

(d) The fees charged to clients shall not be increased by reason of the sale of the practice.

(e) If substitution in a pending matter is required by the tribunal or these Rules, the purchasing lawyer or law firm shall provide for same promptly.

(f) Admission to or withdrawal from a partnership, professional corporation, or limited liability entity, retirement plans and similar arrangements, or sale limited to the tangible assets of a law practice shall not be deemed a sale or purchase for purposes of this Rule.

Note: Adopted October 16, 1992, to be effective immediately; paragraph (f) amended July 10, 1998, to be effective September 1, 1998; paragraph (b) amended November 17, 2003 to be effective January 1, 2004.

RPC 1.18 Prospective Client

(a) A lawyer who has had 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.

(b) A lawyer subject to paragraph (a) shall not represent a client with interests materially adverse to those of a former prospective client in the same or a substantially related matter if the lawyer received information from the former prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (c).
(c) If a lawyer is disqualified from representation under (b), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except that representation is permissible if (1) both the affected client and the former prospective client have given informed consent, confirmed in writing, or (2) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom and written notice is promptly given to the former prospective client.

(d) A person who 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 (August 1, 2016)

A person who communicates with a lawyer to disqualify that lawyer is not considered a prospective client. For example, an uninvited electronic communication is not, without more, considered to be a consultation with a prospective client.

Note: Adopted November 17, 2003 to be effective January 1, 2004; paragraphs (a) and (d) amended, and Official Comment adopted, August 1, 2016 to be effective September 1, 2016.

RPC 2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations, such as moral, economic, social and political facts, that may be relevant to the client's situation.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 2.2 (Reserved)

Note: RPC 2.2 ("Intermediary") adopted July 12, 1984 to be effective September 10, 1984; caption and rule deleted November 17, 2003 effective January 1, 2004.

RPC 2.3 Evaluation for Use by Third Persons

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.
(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless:

(1) the lawyer describes the conditions of the evaluation to the client, in writing, including disclosure of information otherwise protected by RPC 1.6;

(2) the lawyer consults with the client; and

(3) the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by RPC 1.6.

(d) In reporting an evaluation, the lawyer shall indicate any material limitations that were imposed on the scope of the inquiry or on the disclosure of information.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (a) amended and redesignated as paragraphs (a) and (b), former paragraph (b) redesignated as paragraph (d), and paragraph (c) amended November 17, 2003 to be effective January 1, 2004.

RPC 2.4   Lawyer Serving as Third-Party Neutral

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator, or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform the parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Note: Adopted November 17, 2003 to be effective January 1, 2004.

RPC 3.1   Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, nor assert or controvert an issue therein unless the lawyer knows or reasonably believes that there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law, or the establishment of new law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.
Note: Adopted July 12, 1984 to be effective September 10, 1984; amended November 17, 2003 to be effective January 1, 2004.

RPC 3.2   Expediting Litigation

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.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 3.3   Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures; or

(5) fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal, except that it shall not be a breach of this rule if the disclosure is protected by a recognized privilege or is otherwise prohibited by law.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse.
RPC 3.4   Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value, or counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure make frivolous discovery requests or fail to make reasonably diligent efforts to comply with legally proper discovery requests by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

(g) present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (g) adopted July 18, 1990, to be effective September 4, 1990.

RPC 3.5   Impartiality and Decorum of the Tribunal

A lawyer shall not:
(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person except as permitted by law;

(c) engage in conduct intended to disrupt a tribunal; or

(d) contact or have discussions with a judge or other adjudicative officer, arbitrator, mediator, or other third-party neutral (hereinafter "judge") about the judge's post-retirement employment while the lawyer (or a law firm with or for whom the lawyer is a partner, associate, counsel, or contractor) is involved in a pending matter in which the judge is participating personally and substantially.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraphs (b) and (c) amended and new paragraph (d) adopted July 19, 2012 to be effective September 4, 2012.

RPC 3.6   Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense, or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) the information contained in a public record;

(3) that an investigation of the matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

Official Comment by Supreme Court (November 17, 2003)

A statement referred to in paragraph (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness other than the victim of a crime, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraph (b)(1) amended October 1, 1992, to be effective immediately; paragraph (a) amended, paragraph (b) deleted and restated in Official Comment, paragraph (c) amended and redesignated as paragraph (b), and new paragraph (c) adopted November 17, 2003 to be effective January 1, 2004.
RPC 3.7  Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

1. the testimony relates to an uncontested issue;
2. the testimony relates to the nature and value of legal services rendered in the case; or
3. disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by RPC 1.7 or RPC 1.9.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (a) amended November 17, 2003 to be effective January 1, 2004.

