APPENDIX A, PART 1

COURT NOTICES AND OMNIBUS ORDERS RE COVID-19

MARCH 29 NOTICE WITH MARCH 27 ORDER

NOTICE TO THE BAR

COVID-19 CORONAVIRUS – SUPREME COURT'S MARCH 27, 2020 OMNIBUS ORDER CONTINUING THE SUSPENSION OF COURT PROCEEDINGS AND EXTENDING DEADLINES AND TIMEFRAMES THROUGH APRIL 26, 2020

The Supreme Court on March 27, 2020 issued an omnibus order regarding the Judiciary's response to the COVID-19 Coronavirus public health crisis.

Over the past few weeks, the Court entered a series of orders and notices suspending certain court proceedings, extending deadlines, and tolling time periods because of the practical impossibility of continuing business as usual during this unprecedented emergency caused by the COVID-19 pandemic. The omnibus order extends numerous of those provisions – including the suspension of jury trials, Landlord/Tenant calendars, and all Municipal Court sessions – through April 26, 2020.

In addition to those continuations, the Court's March 27 Order also takes a number of new steps. In Civil matters, the Order extends deadlines to additional areas, including for filing affidavits of merit in medical and professional malpractice cases and for various types of discovery, and it tolls time periods for lack of prosecution dismissals and discovery end dates. It also suspends trial calendars in the Special Civil Part and Small Claims. In addition, the omnibus order modifies the provisions of the Court's March 25 Order by increasing to 35 pages the threshold for requiring the filing of courtesy copies (rather than 25 pages).

The March 27 Order provides that depositions may be conducted remotely using video technology and that court reporters may administer and accept oaths remotely. It also relaxes the provisions of any Court Rule that requires original signatures so as to permit the use of electronic signatures where authorized during the COVID-19 crisis.

In attorney disciplinary matters and fee arbitrations, the omnibus order tolls the periods for grievances and authorizes email submissions to the Office of Attorney Ethics. It also extends the deadline for submitting an application to take the July 2020 bar exam.

As noted, the actions set forth in the omnibus order are temporary and in response to the COVID-19 crisis. The order establishes a consistent end date of April 26, 2020 for nearly all provisions.

The Supreme Court's March 27 omnibus order, along with all prior orders and notices regarding COVID-19 are available on the Judiciary's public webpage (njcourts.gov).

Glenn A. Grant by SDB

Hon. Glenn A. Grant, J.A.D.

Dated: March 29, 2020

SUPREME COURT OF NEW JERSEY

In response to the growing public health crisis worldwide and in this state involving the COVID-19 coronavirus, the New Jersey Judiciary has implemented various modifications to court operations, including an ongoing transition to video and phone proceedings instead of in-person appearances and related measures intended to minimize in-person contact and adhere to crucial social distancing measures recommended by the New Jersey Department of Health ("NJ DOH") and the Centers for Disease Control ("CDC").

In conjunction with those operational changes, the Court has entered a series of orders suspending certain court proceedings, extending deadlines, and tolling time periods because of the practical impossibility of continuing business as usual during this public health crisis.

Since the entry of those orders and notices, the effect of the COVID-19 coronavirus has continued to increase exponentially, prompting emergency declarations at the national, state, and county levels, and further disrupting the practice of law and the normal operations of the courts.

The Court has reviewed its interim measures and determined that, in the interest of justice, the effective periods must be extended based on current restrictions on movement and activity recommended by the NJ DOH and CDC, as well as provisions of Executive Order 107 (March 21, 2020).

Accordingly, it is ORDERED that, effective immediately, the following provisions established by prior order or otherwise necessitated by the Judiciary's response to the COVID-19 pandemic, are affirmed, continued, or supplemented:

(1) JURIES

a. No new civil or criminal jury trials will be conducted until further notice, as previously provided by notices dated March 12 and March 15, 2020;

b. Suspension of grand jury empanelment dates and sessions as set forth in the March 17, 2020 Order is extended as follows:

i. All grand jury empanelment dates including for State Grand Jury are postponed, and new notices will be issued rescheduling grand jury selection for a date after April 26, 2020;

ii. All current grand jury sessions including for State Grand Jury are cancelled through April 26, 2020; and

(2) CRIMINAL

a. Based on the continued suspension of jury trials and grand jury sessions, the provisions of the March 19, 2020 Order regarding excludable time are extended as follows:

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i. In the computation of the time limits for the commencement of a prosecution for an indictable offense under N.J.S.A. 2C:1-6(b), the additional period starting March 30 through April 26, 2020, shall be tolled;

ii. In the calculation of the time period for the return of an indictment for an eligible defendant detained in the county jail, the additional period from March 30 through April 26, 2020, shall be excluded due to exceptional circumstances, pursuant to N.J.S.A. 2A:162-22(b)(1)(f), and on account of good cause for the delay, pursuant to N.J.S.A. 2A:162-22(b)(1)(l), namely, grand jury unavailability, which period shall be attributable to the court;

iii. In the calculation of the time period for the commencement of trial for an eligible defendant detained in the county jail, the additional period from March 30 through April 26, 2020, shall be excluded due to exceptional circumstances, pursuant to N.J.S.A. 2A:162-22(b)(1)(f), and on account of good cause for the delay, pursuant to N.J.S.A. 2A:162-22(b)(1)(l), namely, the statewide postponement of jury trials, which period shall be attributable to the court;

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iv. Those excludable time provisions are not intended to prevent the parties from making every effort to continue to resolve cases prior to indictment and trial, and courts will conduct proceedings by video or phone, as appropriate; and

(3) CIVIL

a. The provisions of the March 17, 2020 Order are affirmed and extended, and Rules 4:24-l(a), 4:24-l(c), 4:46-1, and 4:36-3 are relaxed and supplemented to permit the extension of discovery deadlines through April 26, 2020;

b. The deadlines for filing affidavits of merit in medical and professional malpractice cases will be extended from March 16 through April 26, 2020;

c. The time periods for dismissal of civil cases for lack of prosecution will be tolled for the period from March 16 through April 26, 2020; and in addition, (a) automated lack of prosecution dismissal processes for Law Division – Civil Part, Foreclosure, and Chancery matters will be suspended through April 26, 2020; and (b) automated default for DC matters will be suspended through April 26, 2020;

d. Rule 4:4-1 is relaxed and supplemented to extend the time period for issuance of a summons from within 15 days to within 60 days of the Track Assignment Notice for notices issued from March 16 through April 26, 2020;

e. The timeframe for service of valid and timely Notices of Tort Claim will be tolled from March 16 through April 26, 2020;

f. The time periods for discovery, including but not limited to interrogatories (Rule 4:17), discovery and inspection of documents and property (Rule 4:18), physical and mental examination of persons (Rule 4:19), and requests for admissions (Rule 4:22), will be extended from March 16 through April 26, 2020, and to the extent that Rule 6:4-3 incorporates Part 4 discovery rules, the time periods for discovery in Special Civil Part matters will be extended through April 26, 2020;

g. The Office of Foreclosure will not review or recommend motions or judgments received on or after March 1, 2020 pending further court order;

h. Hearings on involuntary civil commitments are adjourned for the reasons set forth in the March 17, 2020 Order, and the adjournment periods are extended as follows:

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i. Pursuant to Rule 4:74-7(c)(1), all initial hearings for the involuntary civil commitment of an adult scheduled from March 17 through March 27, 2020, which had been adjourned for a period of not more than 14 days, may be adjourned for an additional period of not more than 14 days; and all initial hearings for the involuntary civil commitment of an adult scheduled from March 30 through April 10, 2020 may be adjourned for a period of not more than 14 days;

ii. Pursuant to Rule 4:74-7A(b)(2), all initial hearings for the involuntary civil commitment of a minor scheduled from March 17 through March 27, 2020, which had been adjourned for a period of not more than 7 days, may be adjourned for an additional 7 days; and all initial hearings for the civil commitment of a minor scheduled from March 30 through April 10, 2020 may be adjourned for a period of not more than 7 days; and

i. In the computation of time for discovery end dates, the period of March 16 through April 26, 2020 shall be excluded due to exceptional circumstances;

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j. Landlord/tenant calendars are suspended through April 26, 2020, and lockouts of residential tenants (evictions) are suspended in accordance with Executive Order 106 (March 19, 2020), thus extending the terms of the March 14 notice;

k. Special Civil Part (DC) and Small Claims (SC) trial calendars are suspended through April 26, 2020;

l. The Order dated March 25, 2020 remains in full force and effect, as modified below, and the provisions of Rule 1:6-4 are relaxed and supplemented so as to eliminate the requirement that, in addition to filing all Civil motion papers, orders to show cause, and orders, attorneys must also simultaneously submit to the judge a copy of all motion papers; and the requirement of submitting paper "courtesy copies" of motion papers to the judge (as set forth in Notices to the Bar dated June 28, 2017 and December 6, 2017) is modified so as to suspend the requirement of submitting courtesy copies in Civil matters so long as the total submission (including appendices and attachments) does not exceed 35 pages, and where the submission is more than 35 pages, courtesy copies still must be mailed or delivered to the court and postmarked within two days of the electronic filing;

m. The provisions of the March 19, 2020 Order regarding Civil Arbitration sessions are extended as follows:

i. Civil Arbitration sessions scheduled from March 16 to April 10, 2020 have been postponed, and Civil Arbitration sessions scheduled from April 11 to April 26, 2020 will also be rescheduled;

ii. Effective April 27, 2020, Civil Arbitration sessions will resume, with participation in any session to be via video and/or telephone conference and initiated by an arbitrator or panelist. The county Arbitration Administrator or other designated court staff will resolve any scheduling issues and will provide assistance as necessary to facilitate the process. Any participant may apply to the court for extension of deadlines or rescheduling of sessions as may be required based on the circumstances of an individual case, including but not limited to barriers to participation by video or phone conferencing; and

iii. The provisions of Rules 4:21A-l(d) and 4:21A-4(d) are relaxed and supplemented so as to permit the extension of arbitration timeframes and to authorize arbitration

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proceedings to be conducted in a location other than the courthouse; and

(4) FAMILY

a. The provisions of the March 17, 2020 Order are affirmed, and Rule 5:5-l(e) is relaxed and supplemented to permit the additional extension of discovery deadlines through April 26, 2020;

b. The time periods for dismissal of family cases for lack of prosecution will be tolled for the period from March 16 through April 26, 2020; and in addition, automated lack of prosecution dismissal processes for family matters will be suspended through April 26, 2020;

c. The provisions of the March 19, 2020 Order regarding Matrimonial Early Settlement Panel (ESP) sessions are extended as follows:

   i. Matrimonial ESP sessions scheduled from March 16 to April 10, 2020 have been postponed, and Matrimonial ESP sessions scheduled from April 11 to April 26, 2020 will also be rescheduled;

   ii. Effective April 27, 2020, Matrimonial ESP sessions will resume, with participation in any session to be via video and/or telephone conference and initiated by an arbitrator or

panelist. Designated court staff will resolve any scheduling issues and will provide assistance as necessary to facilitate the process. Any participant may apply to the court for extension of deadlines or rescheduling of sessions as may be required based on the circumstances of an individual case, including but not limited to barriers to participation by video or phone conferencing; and

iii. The provisions of Rules 5:5-5 and 5:5-6 are relaxed and supplemented: (i) to permit the extension of ESP timeframes, (ii) to allow submissions to be sent directly to the panelists, (iii) to authorize these proceedings to be conducted in a location other than the courthouse, and (iv) to allow post-ESP events to proceed without the simultaneous entry of an court order; and

(5) TAX

a. The provisions of the Order dated March 19, 2020 remain in effect with respect to the extension of filing deadlines for local property tax appeals and state tax appeals; and

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(6) MUNICIPAL

a. Municipal Court sessions are suspended through April 26, 2020, during which period Municipal Court functions will continue as described in the March 14, 2020 notice; and

(7) ALL COURTS

a. To the extent practicable through April 26, 2020, depositions should be conducted remotely using necessary and available video technology, and in those circumstances court reporters may administer and accept oaths remotely;

b. To the extent practicable, all court matters including hearings, conferences, and arguments, will be conducted by video or phone conferencing, and in-person appearances will be permitted only in emergency situations;

c. As provided in the March 25, 2020 Order, which remains in full force and effect, all depositions and appearances for any doctors, nurses, or healthcare professionals involved in responding to the COVID-19 public health emergency are suspended through April 26, 2020, except for appearances and depositions (i) that are requested by the doctor, nurse, or healthcare professional; or (ii) that are for matters related to COVID-19;

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d. In the computation of time periods under the Rules of Court and under any statute of limitations for matters in all courts, for purposes of filing deadlines, the additional period from March 28 through April 26, 2020 shall be deemed the same as a legal holiday, thus extending the tolling established by the March 17 Order; and

(8) DISCIPLINARY MATTERS & FEE ARBITRATION

a. The rules pertaining to the attorney disciplinary system, including Rules 1:20-1 et seq. (discipline of members of the bar) and Rules 1:20A-1 et seq. (fee arbitration) are hereby relaxed as follows:

i. In computing time periods under the Rules of Court for the purposes of grievances, formal pleadings, hearings and procedural deadlines, the period from March 16, 2020 through April 26, 2020 shall be deemed the same as a legal holiday and thus shall be tolled;

ii. The Court authorizes the use of email for submission of grievances to the Office of Attorney Ethics, for respondents to file responsive documents and answers to formal pleadings, and for communication with respondents when respondent's email address is known to be current; and

(9) BOARD OF BAR EXAMINERS

a. The rules pertaining to the application for admission to the practice of law, Rules 1:24-1 et seq., are hereby relaxed as follows:

i. The deadline for filing an application for the July 2020 bar examination is extended through April 30, and no late fees will apply to an application filed before that date; and

(10) ELECTRONIC SIGNATURES

a. The provisions of Rule 1:32-2A(c) and all other Court Rules requiring original signatures on filings are relaxed and supplemented so as to permit electronic signatures to be used in all filing processes temporarily authorized to be used during the COVID-19 crisis, including but not limited to emergent applications submitted by email and hardcopy submissions in dockets without an approved electronic filing system, as well as in disciplinary and fee arbitration matters, and applications for admission to the bar.