RPC 3.8  Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important post-indictment pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:
(1) either the information sought is not protected from disclosure by any applicable privilege or the evidence sought is essential to an ongoing investigation or prosecution; and

(2) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under RPC 3.6 or this Rule.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraphs (c) and (d) amended and new paragraphs (e) and (f) adopted November 17, 2003 to be effective January 1, 2004.

RPC 3.9   Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative body or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of RPC 3.3(a) through (d), RPC 3.4(a) through (g), and RPC 3.5(a) through (c).

Note: Adopted July 12, 1984 to be effective September 10, 1984; amended November 17, 2003 to be effective January 1, 2004.

RPC 4.1   Truthfulness in Statements to Others

(a) In representing a client a lawyer shall not knowingly:

(1) make a false statement of material fact or law to a third person; or

(2) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

(b) The duties stated in this Rule apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.

Note: Adopted July 12, 1984 to be effective September 10, 1984.
RPC 4.2  Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows, or by the exercise of reasonable diligence should know, to be represented by another lawyer in the matter, including members of an organization's litigation control group as defined by RPC 1.13, unless the lawyer has the consent of the other lawyer, or is authorized by law or court order to do so, or unless the sole purpose of the communication is to ascertain whether the person is in fact represented. Reasonable diligence shall include, but not be limited to, a specific inquiry of the person as to whether that person is represented by counsel. Nothing in this rule shall, however, preclude a lawyer from counseling or representing a member or former member of an organization's litigation control group who seeks independent legal advice.

Official Comment by Supreme Court (November 17, 2003)

Concerning organizations, RPC 4.2 addresses the issue of who is represented under the rule by precluding a lawyer from communicating with members of the organization's litigation control group. The term "litigation control group" is not intended to limit application of the rule to matters in litigation. As the Report of the Special Committee on RPC 4.2 states, "... the 'matter' has been defined as a 'matter whether or not in litigation.'" The primary determinant of membership in the litigation control group is the person's role in determining the organization's legal position. See Michaels v. Woodland, 988 F.Supp. 468, 472 (D.N.J. 1997).

In the criminal context, the rule ordinarily applies only after adversarial proceedings have begun by arrest, complaint, or indictment on the charges that are the subject of the communication. See State v. Bisaccia, 319 N.J. Super. 1, 22-23 (App. Div. 1999).

Concerning communication with governmental officials, the New Jersey Supreme Court Commission on the Rules of Professional Conduct agrees with the American Bar Association's Commission comments, which state:

Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with a governmental official. For example, the constitutional right to petition and the public policy of ensuring a citizen's right of access to government decision makers, may permit a lawyer representing a private party in a controversy with the government to communicate about the matter with government officials who have authority to take or recommend action in the matter.

Note: Adopted September 10, 1984, to be effective immediately; amended June 28, 1996, to be effective September 1, 1996; amended November 17, 2003 to be effective January 1, 2004.
RPC 4.3  Dealing with Unrepresented Person; Employee of Organization

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. If the person is a director, officer, employee, member, shareholder or other constituent of an organization concerned with the subject of the lawyer's representation but not a person defined by RPC 1.13(a), the lawyer shall also ascertain by reasonable diligence whether the person is actually represented by the organization's attorney pursuant to RPC 1.13(e) or who has a right to such representation on request, and, if the person is not so represented or entitled to representation, the lawyer shall make known to the person that insofar as the lawyer understands, the person is not being represented by the organization's attorney.

Note: Adopted September 10, 1984, to be effective immediately; amended June 28, 1996, to be effective September 1, 1996.

RPC 4.4  Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(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 it. The lawyer shall (1) promptly notify the sender (2) return the document to the sender and, if in electronic form, delete it and take reasonable measures to assure that the information is inaccessible.

A lawyer who receives a document or electronic information that contains privileged 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 (2) return the document to the other lawyer and, if in electronic form, delete it and take reasonable measures to assure that the information is inaccessible. A lawyer who has been notified about a document containing lawyer-client communications has the obligation to preserve the document.

Official Comment (August 1, 2016)

Lawyers should be aware of the presence of metadata in electronic documents. “Metadata” is embedded information in electronic documents that is generally hidden from view in a printed copy of a document. It is generated when
documents are created or revised on a computer. Metadata may reflect such information as the author of a document, the date or dates on which the document was revised, tracked revisions to the document, and comments inserted in the margins. It may also reflect information necessary to access, understand, search, and display the contents of documents created in spreadsheet, database, and similar applications.

A lawyer who receives an electronic document that contains unrequested metadata may, consistent with Rule of Professional Conduct 4.4(b), review the metadata provided the lawyer reasonably believes that the metadata was not inadvertently sent. When making a determination as to whether the metadata was inadvertently sent, the lawyer should consider the nature and purpose of the document. For example, absent permission from the sender, a lawyer should not review metadata in a mediation statement or correspondence from another lawyer, as the metadata may reflect attorney-client communications, work product or internal communications not intended to be shared with opposing counsel. The lawyer should also consider the nature of the metadata at issue. Metadata is presumed to be inadvertently sent when it reflects privileged attorney-client or work product information. Metadata is likely to be inadvertently sent when it reflects private or proprietary information, information that is outside the scope of discovery by agreement or court order, or information specifically objected to in discovery. If a lawyer must use forensic “mining” software or similar methods to reveal metadata in an electronic document when metadata was not specifically requested, as opposed to using simple computer keystrokes on ordinary business software, it is likely that the information so revealed was inadvertently sent, given the degree of sophistication required to reveal the metadata.

A document will not be considered “wrongfully obtained” if it was obtained for the purposes of encouraging, participating in, cooperating with, or conducting an actual or potential law enforcement, regulatory, or other governmental investigation. Government lawyers, namely, lawyers at the offices of the Attorney General, County Prosecutors, and United States Attorney, who have lawfully received materials that could be considered to be inadvertently sent or wrongfully obtained under this Rule are not subject to the notification and return requirements when such requirements could impair the legitimate interests of law enforcement. These specified government lawyers may also review and use such materials to the extent permitted by the applicable substantive law, including the law of privileges.

Note: Adopted July 12, 1984 to be effective September 10, 1984; text redesignated as paragraph (a) and new paragraph (b) adopted November 17, 2003 to be effective January 1, 2004; paragraph (b) amended and Official Comment adopted August 1, 2016 to be effective September 1, 2016.
RPC 5.1 Responsibilities of Partners, Supervisory Lawyers, and Law Firms

(a) Every law firm, government entity, and organization authorized by the Court Rules to practice law in this jurisdiction shall make reasonable efforts to ensure that member lawyers or lawyers otherwise participating in the organization's work undertake measures giving reasonable assurance that all lawyers conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or ratifies the conduct involved; or

(2) the lawyer having direct supervisory authority over the other lawyer knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(d) No law firm or lawyer on behalf of a law firm shall pay an assessment or make a contribution to a political organization or candidate, including but not limited to purchasing tickets for political party dinners or for other functions, from any of the firm's business accounts while a municipal court judge is associated with the firm as a partner, shareholder, director, of counsel, or associate or holds some other comparable status with the firm.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption and paragraph (a) amended November 17, 2003 to be effective January 1, 2004; new paragraph (d) adopted July 19, 2012 to be effective September 4, 2012.

RPC 5.2 Responsibilities of a Subordinate Lawyer

(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.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 5.3 Responsibilities Regarding Nonlawyer Assistance
With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) every lawyer, law firm or organization authorized by the Court Rules to practice law in this jurisdiction shall adopt and maintain reasonable efforts to ensure that the conduct of nonlawyers retained or employed by the lawyer, law firm or organization is compatible with the professional obligations of the lawyer.

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or ratifies the conduct involved;

(2) the lawyer has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; or

(3) the lawyer has failed to make reasonable investigation of circumstances that would disclose past instances of conduct by the nonlawyer incompatible with the professional obligations of a lawyer, which evidence a propensity for such conduct.

Official Comment (August 1, 2016)

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.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (a) amended November 17, 2003 to be effective January 1, 2004; title amended and Official Comment adopted August 1, 2016 to be effective September 1, 2016.

RPC 5.4 Professional Independence of a Lawyer

Except as otherwise provided by the Rules of Court:

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer;

(3) lawyers or law firms who purchase a practice from the estate of a deceased lawyer, or from any person acting in a representative capacity for a disabled
or disappeared lawyer, may, pursuant to the provisions of RPC 1.17, pay to the estate or other representative of that lawyer the agreed upon price;

(4) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(5) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation, association, or limited liability entity authorized to practice law for profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraph (a)(2) amended and paragraph (a)(3) adopted October 16, 1992, to be effective immediately; paragraph (d) amended July 10, 1998, to be effective September 1, 1998; paragraph (a) amended November 17, 2003 to be effective January 1, 2004.

RPC 5.5   Lawyers Not Admitted to the Bar of This State and the Lawful Practice of Law

(a) A lawyer shall not:

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

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

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

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

3. under any of the following circumstances:

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

   (ii) the lawyer engages in representation of a party to a dispute by participating in arbitration, mediation or other alternate or complementary dispute resolution program 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.