For the Court,

Chief Justice

Dated: March 27, 2020

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NOTICE TO THE BAR

COVID-19 – UPDATED GUIDANCE ON REMOTE PROCEEDINGS IN THE TRIAL COURTS; OPTIONS FOR OBSERVING COURT EVENTS AND OBTAINING VIDEO AND AUDIO RECORDS; COURT AUTHORITY TO SUSPEND THE COMMENCEMENT OF CERTAIN CUSTODIAL TERMS

The Supreme Court has issued comprehensive updated guidance regarding remote proceedings in the trial courts during the COVID-19 pandemic. A copy of the Court's April 20, 2020 Order is attached.

Most Proceedings to Continue Using Remote Options – Consent Required Only for Certain Matters

The Order reinforces that most court events that can be conducted using video or phone options will proceed, even over the objection of an attorney or party. However, the following court matters will proceed remotely only with the consent of all parties: (a) sentencing hearings in Criminal, Family, and Municipal matters; (b) juvenile delinquency adjudications; (c) evidentiary hearings and bench trials in Criminal matters; (d) evidentiary hearings and trials in Municipal matters that involve a reasonable likelihood of a jail sentence or loss or suspension of license; (e) termination of parental rights trials; and (f) hearings for an adjudication of incapacity and appointment of a permanent guardian. The Court's Order comports with current practice and supports the continuity of routine as well as emergent court functions during the COVID-19 crisis.

Livestreaming Technology Primarily Allocated for Criminal Matters

Over the past month, the New Jersey courts have leveraged technology to enable remote proceedings in all divisions of the trial courts as well as in the Supreme Court, Appellate Division, and Tax Court. Our utilization of technology to advance the work of the courts is considered to be a national model. Nevertheless, our resources are finite, and the Court has determined to prioritize livestreaming for most criminal matters and to permit livestreaming for court events in other divisions based on an individualized determination.

Real-Time Access to Court Events Available in All Divisions

The April 20 Order provides that interested persons may request real-time access to observe events that are not livestreamed (so long as those events are not proscribed from public access). Requests to observe an event that is not livestreamed should be directed to the judge handling the matter. Requests should be submitted in advance by email if possible. An individual permitted to observe a court event in real-time must comply with the Supreme Court Guidelines on Electronic Devices in the Courts and other applicable Judiciary policies that prohibit the unauthorized

transmission of video, audio, or photographic records absent specific written permission of the Assignment Judge or designee.

Additional Options for Obtaining Audio or Video Records of Court Events

Records of remote court proceedings will continue to be available according to longstanding Judiciary policies. Requests for an audio record on a CD should be submitted to the vicinage transcript office along with the required $10.00 fee.

In addition to this established process, the Order provides that individuals may obtain a video or an audio record of a remote court event, and the timeframe for providing that record will be expedited for victims. The Administrative Director will promulgate a form for individuals to request an electronic (video or audio) file of a court event, free of charge. Requests and responses will be submitted using email, and the requesting party will receive a password to access the electronic file. Individuals who obtain a video or audio record of a court event conducted remotely must comply with all applicable Judiciary policies, again including the Supreme Court Guidelines on Electronic Devices in the Courts.

Events Guidance for All Divisions

The Court has delegated to the Administrative Director responsibility to develop and maintain lists of typical events in each division of the trial courts (Civil, Criminal, Family, and Municipal) with information as to the remote options (Zoom, Scopia, Microsoft Teams, phone) that may be used for those events. A first iteration of this detailed events guidance will be posted in the attorney and self-help sections of the Judiciary's public website.

The lists are intended to provide guidance to attorneys and parties as to whether their court matter likely or possibly will be livestreamed, in part so that requests to livestream (or not livestream) can be addressed in advance. The lists also will assist attorneys in determining whether to request use of a particular technology, including to accommodate interpreting needs or other issues. The events guidance will be refined in the coming weeks, and court users should consult the Judiciary's website for the most current version.

Authority to Stay the Commencement of Certain Custodial Terms

The Court previously has recognized the harms attendant to detention in jails and other facilities during the COVID-19 pandemic. To that end, the April 20 Order authorizes judges to stay the commencement of certain custodial terms in Criminal, Family, and Municipal matters, as well as to stay adjudications to secure placements in juvenile delinquency matters. The Order requires detailed notice to victims to ensure an opportunity to participate in the sentencing hearing or to object to the scheduling or method of proceeding.

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Next Steps and Questions

In addition to posting the initial Events Guidance Lists, we will be issuing a directive that implements the provisions of the Court's April 20 Order.

Questions about this notice should be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

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

Dated: April 20, 2020

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SUPREME COURT OF NEW JERSEY

In response to the ongoing COVID-19 coronavirus pandemic, the New Jersey Judiciary is implementing all available measures to apply social distancing in court operations, consistent with the recommendations of the New Jersey Department of Health and the Centers for Disease Control. At the same time, courts throughout the state are endeavoring to meet their responsibilities to the people and the State of New Jersey. To that end, the Judiciary has transitioned on an emergent and temporary basis to a court system in which most, if not all, matters that are presently being conducted are proceeding via video or telephone. As a result, for the past month, many matters at all levels of the court system have been conducted and resolved through virtual proceedings. Based on current information, the need to use this alternate approach will continue for a number of months.

Accordingly, it is ORDERED that during the pendency of the COVID-19 public health emergency:

1. All court proceedings, including but not limited to Central Judicial Processing (CJP) hearings and pretrial detention hearings, will continue to be conducted remotely using video and/or phone options to the greatest extent possible. Excluded from this provision are (a) jury trials and petit and grand jury selections, which will not be

conducted remotely, and (b) matters listed in paragraph 2 of this order, which will be conducted only with the consent of all parties.

2. The following matters will be conducted remotely using video and/or phone options only with the consent of all parties:
    a. Sentencing hearings in Criminal, Family, and Municipal matters;
    b. Juvenile delinquency adjudications;
    c. Evidentiary hearings and bench trials in Criminal matters;
    d. Evidentiary hearings and trials in Municipal matters that involve a reasonable likelihood of a jail sentence or loss or suspension of license;
    e. Termination of parental rights trials; and
    f. Hearings for an adjudication of incapacity and appointment of a permanent guardian.
3. The provisions of this order shall apply to all trial courts in the State of New Jersey, including the Municipal Courts, the Tax Court, and the Superior Court (Civil, Criminal, Family, General Equity, Probate, and Special Civil).
4. The Court delegates to the Administrative Director of the Courts the authority to identify the particular video and/or phone technology

options that should be used for the different events that may be conducted remotely. That information will be made readily available to attorneys and the public, and may be updated periodically.

5. (a) Because the Judiciary's ability to livestream court events that are conducted remotely will be limited by the availability of finite resources, Civil, Family, General Equity, Probate, Special Civil Part, and Municipal matters will not be livestreamed absent a showing of good cause, with the court to make that determination.

(b) Certain categories of proceedings should not be livestreamed because of risks in a virtual setting that may not exist in the same way or to the same degree in an in-person forum, for example, the risk of inadvertent disclosure of confidential information in a civil commitment hearing or of information about the location of a party in a hearing on domestic violence or for other protective orders.

(c) Interested persons, including members of the public and the media, may request real-time access to observe events that are not livestreamed but are not proscribed from public access. Such access will be permitted, subject to resource limitations, as determined by the court.

6. Records of all events that are not livestreamed will be preserved on CourtSmart or other Judiciary approved recording systems and, except for closed proceedings, will be accessible to the public, as follows:
    a. Video or audio records of events that are not livestreamed will be available within 48 hours after conclusion of the event, except that such records will be available to victims or persons with an individualized compelling interest as soon as possible and no later than within 24 hours. Those timeframes may be extended only in exceptional circumstances.
    b. Written transcripts will be available as provided by N.J.S.A. 2B:7-4 and Rule 2:5-3.
7. Consistent with the following guidelines and the limitation set forth above that sentencing hearings will proceed remotely only with the consent of all parties, the court may stay the commencement of the custodial portion of a sentence because of risks attendant to the COVID-19 public health emergency, as follows:
    a. In Criminal matters, the court may stay the commencement of the custodial portion of a sentence that consists of a county jail term of 364 days or less. If the custodial term is a condition of probation, the defendant shall report to Probation as directed

notwithstanding the stay of the commencement of that custodial term.

b. In Family quasi-criminal (FO) matters, the court may stay the commencement of the custodial portion of a sentence that consists of a county jail term of 180 days or less. If the custodial term is a condition of probation, the defendant shall report to Probation as directed notwithstanding the stay of the commencement of that custodial term.

c. In Municipal Court matters, the court may stay the commencement of the custodial portion of the sentence that includes a term of incarceration.

d. To determine whether to stay the commencement of a custodial term because of the ongoing public health emergency, judges should consider whether a stay would pose a risk to the safety of the public or the defendant. In that regard, judges must consider and make findings on the risk of danger to the public, the risk of flight, and the seriousness of the offense, among other factors relevant to public safety. Judges should also consider the positions of the defendant, the prosecution, and any victims.

e. The court shall state reasons on the record for immediately commencing or staying the start of a custodial term.

f. Unless the court orders otherwise or as otherwise provided by law, certain other conditions of the sentence, including but not limited to any monetary or court-ordered financial obligations, restitution, no-contact orders, Megan's Law registration obligations, and driver's license suspensions will commence upon sentencing regardless of whether a stay is ordered.

8. Consistent with the principles set forth in paragraph 7, in Family juvenile delinquency (FJ) matters, the court may stay the custodial portion of a disposition to a secure placement for a term of 60 days or less. If the disposition to a secure placement is a condition of probation, the juvenile shall report to Probation as directed notwithstanding the stay of the commencement of the secure placement term.

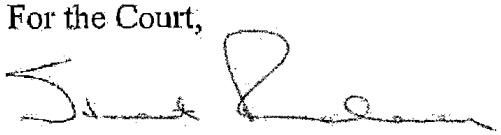
9. Implementation of the provisions of this order, including (a) the determination of whether an event should be livestreamed, (b) the availability of timely access to records of court proceedings, and (c) the right to participate in sentencing, including on the issue of whether to stay commencement of a custodial term, shall take into

consideration the rights of the victims in each such matter. In that regard, County Prosecutors and other law enforcements agencies shall, to the extent applicable, provide notice to victims of the scheduling of the sentencing hearing, including how the hearing is proposed to be conducted and whether the court will consider staying the commencement of the custodial portion of a sentence on application of the defendant or on the court's own motion. Victims shall have an opportunity to participate in the sentencing hearing or to object to the scheduling or method of proceeding.

10. This order is intended to be implemented in tandem with the Court's previous orders addressing the COVID-19 pandemic.

11. Depending on the duration of the COVID-19 pandemic, the Court may reconsider and revise the provisions of this order.

For the Court,



Chief Justice

Dated: April 20, 2020

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APRIL 24 NOTICE AND ORDER

NOTICE TO THE BAR

COVID-19 – SECOND OMNIBUS ORDER ON COURT OPERATIONS AND LEGAL PRACTICE – MORE OPERATIONS TO BE CONDUCTED REMOTELY; LIMITED DISCOVERY EXTENSIONS AND TOLLING PERIODS

The New Jersey courts are committed to continuing court operations during and after the COVID-19 public health emergency. To that end, the Supreme Court today announced the next phase of remote court operations and legal practice. A copy of the Court's April 24, 2020 Second Omnibus Order is attached.

Most Court Operations Are Continuing Remotely

During the COVID-19 pandemic, most court operations have continued remotely in all levels of the court system. Since transitioning to virtual operations, the courts have conducted more than 12,000 remote court events involving more than 80,000 participants.

Since the Court's March 27, 2020 Omnibus Order, involuntary civil commitment hearings have resumed using video conferencing. As of April 27, 2020, civil arbitration sessions and matrimonial early settlement panels also will resume using phone and video options. Efforts to resolve matters in Landlord/Tenant (LT), Special Civil (DC), and Small Claims (SC) cases will continue even while trials in those matters are suspended.

More Court Matters Will Resume in the Coming Weeks

The Court's Order lifts the suspension of Municipal Court sessions. As of April 27, 2020, remote proceedings in the Municipal Courts may be conducted with the consent of all parties. Effective May 11, 2020, with appropriate notice to the parties, Municipal Court sessions can resume in individual Municipal Courts. Sessions may only proceed by video or phone. Municipal Court sessions will resume to the extent possible based on facilities, technology, and other resources.

As of May 11, 2020, attorney disciplinary matters and fee arbitrations also will resume using remote options to the extent possible considering resources and complexity.