(c) A lawyer admitted to practice in another jurisdiction who acts in this jurisdiction pursuant to paragraph (b) above shall:
(1) be licensed and in good standing in all jurisdictions of admission and not be the subject of any pending disciplinary proceedings, nor a current or pending license suspension or disbarment;

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

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

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

(5) comply with R. 1:21-1(a)(1); and

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

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption amended, former text designated as paragraph (a), and new paragraphs (b) and (c) adopted November 17, 2003 to be effective January 1, 2004; paragraph (c) amended July 28, 2004 to be effective September 1, 2004; subparagraphs (b)(3)(ii) and (b)(3)(iii) amended, former subparagraph (b)(3)(iv) redesignated as subparagraph (b)(3)(v) and amended, new subparagraph (b)(3)(iv) adopted, and paragraph (c) and subparagraphs (c)(3) and (c)(6) amended July 23, 2010 to be effective September 1, 2010; subparagraph (b)(3)(iv) amended July 19, 2012 to be effective September 4, 2012; subparagraph (c)(5) amended July 9, 2013 to be effective September 1, 2013.

RPC 5.6 Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

(a) a partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

Note: Adopted July 12, 1984 to be effective September 10, 1984.
RPC 6.1.  **Voluntary Public Interest Legal Service**

Every lawyer has a professional responsibility to render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

**Note:** Adopted July 12, 1984 to be effective September 10, 1984; caption and text amended November 17, 2003 to be effective January 1, 2004.

RPC 6.2  **Accepting Appointments**

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

**Note:** Adopted July 12, 1984 to be effective September 10, 1984.

RPC 6.3  **Membership in Legal Services Organization**

A lawyer may serve as a director, officer or member of a legal services organization, other than the law firm with which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer if:

(a) the organization complies with RPC 5.4 concerning the professional independence of its legal staff; and

(b) when the interests of a client of the lawyer could be affected, participation is consistent with the lawyer's obligations under RPC 1.7 and the lawyer takes no part in any decision by the organization that could have a material adverse effect on the interest of a client or class of clients of the organization or upon the independence of professional judgment of a lawyer representing such a client.

**Note:** Adopted July 12, 1984 to be effective September 10, 1984.
RPC 6.4   Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client, except that when the organization is also a legal services organization, RPC 6.3 shall apply.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 6.5   Nonprofit and Court-Annexed Limited Legal Service Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to RPC 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to RPC 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by RPC 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), RPC 1.10 is inapplicable to a representation governed by this RPC.

Note: Adopted November 17, 2003 to be effective January 1, 2004.

RPC 7.1   Communications Concerning a Lawyer’s Service

(a) A lawyer shall not make false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement. A communication is false or misleading if it:

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;
(3) compares the lawyer’s services with other lawyers’ services, unless (i) the name of the comparing organization is stated, (ii) the basis for the comparison can be substantiated, and (iii) the communication includes the following disclaimer in a readily discernible manner: "No aspect of this advertisement has been approved by the Supreme Court of New Jersey"; or

(4) relates to legal fees other than:

(i) a statement of the fee for an initial consultation;

(ii) a statement of the fixed or contingent fee charged for a specific legal service, the description of which would not be misunderstood or be deceptive;

(iii) a statement of the range of fees for specifically described legal services, provided there is a reasonable disclosure of all relevant variables and considerations so that the statement would not be misunderstood or be deceptive;

(iv) a statement of specified hourly rates, provided the statement makes clear that the total charge will vary according to the number of hours devoted to the matter, and in relation to the varying hourly rates charged for the services of different individuals who may be assigned to the matter;

(v) the availability of credit arrangements; and

(vi) a statement of the fees charged by a qualified legal assistance organization in which the lawyer participates for specific legal services the description of which would not be misunderstood or be deceptive

(b) It shall be unethical for a lawyer to use an advertisement or other related communication known to have been disapproved by the Committee on Attorney Advertising, or one substantially the same as the one disapproved, until or unless modified or reversed by the Advertising Committee or as provided by Rule 1:19A-3(d).

Official Comment by Supreme Court (November 2, 2009)

A truthful communication that the lawyer has received an honor or accolade is not misleading or impermissibly comparative for purposes of this Rule if: (1) the conferrer has made inquiry into the attorney’s fitness; (2) the conferrer does not issue such an honor or accolade for a price; and (3) a truthful, plain language description of the standard or methodology upon which the honor or accolade is based is available for inspection either as part of the communication itself or by reference to a convenient, publicly available source.

Note: Adopted July 12, 1984, to be effective September 10, 1984; new paragraph (b) added June 26, 1987, to be effective July 1, 1987; paragraph (a) amended June 29, 1990, to be effective September 4,
RPC 7.2   Advertising

(a) Subject to the requirements of RPC 7.1, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, radio or television, internet or other electronic media, or through mailed written communication. All advertisements shall be predominantly informational. No drawings, animations, dramatizations, music, or lyrics shall be used in connection with televised advertising. No advertisement shall rely in any way on techniques to obtain attention that depend upon absurdity and that demonstrate a clear and intentional lack of relevance to the selection of counsel; included in this category are all advertisements that contain any extreme portrayal of counsel exhibiting characteristics clearly unrelated to legal competence.

(b) A copy or recording of an advertisement or written communication shall be kept for three years after its dissemination along with a record of when and where it was used. Lawyers shall capture all material on their websites, in the form of an electronic or paper backup, including all new content, on at least a monthly basis, and retain this information for three years.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that: (1) a lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule; (2) a lawyer may pay the reasonable cost of advertising, written communication or other notification required in connection with the sale of a law practice as permitted by RPC 1.17; and (3) a lawyer may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraph (a) amended December 10, 1986, to be effective December 10, 1986; paragraph (c) amended October 16, 1992, to be effective immediately; paragraph (a) amended November 17, 2003 to be effective January 1, 2004; paragraph (b) amended July 27, 2018, to be effective September 1, 2018.

RPC 7.3   Personal Contact with Prospective Clients

(a) A lawyer may initiate personal contact with a prospective client for the purpose of obtaining professional employment, subject to the requirements of paragraph (b).

(b) A lawyer shall not contact, or send a written or electronic or other form of communication to, a prospective client for the purpose of obtaining professional employment if:
the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer; or

(2) the person has made known to the lawyer a desire not to receive communications from the lawyer; or

(3) the communication involves coercion, duress or harassment; or

(4) the communication involves unsolicited direct contact with a prospective client within thirty days after a specific mass-disaster event, when such contact concerns potential compensation arising from the event; or

(5) the communication involves unsolicited direct contact with a prospective client concerning a specific event not covered by section (4) of this Rule when such contact has pecuniary gain as a significant motive except that a lawyer may send a letter by regular mail to a prospective client in such circumstances provided the letter:

(i) bears the word "ADVERTISEMENT" prominently displayed in capital letters at the top of the first page of text and on the outside envelope, unless the lawyer has a family, close personal, or prior professional relationship with the recipient. The envelope shall contain nothing other than the lawyer's name, firm, return address and "ADVERTISEMENT" prominently displayed; and

(ii) shall contain the party's name in the salutation and begin by advising the recipient that if a lawyer has already been retained the letter is to be disregarded; and

(iii) contains the following notice at the bottom of the last page of text: "Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision."; and

(iv) contains an additional notice also at the bottom of the last page of text that the recipient may, if the letter is inaccurate or misleading, report same to the Committee on Attorney Advertising, Hughes Justice Complex, P.O. Box 970, Trenton, New Jersey 08625-0970. The name and address of the attorney responsible for the content of the letter shall be included in the notice.

(c) A lawyer shall not knowingly assist an organization that furnishes or pays for legal services to others to promote the use of the lawyer's services or those of the lawyer's partner, or associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, as a private practitioner, if:

(1) the promotional activity involves use of a statement or claim that is false or misleading within the meaning of RPC 7.1; or
(2) the promotional activity involves the use of coercion, duress, compulsion, intimidation, threats, unwarranted promises of benefits, overreaching, or vexatious or harassing conduct.

(d) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client except that the lawyer may pay for public communications permitted by RPC 7.1 and the usual and reasonable fees or dues charged by a lawyer referral service operated, sponsored, or approved by a bar association.

(e) A lawyer shall not knowingly assist a person or organization that furnishes or pays for legal services to others to promote the use of the lawyer's services or those of the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm except as permitted by RPC 7.1. However, this does not prohibit a lawyer or the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm from being recommended, employed or paid by or cooperating with one of the following offices or organizations that promote the use of the lawyer's services or those of the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm if there is no interference with the exercise of independent professional judgment in behalf of the lawyer's client:

(1) a legal aid office or public defender office:

(i) operated or sponsored by a duly accredited law school.

(ii) operated or sponsored by a bona fide nonprofit community organization.

(iii) operated or sponsored by a governmental agency.

(iv) operated, sponsored, or approved by a bar association.

(2) a military legal assistance office.

(3) a lawyer referral service operated, sponsored, or approved by a bar association.

(4) any bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:

(i) such organization, including any affiliate, is so organized and operated that no profit is derived by it from the furnishing, recommending or rendition of legal services by lawyers and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised or selected by it except in
connection with matters when such organization bears ultimate liability of its member or beneficiary.