Most Extensions of Discovery Deadlines and Tolling of Time Periods Will End as of May 10, 2020

Based on the demonstrated increased ability of the courts to handle matters remotely, combined with the new electronic filing options available to attorneys and self-represented litigants, legal practice generally can continue consistent with regular timeframes. To that end, most discovery deadlines in Civil and Family matters generally are extended through May 10, 2020, with lengthier extensions only in specific areas.

Discovery involving medical professionals is extended through May 31, 2020, based on the ongoing unavailability of those experts.

Jury Trials and Grand Jury Proceedings Are Still Suspended

It remains impracticable to plan for in-person jury trials or grand jury proceedings. The April 24 Order continues the suspension of petit and grand juries through May 31, 2020. This continued suspension period will constitute additional excludable time attributable to the court.

Requests in Individual Cases

The COVID-19 pandemic continues to affect attorneys, parties, and others, both professionally and personally. "In recognition of the pervasive and severe effects of the COVID-19 public health crisis, the court in any individual matter consistent with Rule 1:1-2(a) may suspend proceedings, extend discovery or other deadlines, or otherwise accommodate the legitimate needs of parties, attorneys, and others in the interests of justice." Such individual requests for extensions may be submitted by letter in lieu of a formal motion.

Next Steps

The New Jersey courts are continuing to provide meaningful access to justice throughout this unprecedented emergency. Sustaining and expanding that access requires a careful and considered balancing of the important interests at stake, as implemented in the Court's April 24 Second Omnibus Order. As the COVID-19 pandemic continues, the Court will revisit these matters and adjust as appropriate.

Questions about this notice should be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

Glenn A. Grant
Acting Administrative Director of the Courts

Dated: April 24, 2020

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SUPREME COURT OF NEW JERSEY

In response to the ongoing COVID-19 public health emergency, the Supreme Court has authorized various interim measures, including as set forth in the March 27, 2020 Omnibus Order, which suspended certain proceedings, extended discovery and other deadlines, and tolled various timeframes.

In the past month, the court system has improved its capacity to handle routine as well as emergent matters using video and phone options, and an increasing number of matters at all levels of the New Jersey court system are being conducted and resolved through virtual proceedings. To date, the New Jersey courts have conducted more than 12,000 court events -- including hearings on motions, settlement and status conferences, arraignments, detention hearings, municipal appeals, and other matters -- with more than 80,000 participants.

Based on guidance from the New Jersey Department of Health, the effects of the COVID-19 crisis appear likely to continue, meaning that many court matters will continue to be conducted using video and phone options.

In its April 20, 2020 Order, the Court restated its commitment to supporting court operations in a virtual format to the greatest extent practicable, subject to constitutional considerations and the limitations of our finite resources.

The Court has considered the interim measures implemented by the March 27, 2020 Omnibus Order and other orders and determined that a number of

provisions should be extended an additional month. Because certain other areas can be addressed by video and phone options, suspensions and extensions do not need to be continued across the board in those matters and will conclude on May 10, 2020. Thereafter, further extensions may be requested based on the specific circumstances of a case.

Accordingly, it is ORDERED that effective immediately:

(1) JURIES

a. No new civil or criminal jury trials will be conducted until further notice;

b. Suspension of grand jury empanelment dates and sessions is extended as follows:

   i. All grand jury empanelment dates, including for State Grand Jury, are postponed; new notices will be issued rescheduling grand jury selection for a date after May 31, 2020;

   ii. All current grand jury sessions, including for State Grand Jury, are cancelled through May 31, 2020;

   iii. The Judiciary and stakeholders will meet to explore potential options for conducting virtual grand jury selections and sessions; and

(2) CRIMINAL

a. Based on the continued suspension of jury trials and grand jury sessions, the provisions of the March 19 and March 27, 2020 Orders regarding excludable time are extended as follows:

i. In the computation of the time limits for the commencement of a prosecution for an indictable offense under N.J.S.A. 2C:1-6(b), the additional period starting April 27 through May 31, 2020, shall be tolled;

ii. In the calculation of the time period for the return of an indictment for an eligible defendant detained in the county jail, the additional period from April 27 through May 31, 2020, shall be excluded due to exceptional circumstances, pursuant to N.J.S.A. 2A:162-22(b)(1)(f), and on account of good cause for the delay, pursuant to N.J.S.A. 2A:162-22(b)(1)(l), namely, grand jury unavailability, which period shall be attributable to the court;

iii. In the calculation of the time period for the commencement of trial for an eligible defendant detained in the county jail, the additional period from April 27 through May 31, 2020, shall be excluded due to exceptional circumstances, pursuant

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to N.J.S.A. 2A:162-22(b)(1)(f), and on account of good cause for the delay, pursuant to N.J.S.A. 2A:162-22(b)(1)(l), namely, the statewide postponement of jury trials, which period shall be attributable to the court;

iv. Those excludable time provisions are not intended to prevent the parties from making every effort to continue to resolve cases prior to indictment and trial, and courts will conduct proceedings by video or phone, as appropriate;

b. Interim modifications to the process for search warrant and communication data warrant applications and returns remain in full force in effect as established by the April 1, 2020 Order; and

(3) CIVIL

a. In cases in which discovery deadlines had not expired as of March 16, 2020, the provisions of the March 17 and March 27, 2020 Orders are affirmed and extended, and Rules 4:24-1(a), 4:24-1(c), and 4:46-1 are relaxed and supplemented to permit the extension of discovery deadlines for the additional period from April 27 through May 10, 2020;

b. Discovery deadlines involving physical or mental examinations of persons (Rule 4:19) shall be extended for the additional period from April 27 through May 31, 2020;

c. The deadlines for filing affidavits of merit in medical and professional malpractice cases will be extended for the additional period from April 27 through May 31, 2020;

d. The time periods for dismissal of civil cases for lack of prosecution will be tolled for the additional period from April 27 through May 31, 2020; and in addition, (a) automated lack of prosecution dismissal processes for Law Division – Civil Part, Foreclosure, and Chancery matters will be suspended for the additional period from April 27 through May 31, 2020; and (b) automated default for DC matters will be suspended for the additional period from April 27 through May 31, 2020;

e. For Track Assignment Notices issued from March 16 through April 26, 2020, the time period for issuance of a summons pursuant to Rule 4:4-1 was extended from within 15 days to within 60 days of the notice. For Track Assignment Notices issued from April 27 through May 31, 2020, that time period is extended from within 15 days to within 30 days of the notice;

f. The tolling of the timeframe for service of valid and timely Notices of Tort Claim will be extended for the additional period from April 27 through May 31, 2020;

g. The extension of time periods for discovery, including but not limited to interrogatories (Rule 4:17), discovery and inspection of documents and property (Rule 4:18), depositions (Rules 4:14 and 4:15), and requests for admissions (Rule 4:22), will conclude as of May 10, 2020, and to the extent that Rule 6:4-3 incorporates Part IV discovery rules, the extension of time periods for discovery in Special Civil Part matters will conclude as of May 10, 2020;

h. The Office of Foreclosure will not review or recommend motions or judgments received on or after March 1, 2020 pending further court order;

i. The general adjournments of hearings on involuntary civil commitments have concluded, consistent with the dates set forth in the March 27, 2020 Order, and adjournments may be requested based on the specific circumstances of a case;

j. In the computation of time for discovery end dates, the additional period from April 27 through May 10, 2020 will be excluded due to exceptional circumstances. Further extensions of discovery end

dates may be requested based on the specific circumstances of a case;

k. Landlord/tenant trials are suspended through May 31, 2020, and lockouts of residential tenants (evictions) are suspended in accordance with Executive Order 106 (March 19, 2020). This provision shall not prevent settlement negotiations, case management conferences, motions, and other proceedings, in an effort to resolve matters;

l. Special Civil Part (DC) and Small Claims (SC) trial calendars are suspended through May 31, 2020. This provision shall not prevent settlement negotiations, case management conferences, motions, and other proceedings in an effort to resolve matters;

m. The relaxation and supplementation of Rule 1:6-4 is extended, and the requirement to submit courtesy copies in Civil matters remains suspended so long as the total submission (including appendices and attachments) does not exceed 35 pages. When the submission is more than 35 pages, courtesy copies still must be mailed or delivered to the court and postmarked within two days of the electronic filing;

n. Effective April 27, 2020, Civil Arbitration sessions will resume, with participation in any session to be by video and/or telephone

conference and initiated by an arbitrator or panelist, as detailed in the April 16, 2020 notice to the bar. Any participant may apply to the court for extension of deadlines or rescheduling of sessions as may be required based on the specific circumstances of a case, including but not limited to barriers to participation by video or phone conferencing; and

o. The provisions of the April 8, 2020 Order remain in full force and effect, and Rule 4:86 relating to guardianships of incapacitated persons, is relaxed and supplemented based on current social distancing requirements. Consistent with the April 20, 2020 Order, hearings on the adjudication of incapacity and appointment of a permanent guardian shall proceed using remote options only with the consent of all parties. Other probate and guardianship matters will continue using remote options; and

(4) FAMILY

a. The extension of discovery deadlines pursuant to Rule 5:5-1(e) will conclude as of May 10, 2020, except that deadlines for discovery involving experts will be extended through May 31, 2020. Further extensions of discovery deadlines may be requested based on the specific circumstances of a case;

b. The tolling of time periods for dismissal of family cases for lack of prosecution will conclude as of May 10, 2020. In addition, the suspension of automated lack of prosecution dismissal processes for family matters will conclude as of May 10, 2020;

c. Effective April 27, 2020, Matrimonial ESP sessions will resume, with participation in any session to be by video and/or telephone conference and initiated by a panelist, as detailed in the April 22, 2020 notice to the bar. Any participant may apply to the court for extension of deadlines or rescheduling of sessions as may be required based on the specific circumstances of a case, including but not limited to barriers to participation by video or phone conferencing. The provisions of Rules 5:5-5 and 5:5-6 are relaxed and supplemented: (i) to permit the extension of ESP timeframes, (ii) to allow submissions to be sent directly to the panelists, and (iii) to allow post-ESP events to proceed without the simultaneous entry of an court order; and

(5) TAX

a. The provisions of the Orders dated March 19, April 6, and April 21, 2020 remain in effect with respect to the extension of filing

deadlines for state tax controversies and local property tax appeals; and

(6) MUNICIPAL

a. Municipal Court sessions have been suspended through April 26, 2020, consistent with the March 27, 2020 order;

b. Starting on April 27, 2020, Municipal Court sessions may be conducted with the consent of all parties. Effective May 11, 2020, with appropriate notice to the parties, Municipal Court sessions can resume in individual Municipal Courts. All sessions may only proceed in a virtual (video or phone) format. The resumption of sessions shall be to the extent possible, based on facilities, technology, and other resources, and shall be consistent with the provisions of the April 20, 2020 Order regarding remote proceedings; and

(7) ALL COURTS

a. To the extent practicable through May 31, 2020, depositions should continue to be conducted remotely using necessary and available video technology, and in those circumstances court reporters may administer and accept oaths remotely;

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b. To the extent practicable, and consistent with the provisions of the Court's April 20, 2020 Order, court matters including hearings, conferences, and arguments, will be conducted by video or phone conferencing, and in-person appearances will be permitted only in emergency situations;

c. As provided in the March 25 and March 27, 2020 Orders, all depositions and appearances for any doctors, nurses, or healthcare professionals involved in responding to the COVID-19 public health emergency were suspended through April 26, 2020, and will remain suspended for the additional period from April 27 through May 31, 2020, except for appearances and depositions (i) that are requested by the doctor, nurse, or healthcare professional; or (ii) that are for matters related to COVID-19;

d. In the computation of time periods under the Rules of Court and under any statute of limitations for matters in all courts, for purposes of filing deadlines, except as otherwise provided in this order, the period from March 16 through May 10, 2020 shall be deemed the same as a legal holiday;

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e. The provisions of the April 7, 2020 Order relaxing Rule 4:4-4(a)(7) so as to permit electronic service of process by email on the State of New Jersey are continued; and

(8) DISCIPLINARY MATTERS & FEE ARBITRATION

a. The relaxation of the rules pertaining to the attorney disciplinary system, including Rules 1:20-1 et seq. (discipline of members of the bar) and Rules 1:20A-1 et seq. (fee arbitration), is extended as follows:

i. In computing time periods under the Rules of Court for the purposes of grievances, formal pleadings, hearings and procedural deadlines, the additional period from April 27 through May 10, 2020 shall be deemed the same as a legal holiday and thus shall be tolled;

ii. The Court continues to authorize the use of email for submission of grievances to the Office of Attorney Ethics;

b. Effective May 11, 2020, disciplinary hearings and fee arbitrations will resume in a virtual (video or phone) format to the extent possible based on facilities, technology, and other resources; and the nature and complexity of the matter. The Director of the Office of

Attorney Ethics shall exercise discretion and proceed in relatively straightforward matters; and

(9) BOARD OF BAR EXAMINERS

a. The rules pertaining to the application for admission to the practice of law, Rules 1:24-1 et seq., are relaxed as set forth in the April 6, 2020 Order regarding cancellation of the July 2020 bar examination and relaxing Rule 1:21 so as to permit certain law graduates to practice subject to conditions and with supervision prior to passing the bar exam; and