(ii) neither the lawyer, nor the lawyer’s partner or associate or any other lawyer or nonlawyer affiliated with the lawyer or the lawyer’s firm directly or indirectly who have initiated or promoted such organization shall have received any financial or other benefit from such initiation or promotion.

(iii) such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization.

(iv) the member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter.

(v) any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, if such member or beneficiary so desires, and at the member or beneficiary’s own expense except where the organization’s plan provides for assuming such expense, select counsel other than that furnished, selected or approved by the organization for the particular matter involved. Nothing contained herein, or in the plan of any organization that furnishes or pays for legal services pursuant to this section, shall be construed to abrogate the obligations and responsibilities of a lawyer to the lawyer’s client as set forth in these Rules.

(vi) the lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court and other legal requirements that govern its legal service operations.

(vii) such organization has first filed with the Supreme Court and at least annually thereafter on the appropriate form prescribed by the Court a report with respect to its legal service plan. Upon such filing, a registration number will be issued and should be used by the operators of the plan on all correspondence and publications pertaining to the plan thereafter. Such organization shall furnish any additional information requested by the Supreme Court.

(f) A lawyer shall not accept employment when the lawyer knows or it is obvious that the person who seeks the lawyer’s services does so as a result of conduct prohibited under this Rule.

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraph (b)(4) amended June 29, 1990, to be effective September 4, 1990; new paragraph (b)(4) adopted and former paragraph (b)(4) redesignated and amended as paragraph (b)(5) April 28, 1997, to be effective May 5, 1997; paragraph (b)(5) amended November 17, 2003 to be effective January 1, 2004; subparagraph (b)(5)(i) amended July 23, 2010 to be effective September 1, 2010; paragraphs (b) and (b)(5) amended July 22, 2014, to be effective September 1, 2014; subparagraph (b)(5)(iv) amended April 30, 2018 to be effective immediately.
RPC 7.4   Communication of Fields of Practice and Certification

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may not, however, state or imply that the lawyer has been recognized or certified as a specialist in a particular field of law except as provided in paragraphs (b), (c), and (d) of this Rule.

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

(c) A lawyer engaged in admiralty practice may use the designation "Admiralty," "Proctor in Admiralty," or a substantially similar designation.

(d) A lawyer may communicate that the lawyer has been certified as a specialist or certified in a field of practice only when the communication is not false or misleading, states the name of the certifying organization, and states that the certification has been granted by the Supreme Court of New Jersey or by an organization that has been approved by the American Bar Association. If the certification has been granted by an organization that has not been approved, or has been denied approval, by the Supreme Court of New Jersey or the American Bar Association, the absence or denial of such approval shall be clearly identified in each such communication by the lawyer.

Note: Adopted July 12, 1984, to be effective September 10, 1984; former rule amended and designated paragraph (a) and new paragraph (b) adopted July 15, 1993, to be effective September 1, 1993; paragraph (a) amended, paragraph (b) redesignated as paragraph (d), and new paragraphs (b) and (c) adopted November 17, 2003 to be effective January 1, 2004.

RPC 7.5   Firm Names and Letterheads

(a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates RPC 7.1. Except for organizations referred to in R. 1:21-1(e), the name under which a lawyer or law firm practices shall include the full or last names of one or more of the lawyers in the firm or office or the names of a person or persons who have ceased to be associated with the firm through death or retirement.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction. In New Jersey, identification of all lawyers of the firm, in advertisements, on letterheads or anywhere else that the firm name is used, shall indicate the jurisdictional limitations on those not licensed to practice in New Jersey. Where the name of an attorney not licensed to practice in this State is used in a firm name, any advertisement, letterhead or other communication containing the firm name must include the name of at least one licensed New Jersey attorney who is responsible for the firm's New Jersey practice or the local office thereof.
(c) A firm name shall not contain the name of any person not actively associated with the firm as an attorney, other than that of a person or persons who have ceased to be associated with the firm through death or retirement.

(d) Lawyers may state or imply that they practice in a partnership only if the persons designated in the firm name and the principal members of the firm share in the responsibility and liability for the firm's performance of legal services.

(e) A law firm name may include additional identifying language such as "& Associates" only when such language is accurate and descriptive of the firm. Any firm name including additional identifying language such as "Legal Services" or other similar phrases shall inform all prospective clients in the retainer agreement or other writing that the law firm is not affiliated or associated with a public, quasi-public or charitable organization. However, no firm shall use the phrase "legal aid" in its name or in any additional identifying language. Use of a trade name shall be permissible so long as it describes the nature of the firm's legal practice in terms that are accurate, descriptive, and informative, but not misleading, comparative, or suggestive of the ability to obtain results. Such trade names shall be accompanied by the full or last names of one or more of the lawyers practicing in the firm or the names of lawyers who are no longer associated in the firm through death or retirement.

(f) In any case in which an organization practices under a trade name as permitted by paragraph (a) above, the name or names of one or more of its principally responsible attorneys, licensed to practice in this State, shall be displayed on all letterheads, signs, advertisements and cards or other places where the trade name is used.

Official Comment to RPC 7.5(e) by Supreme Court (July 27, 2015)

By way of example, "Millburn Tax Law Associates, John Smith, Esq." would be permissible under the trade name provision of this rule, as would "Smith & Jones Millburn Personal Injury Lawyers," provided that the law firm's primary location is in Millburn and its primary practice area is tax law or personal injury law, respectively. "John Smith Criminal Defense and Municipal Law" would also be permissible. However, neither "Best Tax Lawyers" nor "Tax Fixers" would be permissible, the former being comparative and the latter being suggestive of the ability to achieve results. Similarly, "Budget Lawyer John Smith, Esq." is not permissible as it is comparative and likely to be misleading; "Million Dollar Personal Injury Lawyer John Smith, Esq." is not permissible as it suggests the ability to achieve results; and "Tough As Nails Lawyer John Smith, Esq." is not permissible as it purports to describe the lawyer and does not describe the nature of the firm's legal practice.

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraphs (a) and (d) amended, paragraph (e) amended and redesignated as paragraph (f) and new paragraph (e) added June 29, 1990, to be effective September 4, 1990; paragraph (a) amended January 5, 2009 to be effective immediately; paragraph (e) amended, and Official Comment adopted July 27, 2015 to be effective September 1, 2015.
RPC 8.1   Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by RPC 1.6.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 8.2   Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge, adjudicatory officer or other public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who has been confirmed for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 8.3   Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by RPC 1.6.

(d) Paragraph (a) of this Rule shall not apply to knowledge obtained as a result of participation in a Lawyers Assistance Program established by the Supreme Court and administered by the New Jersey State Bar Association, except as follows:
(i) if the effect of discovered ethics infractions on the practice of an impaired attorney is irremediable or poses a substantial and imminent threat to the interests of clients, then attorney volunteers, peer counselors, or program staff have a duty to disclose the infractions to the disciplinary authorities, and attorney volunteers have the obligation to apply immediately for the appointment of a conservator, who also has the obligation to report ethics infractions to disciplinary authorities; and

(ii) attorney volunteers or peer counselors assisting the impaired attorney in conjunction with his or her practice have the same responsibility as any other lawyer to deal candidly with clients, but that responsibility does not include the duty to disclose voluntarily, without inquiry by the client, information of past violations or present violations that did not or do not pose a serious danger to clients.

Note: Adopted July 12, 1984, to be effective September 10, 1984; new paragraph (d) adopted October 5, 1993, to be effective immediately; paragraphs (a) and (b) amended November 17, 2003 to be effective January 1, 2004.

RPC 8.4   Misconduct

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 judicial 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.

Official Comment by Supreme Court (May 3, 1994)
This rule amendment (the addition of paragraph g) is intended to make discriminatory conduct unethical when engaged in by lawyers in their professional capacity. It would, for example, cover activities in the court house, such as a lawyer's treatment of court support staff, as well as conduct more directly related to litigation; activities related to practice outside of the court house, whether or not related to litigation, such as treatment of other attorneys and their staff; bar association and similar activities; and activities in the lawyer's office and firm. Except to the extent that they are closely related to the foregoing, purely private activities are not intended to be covered by this rule amendment, although they may possibly constitute a violation of some other ethical rule. Nor is employment discrimination in hiring, firing, promotion, or partnership status intended to be covered unless it has resulted in either an agency or judicial determination of discriminatory conduct. The Supreme Court believes that existing agencies and courts are better able to deal with such matters, that the disciplinary resources required to investigate and prosecute discrimination in the employment area would be disproportionate to the benefits to the system given remedies available elsewhere, and that limiting ethics proceedings in this area to cases where there has been an adjudication represents a practical resolution of conflicting needs.

"Discrimination" is intended to be construed broadly. It includes sexual harassment, derogatory or demeaning language, and, generally, any conduct towards the named groups that is both harmful and discriminatory.

Case law has already suggested both the area covered by this amendment and the possible direction of future cases. In re Vincenti, 114 N.J. 275 (554 A.2d 470) (1989). The Court believes the administration of justice would be better served, however, by the adoption of this general rule than by a case by case development of the scope of the professional obligation.