(10) ELECTRONIC SIGNATURES

a. The provisions of Rule 1:32-2A(c) and all other Court Rules requiring original signatures on filings are relaxed and supplemented so as to permit electronic signatures to be used in all filing processes temporarily authorized to be used during the COVID-19 crisis, including, in addition to those matters listed in the March 27, 2020 Order: (i) exemplified documents signed by the Superior Court Clerk in the presence of a judge, and (ii) certified documents; and

(11) APPELLATE DIVISION

a. The tolling provisions of the March 17 and March 27, 2020 orders, and this order, do not apply to appeals involving the termination of parental rights, in particular: (i) the tolling provisions do not apply to the calculation and enforcement of deadlines for the taking of appeals, and to the prosecution and opposition to those appeals, filed pursuant to Rule 2:4-1(a)(1); (ii) appeals from those judgments must be filed within 21 days of their entry, and otherwise, a motion to file the appeal as within time must be filed; and (iii) all existing expedited deadlines and those prospective expedited deadlines to be established as appeals are processed remain in full force and effect and are not tolled;

b. As provided in the April 9, 2020 Order, there has been no tolling of pretrial detention appeals or pretrial detention filings, including appeals filed pursuant to Rule 2:9-13, responses to those appeals, and motions for leave to appeal pursuant to Rule 2:5-6 and Rule 3:4A(e);

c. Appellate Division matters that are expedited will continue to proceed on an expedited track, including: (i) appeals from motions for leave to appeal that are not summarily decided, Rule 2:11-2; (ii)

appeals from orders compelling arbitration or denying arbitration, whether the action is dismissed or stayed; (iii) appeals where the court has ordered acceleration; and (iv) other appeals that may be expedited pursuant to statute, case law, or court rule. Briefing deadlines that fall within the tolling provisions of the Court's March 17 and March 27, 2020 Orders for those and other expedited Appellate Division matters remain in full force and effect and are not tolled;

d. The provisions of the notice issued on April 15, 2020 remain in effect; and

(12) Requests for extensions of time in individual cases, based on specific circumstances, may be submitted by letter in lieu of a formal motion; and

(13) In recognition of the pervasive and severe effects of the COVID-19 public health crisis, the court in any individual matter consistent with Rule 1:1-2(a) may suspend proceedings, extend discovery or other deadlines, or otherwise accommodate the legitimate needs of parties, attorneys, and others in the interests of justice; and

(14) This order is intended to be implemented in tandem with the Court's April 20, 2020 Order on the continuation of remote proceedings; and

(15) Depending on the duration of the COVID-19 pandemic, the Court may reconsider and revise the provisions of this order.

For the Court,

Chief Justice

Dated: April 24, 2020

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MAY 28 NOTICE AND ORDER

NOTICE TO THE BAR

COVID-19 – THIRD OMNIBUS ORDER ON COURT OPERATIONS AND LEGAL PRACTICE

The Supreme Court today issued its Third Omnibus Order on Court Operations and Legal Practice in response to the ongoing COVID-19 pandemic. A copy of the Order is attached.

This May 28, 2020 Third Omnibus Order addresses all provisions of the April 24, 2020 Second Omnibus Order (and the May 15, 2020 clarification order). It continues some of those provisions through June 14, 2020, affirms that other provisions remain in full force and effect, and lists those provisions that have concluded.

Among other key provisions, the Third Omnibus Order provides that new jury trials and in-person jury selections continue to be suspended, as are trials in landlord/tenant matters. The suspension of most depositions and appearances of healthcare professionals involved in responding to COVID-19 also is extended through June 14, 2020, and discovery involving experts and medical professionals likewise is extended. Interim operational adjustments required by the social distancing measures attendant to COVID-19 – including the modified process for search warrants and communication data warrants, the option of electronic service of process on the State of New Jersey, and the relaxation of electronic signature requirements – remain in full force and effect. Most other adjustments, including most discovery and tolling provisions, either concluded on May 10, 2020 or will conclude after May 31, 2020. While blanket suspensions, extensions, and tolling provisions have concluded or will conclude shortly, the May 28, 2020 Third Omnibus Order permits extensions based on the individual facts of a case and allows requests for such relief by letter rather than motion.

The New Jersey courts are continuing to expand the use of remote court operations through video and other means, thereby sustaining access to justice throughout this unprecedented extended emergency. As the COVID-19 pandemic continues, the Court will revisit the provisions of the Third Omnibus Order and make adjustments as appropriate.

Questions about this notice or the Court's Third Omnibus Order may be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

Glenn A Grant by SDB

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

Dated: May 28, 2020

SUPREME COURT OF NEW JERSEY

In response to the ongoing COVID-19 public health emergency, the Supreme Court has authorized various interim adjustments to court operations, including as set forth in the March 27, 2020 First Omnibus Order and April 24, 2020 Second Omnibus Order.

Court operations are continuing in a virtual format to the greatest extent practicable, subject to constitutional considerations and resource limitations. To date, the New Jersey courts have conducted more than 30,000 court events involving more than 250,000 participants.

A public health emergency has been continued in New Jersey at least through June 5, 2020, and current health guidance suggests that in-person court operations will not resume in full for some time.

The April 24, 2020 Second Omnibus Order (as clarified by the May 15, 2020 Order) provided for certain limited extensions of deadlines and tolling of timeframes. This Third Omnibus Order continues some of those extensions and tolling provisions through June 14, 2020, affirms that other provisions remain in full force and effect, and lists those provisions that have concluded.

Accordingly, it is ORDERED that effective immediately:

1. The following provisions of the April 24, 2020 Second Omnibus Order (as clarified by the May 15, 2020 Order) are extended for the additional period from June 1 through June 14, 2020:

   - 1(a) – no new jury trials
   - 2(a) – excludable time
   - 3(b) – discovery involving physical or mental examinations
   - 3(c) – time period for filing affidavits of merit
   - 3(k) – no lockouts of residential tenants (evictions); no landlord/tenant (LT) trials; ongoing efforts to settle LT matters
   - 3(l) – no Special Civil Part (DC) or small claims (SC) trial calendars; ongoing efforts to settle DC and SC matters; judges may conduct DC and SC trials in a virtual format with the consent of all parties
   - 3(m) – no courtesy copies in civil matters, and as provided in the May 15, 2020 order in matrimonial (FM) matters, if the total submission does not exceed 35 pages
   - 4(a) – expert reports in family
   - 7(c) – healthcare providers excused from depositions and appearances

2. The following provisions of the April 24, 2020 Second Omnibus Order (as clarified by the May 15, 2020 Order) remain in full force and effect:

   - 2(b) – process for search warrants and communication data warrants

- 3(h) – Office of Foreclosure
- 3(o) – guardianships of incapacitated adults
- 5 – Tax Court
- 6 – Municipal Courts
- 7(a) – remote depositions
- 7(b) – remote proceedings in general
- 7(e) – electronic service on the State of New Jersey
- 8(a)(ii) and (b) – discipline and fee arbitration
- 9 – Board of Bar Examiners
- 10 – electronic signatures
- 11 – Appellate Division
- 12 – letter requests for extensions
- 13 – extensions based on individual facts of a case

3. The following provisions of the April 24, 2020 Second Omnibus Order (as clarified by the May 15, 2020 Order) have concluded:

- 3(a) – civil discovery deadlines
- 3(d) – tolling for lack of prosecution dismissals in civil matters
- 3(e) – Track Assignment Notices
- 3(f) – Notices of Tort Claims
- 3(g) – pretrial discovery in civil matters

- 3(i) – involuntary civil commitment hearings
- 3(j) – discovery end dates
- 3(n) – civil arbitration
- 4(a) – family discovery deadlines except for experts
- 4(b) – tolling for lack of prosecution dismissals in family matters
- 4(c) – matrimonial early settlement panels
- 7(d) – tolling in general
- 8(a)(i) – tolling for disciplinary matters and fee arbitration

4. Suspension of grand jury empanelment dates and sessions is extended as follows:

    a. In-person grand jury selections and sessions shall not be scheduled through at least June 14, 2020; and

    b. Grand juries may convene remotely consistent with the Pilot Program for Virtual Grand Juries as authorized by the Court's May 14, 2020 Order, which currently is operating in Bergen and Mercer Counties.

5. This order is intended to be implemented in tandem with the Court's April 20, 2020 Order on the continuation of remote proceedings.

6. Depending on the duration of the COVID-19 pandemic, the Court may reconsider and revise the provisions of this order.

For the Court,

Chief Justice

Dated: May 28, 2020

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JUNE 10 NOTICE AND POST-PANDEMIC PLAN

NOTICE TO THE BAR

COVID-19 – NEW JERSEY COURTS POST-PANDEMIC PLAN – TRANSITION FROM PHASE 1 (REMOTE OPERATIONS) TO PHASE 2 (LIMITED ONSITE PRESENCE AND IN-PERSON COURT EVENTS)

The Supreme Court has approved the first part of the New Jersey Courts Post-Pandemic Plan (Plan) for transitioning from fully remote court operations (Phase 1) to the gradual return to courthouses and court facilities (Phase 2). The New Jersey courts will begin the incremental implementation of Phase 2 starting on Monday, June 22, 2020.

The Judiciary developed the comprehensive plan for safely resuming in-person court services in collaboration with Judiciary stakeholders, including representatives from the Departments of Health, Corrections, Human Services, Treasury, and Children and Families, as well as the Attorney General, Public Defender, Sheriffs Association, Wardens Association, State Bar Association, and Legal Services, as well as judges and court staff.

The Plan memorializes our current Phase 1 status and the factors considered in determining to proceed to Phase 2. It outlines the precautions that have been and will be implemented before our buildings are opened for any in-person proceedings, including requirements to wear masks in non-private areas and to maintain social distancing as set forth in the Court's June 9, 2020 Order. As noted, the Plan also lists those court events that in Phase 2 will continue to be conducted remotely and those events that may, consistent with Supreme Court guidance, be conducted onsite.

The Plan for moving forward to Phase 2 is posted on the New Jersey courts public website (njcourts.gov).

As we have throughout the COVID-19 public health emergency, the Judiciary will continue to provide information and guidance to attorneys, litigants, and members of the public regarding the status of our court facilities and operations. We will issue additional information, including on the subsequent transitions to Phases 3 and 4, as soon as available.

Glenn A. Grant by SDB

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

Dated: June 10, 2020

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Supreme Court Approved Post-Pandemic Plan

Chief Justice Stuart Rabner and the Supreme Court have approved the following steps for the gradual resumption of certain in-person court events, as recommended by the New Jersey courts Post-Pandemic Planning committees.

This preliminary report focuses on the status of court operations today – in Phase 1 – and how the New Jersey courts will safely begin to return to our court buildings in Phase 2, starting June 22, 2020.

As we have throughout the COVID-19 crisis, we will continue to provide current information on court events and operations, including on our public website (njcourts.gov).

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Overview of First Interim Report

This report memorializes our current status – in Phase 1 – and the factors considered in determining when to proceed to Phase 2.

It outlines the precautions being implemented before our buildings are opened for any in-person proceedings.

Those precautions include requirements to wear masks in non-private areas and to maintain social distancing. (See Supreme Court's June 9, 2020 Order)

It also lists court events that in Phase 2 will continue to be conducted remotely and those events that may, consistent with Supreme Court guidance, be conducted onsite.

Post-Pandemic Planning

- Several weeks ago, Chief Justice Rabner convened a working group to plan for the future of court operations during and after the COVID-19 pandemic.

- Acting Administrative Director of the Courts Glenn A. Grant chairs a stakeholder coordinating committee that includes representatives from the Departments of Health, Corrections, Human Services, Treasury, and Children and Families, as well as the Attorney General, Public Defender, Sheriffs Association, Wardens Association, State Bar Association, and Legal Services.

Post-Pandemic Planning

- The stakeholder coordinating group is working with four subcommittees focused on court operations (case management and court administration), human resources, resuming jury trials, and health and safety / facilities.

- Each subcommittee submitted a detailed report and recommendations for the first steps in the gradual reopening of court buildings. Their collective recommendations were reviewed with the stakeholder coordinating committee and approved by the Supreme Court.

- This report focuses on the first two phases of the gradual reopening of New Jersey state courthouses and facilities, with the principles of this plan extending as applicable to the Municipal Courts.

Phases of Return

We will return to our court buildings incrementally, in phases:

- Phase 1: (March 18-June 21, 2020) Status Quo / Remote Operations – less than 5 % of judges and staff onsite; buildings closed to attorneys and the public
- Phase 2: (June 22, 2020) Gradual and Limited Return – starting with 10-15% of judges and staff onsite; certain matters that cannot proceed remotely may be conducted onsite
- Phase 3: New Operations – ongoing remote operations with gradually increasing onsite events, eventually including new jury trials; 50-75% of judges and staff onsite (with staggered schedules)
- Phase 4: Ongoing Model – once a vaccine is available and/or herd immunity is established; up to 75-80% of judges and staff onsite

Current Status and Ongoing Monitoring

- The New Jersey courts have been in Phase 1 since mid-March – operating remotely with less than 5% of employees onsite in courthouses and facilities

- Remote operations will continue as required during the public health emergency (extended through July 5)

- We will continue to track COVID-19 trends – including hospitalizations, new cases, and deaths – and will be guided by those trends in moving to Phase 2

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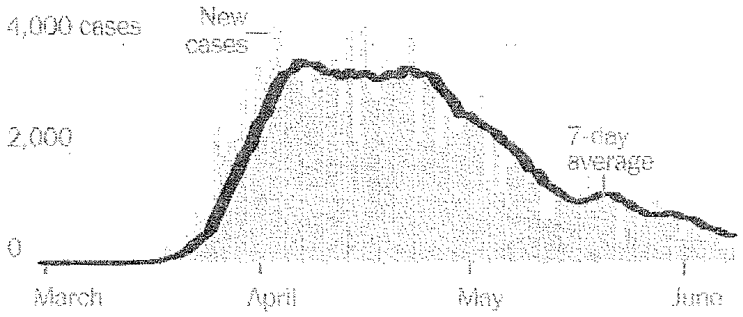
Statewide and County Level Determinations

- The New Jersey courts are implementing a statewide plan for the gradual return to our buildings
- However, we are monitoring and will adjust our reopening plans based on county-level dynamics, including potential future COVID-19 flare-ups in any area
- We will provide information to judges, staff, and court users, including attorneys and self-represented litigants, on the status of court events and services in each facility

Current Status and Ongoing Monitoring

By The New York Times Updated June 9, 2020, 6:30 P.M. E.T.

WORLD COUNTRIES ▾ | U.S.A. STATES ▾ N.Y.C.



TOTAL CASES

164,796

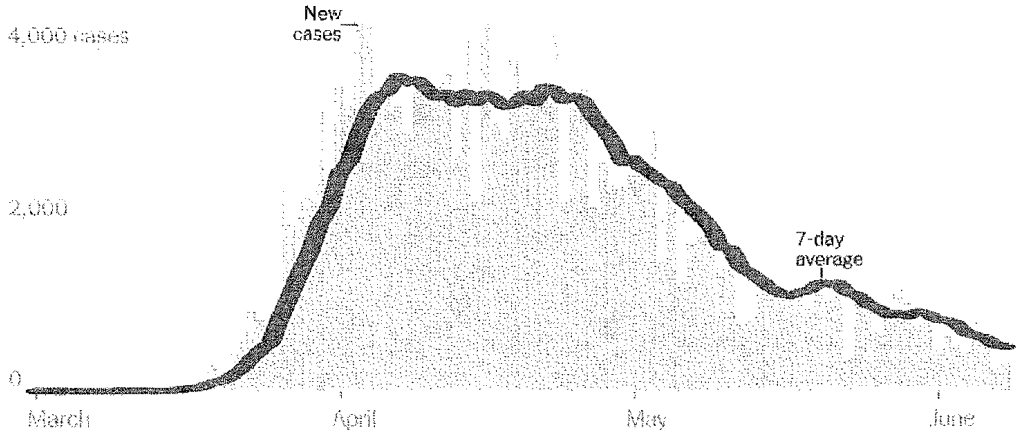
DEATHS

12,303

Includes confirmed and probable cases where available

Current Status and Ongoing Monitoring

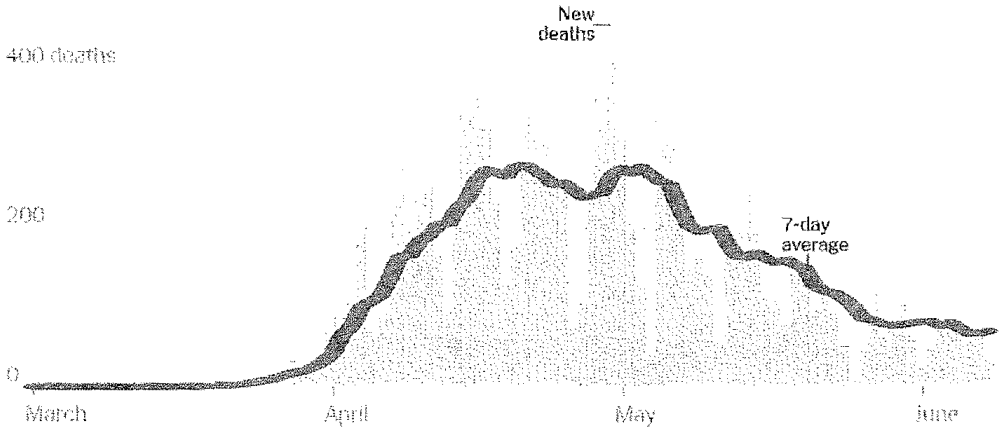
New reported cases by day in New Jersey



Note: The seven-day average is the average of a day and the previous six days of data.

Current Status and Ongoing Monitoring

New reported deaths by day in New Jersey



Note: Scale for deaths chart is adjusted from cases chart to display trend.

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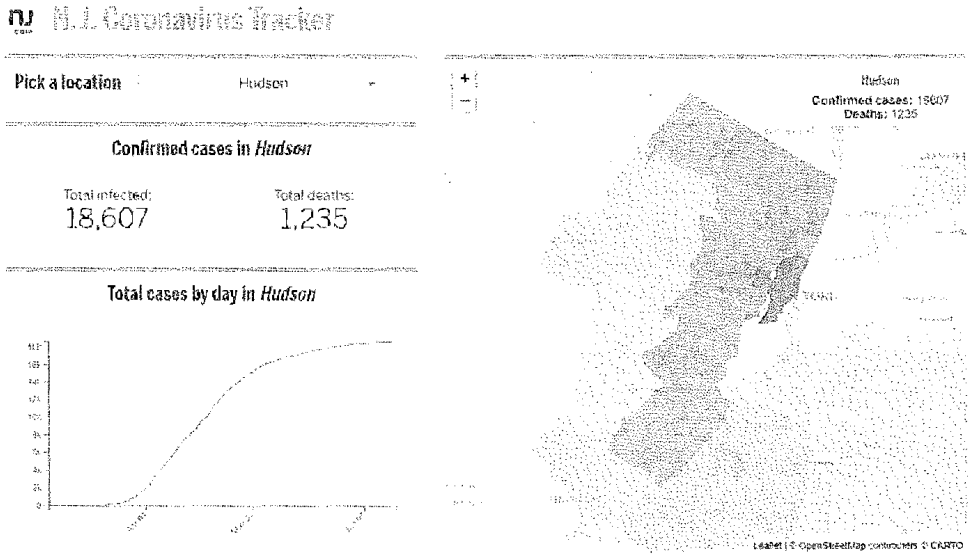
Current Status and Ongoing Monitoring



For further information, see https://projects.nj.com/coronavirus-tracker/

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Phase Two - Criteria

- All baseline criteria met (no barrier to in-person gatherings + ongoing positive COVID-19 trends as determined by the Judiciary + judge/staff readiness); and

- Facilities and health/safety preparations must be sufficient to support the number of people coming to the courthouse (e.g., appropriate cleaning, point-of-entry precautions, signage).

Health and Safety / Facilities Preparations

- Judiciary policies will follow the best scientific or medical information (CDC, NJ DOH, OSHA/PEOSH)
- Before returning to court buildings, all employees will receive mandatory orientation/training with an emphasis on COVID-19 safety
- Appropriate COVID-19 cleaning policies will be implemented in coordination with partners (Treasury, Counties)
- Thermal scanning may be implemented in coordination with partners (Sheriffs, New Jersey State Police, Municipal Court security)

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Health and Safety / Facilities Preparations (Cont'd)

- Point of entry requirements: (a) posted screening questions; (b) signs advising of thermal scanning and requirement that all entrants wear masks; (c) hygiene stations installed past security screening
- Barriers, shields, and/or sneeze guards will be installed in appropriate locations
- Signs throughout court buildings: (a) handwashing; (b) disease prevention; (c) social distancing; (d) masks policy; (e) floor markers for elevators and one-way travel in common areas and stairwells
- Posted protocols for restrooms (occupancy limits, social distancing, paper towels, sanitizer)

Phase Two – Criteria: Limited Judges / Staff Onsite

For transition to Phase 2:

- On a county basis, onsite presence may revert to Phase 1 if any preconditions change (e.g., COVID-19 trends worsen in the area); and

- We will relocate people away from areas with recent exposure (pending appropriate cleaning)

Ongoing Remote Operations – With Exceptions

During Phase 1 and the transition to Phase 2:

- Court events that are successfully being handled remotely will continue to be handled remotely during the transition to Phase 2 and increased presence in our buildings

- As determined by the Supreme Court, court events that cannot be handled remotely (e.g., based on lack of consent to proceed remotely or Judiciary determination that it should be in person) may be conducted onsite

- In Phase 2, state court facilities are open only to attorneys, litigants, and members of the public with scheduled proceedings or appointments

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Ongoing Remote Operations – Criminal

In Phase 2, most Criminal proceedings will continue to be handled remotely, including but not limited to:

- Centralized First Appearance/CJP; motions for pretrial detention, release revocation, and to reopen detention; speedy trial and extradition hearings; violations of monitoring and of probation, for defendants in custody; pretrial and other conferences; bench trials and sentencings with consent; Intensive Supervision Program (ISP) hearings; Extreme Risk Protective Order (ERPO); pretrial monitoring; and operational matters (e.g., PSI reports)

- For detailed information see the Events Guidance on njcourts.gov

Potential Onsite Events - Criminal

As we transition to Phase 2, the following Criminal matters may, consistent with Supreme Court guidance, be handled in person:

Completion of suspended jury trials (5 statewide) with consent of all attorneys and parties and approval of the Chief Justice;

Subject to social distancing and other requirements, in the absence of consent to proceed remotely, bench trials, testimonial motions, pretrial hearings, sentencings, guilty pleas, and Final ERPO hearings; violation of monitoring and violation of probation for defendants not in custody may be conducted in person in Criminal matters

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Prisoner Management in the Courthouse

Note:

In-person appearances by inmates will be strictly limited during Phase 2

The court should be notified by either DOC or the County warden or sheriff of any inmate who has tested positive for COVID-19 who has been in the courthouse in the two weeks prior to the discovery

The court will notify DOC or the County if a judge or court employee has tested positive for COVID-19 within 14 days of any proceeding involving an inmate

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Ongoing Remote Operations - Family

In Phase 2, most Family proceedings will continue to be handled remotely, including but not limited to:

- Orders to Show Cause and returns on OTSC; bench trials; motions; child support hearings including de novo hearings; default hearings; uncontested divorces; conferences; mediations; Temporary Restraining Order applications and appeals; DV dismissals; Final Restraining Order hearings; restraining order violations (FO); violations of monitoring and of probation; fact findings; permanency hearings; children in court compliance reviews; children in court and juvenile bench trials with consent of the parties; and uncontested adoptions

- For detailed information see the Events Guidance on njcourts.gov

Potential Onsite Operations - Family

As we transition to Phase 2, the following Family matters may, consistent with Supreme Court guidance, be handled in person subject to social distancing and other requirements:

- in any Family docket, bench trials and hearings for matters that are especially complex (at a minimum, involving numerous parties or witnesses, or significant evidence in a format that cannot be handled remotely, such as physical evidence or videos in a non-standard format)

- sentencing hearings for quasi-criminal matters (FO) and juvenile delinquency matters (FJ) (in the absence of consent to proceed remotely)

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Ongoing Remote Operations - Civil

In Phase 2, most Civil proceedings will continue to be handled remotely, including but not limited to:

- Orders to Show Cause and returns on OTSC; bench trials; motions; hearings; case management and other conferences; mediation; arbitration; uncontested guardianship hearings; special medical guardianships; stays of sheriff's sales and evictions; Special Civil (DC) and Small Claims (SC) trials with consent; and involuntary civil commitment initial hearings and reviews

- For detailed information see the Events Guidance on njcourts.gov

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Potential Onsite Operations - Civil

As we transition to Phase 2, the following Civil matters may, consistent with Supreme Court guidance, be handled in person:

- Completion of suspended jury trial (1 statewide) with consent of all attorneys and parties and approval of the Chief Justice
- Subject to social distancing and other requirements, in the absence of consent to proceed remotely, bench trials and hearings may be conducted in person in all Civil dockets for matters that are especially complex (at a minimum, involving numerous parties or witnesses, or significant evidence in a format that cannot be handled remotely, such as physical evidence or videos in a non-standard format)
- Contested hearings for an adjudication of incapacity and appointment of a permanent guardian

Ongoing Remote Operations - Municipal

In Phase 2, most Municipal Court proceedings will continue to be handled remotely, including but not limited to:

- Disorderly persons / petty disorderly persons offenses, traffic, DWI dispositions, parking, local ordinance, penalty enforcement and other hearings; First Appearance/CJP; violations of monitoring and probation; bench trials, sentencing hearings, evidentiary hearings, and testimonial motions with consent; guilty pleas; post-adjudication and non-compliance hearings; and dismissals

- For detailed information see the Events Guidance on njcourts.gov

Potential Onsite Operations – Municipal

As we transition to Phase 2, the following Municipal Court matters may, consistent with Supreme Court guidance, be handled in person:

- Subject to social distancing and other requirements, in the absence of consent to proceed remotely, bench trials and hearings may be conducted in person in Municipal Court matters that are especially complex (at a minimum, involving numerous parties or witnesses, or significant evidence in a format that cannot be handled remotely, such as physical evidence or videos in a non-standard format), including DWI trials and other matters involving consequences of magnitude
- Vicinage management will partner with municipalities to help implement the relevant provisions of this plan in the Municipal Courts, including but not limited to issues involving court security and health and safety

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Supreme, Appellate, and Tax Courts