While the origin of this rule was a recommendation of the Supreme Court's Task Force on Women in the Courts, the Court concluded that the protection, limited to women and minorities in that recommendation, should be expanded. The groups covered in the initial proposed amendment to the rule are the same as those named in Canon 3A(4) of the Code of Judicial Conduct.

Following the initial publication of this proposed subsection (g) and receipt of various comments and suggestions, the Court revised the proposed amendment by making explicit its intent to limit the rule to conduct by attorneys in a professional capacity, to exclude employment discrimination unless adjudicated, to restrict the scope to conduct intended or likely to cause harm, and to include discrimination because of sexual orientation or socioeconomic status, these categories having been proposed by the ABA's Standing Committee on Ethics and Professional Responsibility as additions to the groups now covered in Canon 3A(4) of the New Jersey Code of Judicial Conduct. That Committee has also proposed that judges require attorneys, in proceedings before a judge, refrain from manifesting by words or conduct any bias or prejudice based on any of these categories. See proposed Canon 3A(6). This revision to the RPC further reflects the Court's intent to cover all discrimination where the attorney intends to cause
harm such as inflicting emotional distress or obtaining a tactical advantage and not to cover instances when no harm is intended unless its occurrence is likely regardless of intent, e.g., where discriminatory comments or behavior is repetitive. While obviously the language of the rule cannot explicitly cover every instance of possible discriminatory conduct, the Court believes that, along with existing case law, it sufficiently narrows the breadth of the rule to avoid any suggestion that it is overly broad. See, e.g., In re Vincenti, 114 N.J. 275 (554 A.2d 470) (1989).

**Note:** Adopted July 12, 1984, to be effective September 10, 1984; paragraph (g) adopted July 18, 1990, to be effective September 4, 1990; paragraph (g) amended May 3, 1994, to be effective September 1, 1994; paragraph (e) amended November 17, 2003 to be effective January 1, 2004.

**RPC 8.5 Disciplinary Authority; Choice of Law**

**a** Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is subject also to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

**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.

**Note:** Adopted July 12, 1984 to be effective September 10, 1984; caption amended, text amended and redesignated as paragraph (a) with caption added, new paragraph (b) with caption adopted November 17, 2003 to be effective January 1, 2004; subparagraph (b)(2) amended August 1, 2016 to be effective September 1, 2016.
Attorney Advertising Guidelines
(As approved by the Supreme Court of New Jersey)

Attorney Advertising Guideline 1

In any advertisement by an attorney or law firm, the advertisement shall include contact information for the attorney or law firm. The contact information for the attorney or law firm may be any of the following: (a) street address of the regular place of business, (b) mailing address, (c) telephone number, (d) fax number, (e) email address, or (f) website URL.

Note: Adopted June 29, 1990, to be effective September 4, 1990; amended August 14, 2013 to be effective October 1, 2013; amended September 10, 2019 to be effective immediately.

Attorney Advertising Guideline 2

(a) The word "ADVERTISEMENT" required by RPC 7.3(b)(5)(i), at the top of the first page of text of a solicitation letter, must be at least two font sizes larger than the largest size used in the advertising text in the body of the letter.

(b) The font size of notices required by RPC 7.3(b)(5)(ii and iii) must be no smaller than the font size generally used in the advertisement.

(c) The word "ADVERTISEMENT" required by RPC 7.3(b)(5)(i) on the face of the outside of the envelope must be at least one font size larger than the largest font size used on the envelope. If any words on the outside of the envelope are in bold, the word "ADVERTISEMENT" must also be in bold. Pursuant to Committee Opinion 20, if the envelope contains a message relating to the subject matter of the correspondence to be found inside, the attorney must ensure that the face of the envelope also includes the notices required by RPC 7.3(b)(5)(ii) and (iii).

Note: Adopted March 2, 2005, to be effective immediately; paragraphs (a) and (c) amended August 14, 2013 to be effective October 1, 2013.

Attorney Advertising Guideline 3

Attorney Advertisements: Use of Quotations or Excerpts From Judicial Opinions About the Legal Abilities of an Attorney

An attorney or law firm may include, on a website or other advertisement, an accurate quotation or excerpt from a court opinion (oral or written) about the attorney's abilities or legal services. The following disclaimer must be prominently displayed in proximity to such quotation or excerpt: "This comment, made by a judge in a particular case, is not an endorsement of my legal skill or ability."
Official Comment to Guideline 3 by the Supreme Court (October 15, 2014)

It is the responsibility of the attorney to confirm the accuracy of the quotation or excerpt. Court opinions or official transcripts of proceedings are the proper source to confirm statements posted on a website or used in some other form of advertising.

Note: Adopted May 15, 2012 to be effective June 1, 2012; revised Guideline and Official Comment adopted October 15, 2014 to be effective immediately.