As we transition to Phase 2, the expectation is that Supreme Court and Appellate Division arguments and most Tax Court proceedings will continue to be handled remotely

As with the trial divisions of the Superior Court and the Municipal Courts, exceptions may be permitted

Remote Probation Supervision

Adult/Juvenile/Drug Court/ISP Supervision

- Supervision of low and medium risk clients by phone or video
- Supervision of high risk and specialized caseloads, and Intensive Supervision Program (ISP) clients by phone or video
- Curbside home visits
- Drug testing by oral swab for certain drug court clients

Probation Child Support Enforcement

- Monitor cases remotely
- Customer service by phone
- Hold Enforcement of Litigant's Rights (ELR) hearings by phone/video

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Potential In-Person Probation Operations

- Up to 10-15% of high risk and specialized caseloads and ISP clients to report in person using staggered schedules

- Up to 10-15% of high risk and specialized caseloads and drug testing by oral swab or unmonitored urine testing to be conducted at court facilities using staggered schedules

- Drug Court Phase 1 and High-Risk Phase 2 in person reporting every other week in the courthouse and drug testing by oral swab or unmonitored urine testing with staggered reporting schedules

- Begin in-person customer service by appointment

Ongoing Court User Assistance

The New Jersey courts are continuing to provide information and support to attorneys, self-represented litigants, and other court users

Vicinage ombudsmen serve as the frontlines for handling questions and assisting users in navigating the system and using new electronic filing options, including the Judiciary Electronic Document Submission (JEDS) system

Conclusion and Next Steps

These recommendations – and the comprehensive committee reports on which they are based – were reviewed with the stakeholder coordinating committee on May 29, 2020

The Supreme Court on June 9, 2020 approved this approach for Phase 1 and the gradual transition to Phase 2

Further information and guidance on the transition to Phase 3 and beyond will be provided when available

JUNE 11 NOTICE AND ORDER

NOTICE TO THE BAR

COVID-19 – FOURTH OMNIBUS ORDER ON COURT OPERATIONS AND LEGAL PRACTICE

The Supreme Court today issued its Fourth Omnibus Order on Court Operations and Legal Practice in response to the ongoing COVID-19 pandemic. A copy of the Order is attached.

This June 11, 2020 Fourth Omnibus Order follows the format of the May 28, 2020 Third Omnibus Order. It continues certain suspensions and extensions through June 28, 2020 and affirms that other provisions remain in full force and effect. It also provides updated direction in the following areas:

- Jury Trials. Continuing the suspension of new jury trials and providing that ongoing jury trials suspended during COVID-19 may resume consistent with public health precautions with the consent of all parties;

- Grand Jury. Extending the suspension of in-person grand jury selection and sessions and affirming that grand juries may convene remotely consistent with the Pilot Program for Virtual Grand Juries, which currently is operating in Bergen and Mercer Counties;

- Landlord/Tenant. Providing as to landlord/tenant proceedings that (i) lockouts of residential tenants (evictions) continue to be suspended in accordance with Executive Order 106 (March 19, 2020); (ii) landlord/tenant complaints may continue to be filed with the courts, and new complaints will include an email address for the landlord and to the extent available an email address for the tenant; (iii) the court will schedule conferences, including to obtain or confirm contact information from the parties and conduct settlement negotiations in an effort to resolve matters; and (iv) trials continue to be suspended until further notice;

- Tax Court. Affirming provisions of prior orders as to the extension of all filing deadlines for state tax controversies while vacating provisions as to local property tax appeals; and

- Trial Court Filing Deadlines. Restating that in the computation of time periods under the Rules of Court and under any statute of limitations for matters in all trial divisions of the Superior Court, the period from March 16, 2020 through May 10, 2020 will not be included in calculating those trial court filing deadlines.

As the COVID-19 pandemic continues and based on developments in the coming weeks, the Court will revisit the provisions of the Fourth Omnibus Order and make adjustments as appropriate.

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Questions about this notice or the Court's Fourth Omnibus Order may be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

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

Dated: June 11, 2020

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SUPREME COURT OF NEW JERSEY

In response to the ongoing COVID-19 public health emergency, the Supreme Court has authorized various interim adjustments to court operations, including as set forth in the March 27, 2020 First Omnibus Order, April 24, 2020 Second Omnibus Order, and May 28, 2020 Third Omnibus Order.

Court operations are continuing in a virtual format to the greatest extent practicable, subject to constitutional considerations and resource limitations. To date, the New Jersey courts have conducted more than 35,000 court events involving more than 320,000 participants.

A public health emergency has been continued in New Jersey at least through July 5, 2020, and current health guidance suggests that in-person court operations will not resume in full for some time.

At the same time, the New Jersey courts are implementing the first phase of a Post-Pandemic Plan, with limited numbers of judges and employees preparing to return to courthouses and court facilities starting June 22, 2020, subject to statewide precautions including requirements to wear masks or face coverings in non-private areas and to maintain social distancing as set forth in the Court's June 9, 2020 Order. As part of the transition to Phase 2, all levels of the courts may begin to conduct certain limited in-person proceedings and onsite operations as authorized by the Court.

The April 24, 2020 Second Omnibus Order provided for certain limited extensions of deadlines and tolling of timeframes, which were continued, affirmed, or concluded in the May 28, 2020 Third Omnibus Order. This Fourth Omnibus Order further continues some of those extensions through June 28, 2020, affirms that other provisions remain in full force and effect, and lists those provisions that have concluded.

Accordingly, it is ORDERED that effective immediately:

1. The following provisions of the April 24, 2020 Second Omnibus Order as extended by the May 28, 2020 Third Omnibus Order are extended for the additional period from June 15 through June 28, 2020:

    - 1(a) – no new jury trials; however, ongoing jury trials suspended during COVID-19 may resume consistent with public health precautions with the consent of all parties
    - 2(a) – excludable time
    - 3(b) – discovery involving physical or mental examinations
    - 3(c) – time period for filing affidavits of merit
    - 3(l) – no Special Civil Part (DC) or small claims (SC) trial calendars; ongoing efforts to settle DC and SC matters; judges may conduct DC and SC trials in a virtual format with the consent of all parties

- 3(m) – no courtesy copies if the total submission does not exceed 35 pages in civil matters and as provided in the May 15, 2020 order in matrimonial (FM) matters
- 4(a) – expert reports in family
- 7(c) – healthcare providers excused from depositions and appearances

2. The following provisions of the April 24, 2020 Second Omnibus Order (as affirmed by the May 28, 2020 Third Omnibus Order) remain in full force and effect:

- 2(b) – process for search warrants and communication data warrants
- 3(h) – Office of Foreclosure
- 3(o) – guardianships of incapacitated adults
- 6 – Municipal Courts
- 7(a) – remote depositions
- 7(b) – remote proceedings in general
- 7(e) – electronic service on the State of New Jersey
- 8(a)(ii) and (b) – discipline and fee arbitration
- 9 – Board of Bar Examiners
- 10 – electronic signatures
- 11 – Appellate Division
- 12 – letter requests for extensions

- 13 – extensions based on individual facts of a case

3. Suspension of grand jury empanelment dates and sessions is extended as follows:

    a. In-person grand jury selections and sessions shall not be scheduled through at least June 28, 2020; and

    b. Grand juries may convene remotely consistent with the Pilot Program for Virtual Grand Juries as authorized by the Court's May 14 and June 4, 2020 Orders, which currently is operating in Bergen and Mercer Counties.

4. Landlord/tenant proceedings shall proceed as follows:

    a. Lockouts of residential tenants (evictions) continue to be suspended in accordance with Executive Order 106 (March 19, 2020);

    b. Landlord/tenant complaints may continue to be filed with the courts, and new complaints shall include an email address for the landlord and to the extent available an email address for the tenant;

    c. The court shall schedule conferences, including to obtain or confirm contact information from the parties and conduct settlement negotiations in an effort to resolve matters; and

    d. Trials continue to be suspended until further notice.

5. As to the Tax Court, the provisions of prior orders, including those dated March 19, March 27, April 6, April 21, April 24, and May 28, 2020 remain in effect with respect to the extension of all filing deadlines for state tax controversies and as to property tax appeals to the New Jersey Tax Court from judgments issued by the county board of taxation in those counties participating in the Assessment Demonstration Program (L. 2013, c. 15), which at present includes Gloucester and Monmouth Counties. The filing deadlines as to complaints and counterclaims for such matters as set forth in Court Rules 8:4-l(a)(2) and 8:4-3(a) pursuant to N.J.S.A. 54:51A-1, to the extent that those deadlines had not already passed by March 19, 2020, are hereby extended to July 1, 2020. All other provisions relating to the filing of local property tax appeals are hereby vacated.

6. This Order affirms the provisions of the Court's prior orders that in the computation of time periods under the Rules of Court and under any statute of limitations for matters in all trial divisions of the Superior Court, the period from March 16, 2020 through May 10, 2020 shall not be included in calculating those trial court filing deadlines.

7. This order is intended to be implemented in tandem with the Court's April 20, 2020 Order on the continuation of remote proceedings.

8. Depending on the duration of the COVID-19 pandemic and further developments in the weeks ahead, the Court may reconsider and revise the provisions of this order.

For the Court,

Chief Justice

Dated: June 11, 2020

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JUNE 25 NOTICE AND ORDER

NOTICE TO THE BAR

COVID-19 – FIFTH OMNIBUS ORDER ON COURT OPERATIONS AND LEGAL PRACTICE

The Supreme Court has issued its Fifth Omnibus Order on Court Operations and Legal Practice during the ongoing COVID-19 pandemic. A copy of the Order is attached.

This June 25, 2020 Fifth Omnibus Order follows the format of the earlier Omnibus Orders. It continues certain suspensions and extensions through July 12, 2020 and affirms that other provisions remain in full force and effect.

The Fifth Omnibus Order concludes the restrictions on the Office of Foreclosure as established in earlier Omnibus Orders, meaning that in addition to non-dispositive motions (e.g., motions to substitute plaintiff, motions to enter default, motions for surplus funds and motions to correct defendant), the Office of Foreclosure now may recommend judgments or dispositive motions received on or after March 1, 2020.

As the COVID-19 pandemic continues and based on developments in the coming weeks, the Court will revisit the provisions of the Fifth Omnibus Order and make adjustments as appropriate.

Questions about this notice or the Court's Fifth Omnibus Order may be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

Glenn A. Grant by SDB

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

Dated: June 25, 2020

SUPREME COURT OF NEW JERSEY

In response to the ongoing COVID-19 public health emergency, the Supreme Court has authorized various interim adjustments to court operations, including as set forth in the March 27, 2020 First Omnibus Order, April 24, 2020 Second Omnibus Order, May 28, 2020 Third Omnibus Order, and June 11, 2020 Fourth Omnibus Order.

Court operations are continuing in a virtual format to the greatest extent practicable, subject to constitutional considerations and resource limitations. To date, the New Jersey courts have conducted more than 43,000 court events involving more than 390,000 participants.

A public health emergency has been continued in New Jersey at least through July 5, 2020, and current health guidance suggests that in-person court operations will not resume in full for some time.

As part of the Judiciary's transition to Phase 2 of a Post-Pandemic Plan, all levels of the courts are beginning to conduct certain limited in-person proceedings and onsite operations as authorized by the Court.

The prior orders provided for certain limited extensions of deadlines and tolling of timeframes. This Fifth Omnibus Order further continues some earlier extensions through July 12, 2020, affirms that other provisions remain in full force and effect, and lists certain provisions that have concluded.

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Accordingly, it is ORDERED that effective immediately:

1. The following provisions of the April 24, 2020 Second Omnibus Order as extended by the May 28, 2020 Third Omnibus Order and June 11, 2020 Fourth Omnibus Order are extended for the additional period from June 29 through July 12, 2020:

    - 1(a) – no new jury trials; however, ongoing jury trials suspended during COVID-19 may resume consistent with public health precautions with the consent of all parties
    - 2(a) – excludable time
    - 3(b) – discovery involving physical or mental examinations
    - 3(c) – time period for filing affidavits of merit
    - 3(l) – no Special Civil Part (DC) or small claims (SC) trial calendars; ongoing efforts to settle DC and SC matters; judges may conduct DC and SC trials in a virtual format with the consent of all parties
    - 3(m) – no courtesy copies if the total submission does not exceed 35 pages in civil matters and as provided in the May 15, 2020 order in matrimonial (FM) matters
    - 4(a) – expert reports in family
    - 7(c) – healthcare providers excused from depositions and appearances

2. The following provisions of the April 24, 2020 Second Omnibus Order (as affirmed by the May 28, 2020 Third Omnibus Order and June 11, 2020 Fourth Omnibus Order) remain in full force and effect:

- 2(b) – process for search warrants and communication data warrants
- 3(o) – guardianships of incapacitated adults
- 6 – Municipal Courts
- 7(a) – remote depositions
- 7(b) – remote proceedings in general
- 7(e) – electronic service on the State of New Jersey
- 8(a)(ii) and (b) – discipline and fee arbitration
- 9 – Board of Bar Examiners
- 10 – electronic signatures
- 11 – Appellate Division
- 12 – letter requests for extensions
- 13 – extensions based on individual facts of a case

3. Suspension of grand jury empanelment dates and sessions is extended as follows:

a. In-person grand jury selections and sessions shall not be scheduled through at least July 12, 2020; and

b. Grand juries may convene remotely consistent with the Pilot Program for Virtual Grand Juries as authorized by the Court's Orders dated May 14, 2020, June 4, 2020, June 9, 2020, and June 25, 2020.

4. The following provisions of the Court's June 11, 2020 Fourth Omnibus Order remain in full force and effect:

   - 4 – landlord/tenant proceedings
   - 5 – Tax Court
   - 6 – computation of time

5. Effective immediately, the limitations on the Office of Foreclosure provided by the previous Omnibus Orders are concluded.

6. This order is intended to be implemented in tandem with the Court's April 20, 2020 Order on the continuation of remote proceedings.

7. Depending on the duration of the COVID-19 pandemic and further developments in the weeks ahead, the Court may reconsider and revise the provisions of this order.

For the Court,

Chief Justice

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Dated: June 25, 2020

JULY 10 NOTICE
WITH JULY 9 ORDER

NOTICE TO THE BAR

COVID-19 – SIXTH OMNIBUS ORDER ON COURT OPERATIONS AND LEGAL PRACTICE

The Supreme Court has issued its Sixth Omnibus Order on Court Operations and Legal Practice during the ongoing COVID-19 pandemic.

This July 9, 2020 Sixth Omnibus Order (copy attached to this notice) continues certain extensions and suspensions of proceedings (including but not limited to new jury trials; in-person grand jury selections and sessions; and landlord/tenant trials) and affirms that all other provisions of the June 25, 2020 Fifth Omnibus Order remain in full force and effect.

Questions about the Court's Sixth Omnibus Order or this notice may be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

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

Dated: July 10, 2020

SUPREME COURT OF NEW JERSEY

In response to the ongoing COVID-19 public health emergency, the Supreme Court has authorized various interim adjustments to court operations, including as set forth in the March 27, 2020 First Omnibus Order, April 24, 2020 Second Omnibus Order, May 28, 2020 Third Omnibus Order, June 11, 2020 Fourth Omnibus Order, and June 25, 2020 Fifth Omnibus Order.

It is ORDERED that effective immediately, the provisions of the June 25, 2020 Fifth Omnibus Order are continued as follows:

1. The provisions of paragraphs 1 and 3 are extended for the additional period from July 13 through July 26, 2020.
2. All other provisions (paragraphs 2 and 4-7) remain in full force and effect.

For the Court,

Chief Justice

Dated: July 9, 2020

APPENDIX A, PART 2

ADDITIONAL COURT ORDERS AND DIRECTIVES

JULY 22 NOTICE AND ORDER, WITH "PLAN FOR RESUMING JURY TRIALS"

NOTICE TO THE BAR

COVID-19 – CRIMINAL AND CIVIL JURY TRIALS TO RESUME INCREMENTALLY USING A HYBRID PROCESS WITH VIRTUAL (VIDEO) JURY SELECTION AND SOCIALLY DISTANCED IN-PERSON TRIALS

The Supreme Court has authorized the incremental resumption of new Civil and Criminal jury trials, which have been suspended for more than four months because of the ongoing COVID-19 pandemic. Attached to this notice are the Court's July 22, 2020 Order and the Report on Resuming Jury Trials.

Atlantic/Cape May, Bergen, and Cumberland/Gloucester/Salem will be the first Vicinages to resume certain jury trials, beginning with Criminal trials involving a single detained defendant. Over the coming months, trials will gradually resume in all counties and will expand to include Civil as well as Criminal cases.

Overview

The Court-approved plan for resuming jury trials replicates to the greatest extent possible standard pre-COVID-19 processes, including as to the issuance of summonses to prospective jurors; availability of online and hard copy options for qualification; resolution by staff of certain statutory pre-reporting excuses (e.g., disqualification of jurors who have relocated outside of the summoning county); and general prescreening of qualified jurors for availability for the trial schedule.

Virtual *Voir Dire* – Including Distribution of Technology

All case-specific questioning of jurors will be conducted by a judge in the presence of the attorneys and parties, with the difference being that most *voir dire* will be conducted virtually rather than in physical courtrooms. As with the ongoing virtual grand jury pilot program, the Judiciary will in all cases provide technology to jurors where it is necessary to support their participation in virtual proceedings.

In-Person Reporting

Following virtual questioning and for-cause excusals, a small group of jurors will be directed to report in person to the courthouse for the final phase of selection, including the exercise of peremptory challenges. That in-person phase of the selection process will be conducted observing social distancing requirements and with jurors and others generally required to wear masks. Once that phase of the selection process has been completed, selected jurors will be empaneled for a socially distanced in-person

trial, which will be conducted in accordance with public health guidance issued by the Centers for Disease Control and Prevention (CDC) and the New Jersey Department of Health (NJ DOH). Empaneled jurors will be required to wear masks, which the Judiciary can provide, as needed. Throughout the trial the Judiciary will enforce social distancing to avoid close contact between trial participants. We will provide designated restrooms and break areas, and, in coordination with building owners, we will arrange for additional cleaning and sanitizing.

Selection of Cases for Trial

During this beginning phase of the resumption of jury trials, total trial activity will be substantially less than during normal pre-COVID-19 operations, with the goal being to be conducting at least one Civil trial and one Criminal trial at any particular moment in each county in the coming months. Assignment Judges and Presiding Judges will work closely with attorneys to identify the cases that will proceed, taking into account standard factors (e.g., the length of time a criminal defendant has been detained) as well as factors relevant to social distancing (e.g., the occupancy challenges associated with cases involving multiple parties). Attorneys and parties will be invited to walk through the physical layout of courtrooms in advance and to review any proposed technological supports (e.g., large-screen monitors to display evidence) or health precautions (e.g., plexiglass barriers for witnesses).

Critical Areas of Focus

- Preventing and Responding to COVID-19 Risks

  The Court's plan for resuming jury trials depends on strict adherence to public health guidelines for all persons in court facilities, especially trial participants. Judges will exercise primary responsibility for ensuring that courtroom occupants avoid close contact, which the CDC defines as being closer than 6 feet for more than 10-15 minutes or coming into direct contact with bodily fluids (e.g., being coughed on). If a juror or other trial participant during any portion of the in-person proceedings is diagnosed with COVID-19 or develops symptoms consistent with the virus, the Judiciary will notify those persons who are or may be at risk. More detailed information on the Judiciary's COVID-19 exposure notification protocols will be provided before the first jurors report for selection.

- Safeguarding Constitutionality

  The processes authorized by the Court in support of the incremental resumption of jury trials uphold the constitutional rights of parties, including criminal defendants. As in standard in-person operations, attorneys and parties will participate during all case-specific questioning of jurors. By reconfiguring

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courtrooms and making effective use of technology, trial participants will be able to see jurors both during the virtual selection process and during socially distanced in-person trials.

Attorneys will be supported in communicating with their clients during the virtual jury selection and the socially distanced in-person trial. Options for supporting safe direct attorney-client communications include installation of partial plexiglass dividers, exchange of private notes, and/or use of earbuds similar to those used by interpreters. Appropriate measures also will be implemented to ensure that witnesses are visible when testifying, whether protected by a plexiglass barrier or wearing a transparent face shield.

- Supporting Representative Juries

The Judiciary will enable all qualified and available jurors to participate in virtual jury selection, whether by using their individual personal technology (e.g., laptop or smartphone with camera functionality) or by using devices supplied by the Judiciary (e.g., tablet with broadband capability). In additional to ensuring inclusive jury panels, the Judiciary will support juror service for in-person trials by enforcing public health precautions, including wearing masks; maintaining social distancing; and frequently cleaning and disinfecting shared areas.

Development and Ongoing Improvements

The Court-approved plan incorporates many of the recommendations of the Judiciary's Post-Pandemic Planning Committee on Resuming Jury Trials. Assignment Judge Bonnie J. Mizdol (Bergen) serves as chair of that Committee, with Trial Court Administrator Jason Corter (Cumberland/Gloucester/Salem) as vice-chair. The Committee's initial recommendations were refined and supplemented by the Judiciary's Post-Pandemic Stakeholder Coordinating Committee, which includes representatives of the Attorney General's Office, the Office of the Public Defender, the County Prosecutors Association of New Jersey, the New Jersey State Bar Association, the New Jersey Department of Health (NJ DOH), and others.

The Court appreciates comments and suggestions provided over the past few weeks by Criminal and Civil practitioners, including leadership of the New Jersey State Bar Association, the Association of Criminal Defense Lawyers of New Jersey, the New Jersey Association for Justice, and the American Civil Liberties Union (New Jersey). As Criminal and Civil jury trials resume in the coming months, we welcome ongoing input from judges, attorneys, jurors, and the public.

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Conclusion and Questions

Resuming jury trials is critical to supporting comprehensive court operations during the evolving COVID-19 public health crisis. This is a temporary solution to unprecedented circumstances. We will return to normal in-person jury operations as soon as it is safe to do so. In the interim, the New Jersey courts will continue to provide information about jury trials and all upcoming court operations, including on our public webpage, njcourts.gov.

Questions on this notice and the Supreme Court Plan for Resuming Jury Trials should be directed to the Office of the Administrative Director at (609) 376-3000.

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

Dated: July 22, 2020

SUPREME COURT OF NEW JERSEY

In response to the COVID-19 pandemic, the Supreme Court on March 12, 2020 suspended new jury selections and new jury trials. For more than four months, the courts have been operating almost exclusively via remote (video and phone) technologies for matters not including jury trials. With the transition to Phase 2 of the Judiciary's Post-Pandemic Plan, the New Jersey courts are gradually resuming limited on-site presence and in-person proceedings, including for matters that cannot be conducted in a remote format.

In light of public health approval for limited on-site presence (with appropriate precautions), and technological resources that support virtual operations, a limited number of jury trials can be resumed at this time. To that end, the Court has authorized a comprehensive plan for conducting new Criminal and Civil jury selections and trials using a hybrid format that includes both virtual (video) and in-person elements for jury selection, and the presentation of evidence at trial in court.

The plan is based on the recommendations of the Judiciary's Post-Pandemic Planning Committee on Resuming Jury Trials, as refined and supplemented by the Judiciary's Post-Pandemic Stakeholder Coordinating Committee. This is an interim solution to the ongoing COVID-19 crisis. The New Jersey courts will resume standard in-person jury operations when it is safe to do so.

The Court's plan maintains the core components of pre-pandemic jury operations, as modified to protect the health and safety of jurors, attorneys, parties, and all court users. The plan reduces to a minimum the number of jurors who report to courthouses and requires that health precautions – including wearing face masks; maintaining social distancing; and enhancing cleaning protocols – are enforced during jury selection and jury trials. Those interim adjustments will be implemented so as to uphold the fundamental rights established by the United States Constitution and the New Jersey State Constitution, including meaningful participation by attorneys and parties in the jury selection process, and confidential communication between attorneys and clients during jury selection and trial. Steps will be taken to ensure that jurors can hear and observe the presentation of witness testimony and other evidence (including but not limited to documents and videos) in court.

Accordingly, it is ORDERED that effective immediately, for the duration of the COVID-19 public health emergency and under further order:

1. The Administrative Director of the Courts ("Director") and Assignment Judges shall take steps to implement jury selection in a primarily virtual (video) format, as follows:

    a. Qualified jurors will be prescreened by Judiciary staff for technological capacity to participate in virtual selection;

b. Jurors can participate in virtual selection using a laptop, tablet, smartphone, or other comparable device with a reliable Internet connection and a functioning web camera;

c. When a juror is otherwise able to participate in virtual selection but requires technological support, the Judiciary shall provide restricted-use devices (laptops or tablets) and related supports (including, as necessary, broadband capacity), which shall be configured and administered solely by the Judiciary; and

d. Before starting virtual jury selection, Judiciary staff will provide initial Zoom testing and onboarding for qualified jurors.

2. The Director and Assignment Judges shall take steps to implement limited in-person jury selection and socially distanced jury trials, as follows:

a. Limited numbers of jurors will report to the courthouse for a final phase of selection;

b. Jurors will report on staggered schedules and will adhere to public health protocols while in public areas and in courtrooms, including during breaks and deliberations;

c. Trial judges will exercise primary responsibility for enforcing public health requirements, including preventing close contact between trial

participants by maintaining six feet of social distance between people; and

d. Consistent with the Court's June 9, 2020 Order, court users including judges, court staff, attorneys, parties, witnesses, and jurors will be required to wear face masks, except that judges will have discretion to remove their own face mask or to direct others to remove face masks when other public health safeguards can be implemented (e.g., a witness testifying behind a clear plexiglass barrier).

3. Jurors will be summoned consistent with standard practices, except that the initial summons notice and the follow-up questionnaire will notify them of the interim hybrid process that includes virtual selection and socially distanced in-person trials.
4. In coordination with Assignment Judges, Judiciary staff will address juror requests to be disqualified or excused before reporting (e.g., based on relocation outside of the summoning county) in accordance with statutory criteria.
5. Judiciary staff will follow standard statewide protocols for juror requests to be excused based on medical inability to serve, including but not limited to reasons related to the COVID-19 virus.

6. Jurors who request to be excused based on COVID-19 concerns not related to substantiated medical inability will be scheduled for questioning by a judge.
7. Judiciary staff will prescreen jurors as authorized by the Supreme Court Guidelines on Screening Jurors Prior to *Voir Dire*, including as to availability for the anticipated trial schedule.
8. All case-specific questioning of jurors will be conducted during the virtual *voir dire* process in the presence of the judge, attorneys, and parties. Jurors will be excused for cause based on that questioning.
9. Following virtual questioning and for-cause excusals, the remaining small group of jurors will be directed to report in person to the courthouse for the final phase of selection, including the exercise of peremptory challenges.
10. Judges will schedule virtual and/or in-person visits by attorneys and clients before starting jury selection begins to address courtroom configuration, including seating arrangements for all trial participants.
11. Public access will be provided for the virtual and in-person phases of jury selection.
12. Socially distanced in-person jury trials will be livestreamed to the public.
13. Confidential attorney-client communications will be supported during virtual and in-person jury selection and socially distanced jury trials.

14. If a juror or other trial participant during any portion of the in-person proceedings is diagnosed with COVID-19 or develops symptoms consistent with that virus, the Judiciary will notify those persons who are or may be at risk and will take appropriate next steps.

15. The first jury selections and trials will begin in the following three Vicinages: Atlantic/Cape May, Bergen, and Cumberland/Gloucester/Salem. The first new jury trials will be Criminal cases involving a single detained defendant. Informed by those initial experiences, jury trials will expand statewide and will include both Criminal and Civil cases.

16. Depending on the duration of the COVID-19 pandemic and further developments in the months ahead, the Court may reconsider and revise the provisions of this order.

For the Court

Chief Justice

Dated: July 22, 2020

New Jersey Courts

Independence • Integrity • Fairness • Quality Service

New Jersey Supreme Court

Plan for Resuming Jury Trials

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July 22, 2020

Starting Premises

Chief Justice Stuart Rabner and the New Jersey Supreme Court are committed to providing comprehensive court services, even during the COVID-19 pandemic.

To that end, the New Jersey courts are preparing to resume Civil and Criminal jury trials in or around September 2020.

We will mail juror summonses in July/August 2020 and empanel juries and start trials in September.

Starting Premises

Jury trials during the COVID-19 period will require adjustments based on public health requirements and other factors.

A108

We face severe space restrictions. We will need multiple courtrooms for individual trials and will be unable in some counties to conduct multiple trials simultaneously for the foreseeable future.

Starting Premises

Our immediate focus is to develop the capacity to support jury trials statewide using a hybrid model with some virtual (video) and some in-person elements.

A1109

This is a **temporary** solution to an unprecedented situation. We will resume standard in-person jury operations when it is safe to do so.

Starting Premises

Resuming jury trials is necessary – and it is urgent.

- The suspension of new jury trials for nearly four months jeopardizes the rights of criminal defendants, including those who are detained, as well as victims seeking to complete a critical event in their recovery process.

- Civil litigants also must not be made to wait indefinitely for their day in court.

A110

Waiting is not an option

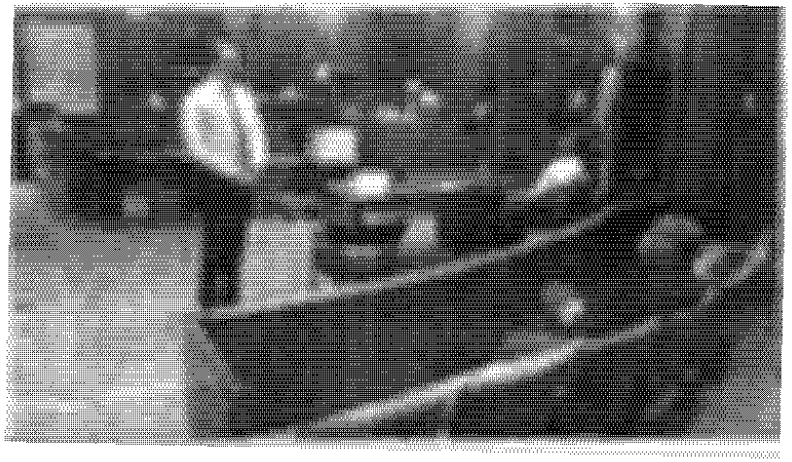
We cannot predict if or when jury trials will be able to resume in a pre-COVID-19 format.

That time may be months or more than a year from now.

The Judiciary is responsible to ensure the fair and timely administration of justice. Resuming jury trials is a key part of fulfilling that responsibility.

A111

Hybrid Approach: Virtual and In-Person



A112

Starting Premises

The plan is based on the recommendations of the Judiciary's Post-Pandemic Planning Committee on Resuming Jury Trials, which considered national best practices and models introduced in other jurisdictions, including the federal courts.

A113

The Committee – including representatives of the County Prosecutors Association and Public Defender's Office as well as Civil and Criminal judges – evaluated various options and recommended that a hybrid approach would be the best way to resume jury trials in New Jersey.

Starting Premises

The draft proposal was shared with Civil and Criminal attorneys who posed a number of questions and suggested certain refinements that are incorporated in this final report.

A114

The Judiciary Stakeholder Coordinating Committee – which includes Attorney General, Public Defender, and New Jersey State Bar Association members – also reviewed and assisted in finalizing the report.

Starting Premises

Virtual jury selection is necessary. Based on public health guidance, we cannot support an entirely in-person jury **selection** process.

- The Judiciary annually summons 1.4 million jurors, with about 250,000 jurors reporting in person to courthouses.
- The pre-COVID-19 model of packed jury assembly rooms is simply not an option.

A115

Starting Premises

- We cannot bring significant numbers of jurors into courthouses at one time.

- We cannot require jurors to report to court facilities without actually coming into the courthouse (especially considering jurors who travel by public transit).

A116

Starting Premises

The Virtual Grand Jury Pilot Program currently is operating in Bergen and Mercer Counties and will be expanding to include State Grand Jury.

A117

Through that pilot program, we have worked through the technical components of a virtual jury process – and we are ready to build on that foundation for virtual selections of trial juries.

Starting Premises

Few courtrooms are large enough to accommodate jury trials with social distancing.

- To support at least 1 Criminal trial and 1 Civil trial in each county at one time (which will be the maximum capacity in many counties), selection must be done in a primarily virtual format.

A118

Starting Premises

High-volume counties (Essex, Camden) should be able to accommodate 3-4 trials at one time – but only if courtroom space is reserved for trial and deliberations.

There is no space to bring in more than 30 jurors at one time for the very final phase of selection.

A119

Starting Premises

In counties without any courtroom large enough for a criminal trial, it may be necessary to use two courtrooms, with one used by the judge and attorneys and all of the jurors seated in another room with a live feed of the trial proceedings.

A120

We will engage attorneys and parties in a walk-through in advance of any trial, so that all participants have accurate expectations.

Overview – Virtual Selections & In-Person Trials

The Judiciary will be implementing a hybrid model for jury selection and jury trials, including:

- Video and other public information for jurors
- Modified summoning and qualification
- Enhanced prescreening for additional statutory excusals, deferments, and COVID-19 issues
- Virtual (or mostly virtual) jury selection
- In-person jury trials

A121

Tentative Timeline

- July/August 2020 – summonses mailed to jurors in first counties
- August 2020 – jurors qualify online and on paper; Jury staff prescreen jurors; Judiciary distributes technology as needed
- Mid-September 2020 – jurors report for virtual selection, followed by the final in-person phase of selection
- Late September – jurors report for socially distanced in-person trials (Criminal involving detained defendant)

A122

Overview – Jury Selection Process

- Summoning prospective jurors
- Qualification and pre-reporting excuses
- Prescreening by Jury Management
- Virtual (video) jury selection
- In-person final phase of selection
- Socially distanced jury trials
- Next steps

A123

Summoning Prospective Jurors

To test the process, we will begin with a straightforward Criminal trial (single defendant; less than 2 weeks for the trial itself (possible total of 4+ weeks with selection)).

- The Judiciary will mail initial notices, which direct jurors to go online to complete a qualification questionnaire.
- Jurors who do not respond to the online questionnaire will be mailed a follow-up customized hard copy qualification questionnaire.

A124

Prescreening by Jury staff

In addition to standard pre-reporting excuses, during COVID-19 Jury staff also will contact all confirmed jurors to review:

- Ability to participate in a virtual selection process;
- Ability to participate in an in-person trial; and
- Factors related to COVID-19.

A125

Prescreening – COVID-19 Questions

Jury staff will defer (reschedule to a future date) prospective jurors who substantiate that they should avoid in-person gatherings based on current CDC guidance.

As of mid-July 2020, this includes:

- Persons who are 65+ years of age; and
- Persons with specific underlying medical conditions (chronic kidney disease; COPD; immunocompromised state from solid organ transplant; obesity; serious heart conditions; sickle cell disease; Type 2 diabetes).

Medical excuses will require a doctor's note (without confidential medical information) as in non-COVID-19 cases.

A1126

Prescreening – COVID-19 Questions

Jury staff will speak with jurors who express general health/safety concerns about reporting and explain how the Judiciary is ensuring clean and safe facilities.

Jury staff also will speak with jurors who indicate non-health related concerns or views about COVID-19.

Those jurors will not be excused by staff and will instead be scheduled to report in a virtual setting to speak with a judge.

Prescreening by Jury staff

Prescreening serves two main purposes:

(1) Identifying jurors who need technology to participate in virtual selection (which technology will be provided by the Judiciary); and

(2) Eliminating from the pool jurors who could not report in person for the trial dates (including for COVID-19 reasons).

A1128

Prescreening by Jury staff – Complex Trials

For complex Civil trials or multi-defendant* or high-profile Criminal trials, Jury staff also may distribute case-specific questionnaires as approved by the attorneys and the judge.

* Multi-defendant trials will be especially difficult in many counties due to space limitations.

A129

Prescreening by Jury staff – Complex Trials

The plan is to start with simple, shorter trials that will not involve case-specific questionnaires, which will be added as the types of jury trials expand.

We will expand to complex Civil trials as promptly as practicable, leveraging the technology we have employed during remote operations to facilitate presentation of evidence to jurors.

A1130

Supporting Participation in Virtual Selection

The Supreme Court is committed to ensuring representative and inclusive juries at every stage of the selection process.

As in the Virtual Grand Jury Pilot Program, the Judiciary will provide technology to jurors without a smartphone, tablet, or laptop with functioning web camera.

Judiciary IT staff will facilitate a virtual selection process using Zoom, essentially like a virtual court proceeding.

IT staff will provide assistance to jurors as needed.

A1131

Jury Selection Process – Virtual Phase

The Judge will pose questions to the jurors as a group and then individually as needed, asking all of the Model Voir Dire Questions.

A132

The sequence of the Model Voir Dire Questions can be adjusted for remote selection.

Jurors will be excused for cause and may be peremptorily challenged.

Size of the Virtual Panel

Virtual selection will start with a panel of 30 jurors (so that all jurors are visible in the Zoom courtroom).

Those 30 jurors will have qualified and confirmed availability and further confirmed capacity to participate virtually and in person.

A133

Virtual Selection

The virtual selection process will be substantive, with the following expectations:

- The attorneys and parties can be present in the courtroom with the judge or can participate remotely upon request.
- The judge will ask all model questions, the biographical questions, the omnibus questions, and open-ended questions.
- The judge will dismiss jurors for cause.
- Jurors requiring individualized questioning will have 1:1 follow-up virtual sessions.

A134

Overview – Virtual and In-Person Selection; Trial

Step 1 – General Virtual Questioning

Step 2 – Individualized Virtual Questioning

Step 3 – In-Person Final Phase of Selection

Step 4 – In-Person Trial

A1135

Virtual Selection – Step 1

Step 1 – The judge will hold two Zoom sessions (morning and afternoon) with 30 jurors at each session. The judge will provide the basic information about the trial and excuse jurors for cause. Jurors not excused but requiring further questioning will be individually questioned – either during that session or later.

For a Criminal selection, with 30 jurors each morning and 30 jurors each afternoon, this might take up to a week.

Virtual Selection – Step 2

Step 2 – Jurors not excused for cause but requiring additional questioning (e.g., those who answer that they are more or less likely to believe police testimony) will be individually questioned by the judge in the presence of the attorneys, either during their initial session or on a future date.

The virtual phase will be similar to the process used in a "struck jury" and will yield a small group of pre-questioned jurors who actually report in person.

A1137

In-Person Selection – Step 3

For social distancing purposes, limited numbers of jurors will report at one time for the final phase of in-person questioning/challenges.

- The question "do you know any of the other jurors in the box?" will need to be asked in person.

Following general and individualized questioning, the starting group of 210 jurors will be reduced to about 60-70 jurors who will be scheduled to report in person on consecutive days.

Attorneys will exercise peremptory challenges, and the judge will dismiss additional jurors for cause as necessary.

A138

In-Person Selection – Step 3

Some degree of in-person questioning (including as to anything that has changed) will be conducted.

During in-person questioning, to the extent possible, the judge and attorneys in the main courtroom will be provided a live feed view of the other jurors in a separate courtroom (e.g., 14 jurors in the main in-person courtroom and another 15-20 in a separate in-person room or rooms with video feed).

A136

In-Person Selection – Step 3

Several options might be used for sidebar discussions with jurors.

- For brief conversations, jurors can be brought up closer than 6' from the judge, with plexiglass and/or face shield barriers, for questioning.

- For longer conversations, it may be necessary to provide a separate room for the judge, attorneys, and juror to relocate to for a sidebar discussion.

- Courtroom facilities will affect the best options.

A140

In-Person Trial – Step 4

After selection, jurors will be directed to report in person to a courthouse.

- Jurors will receive a text message with COVID-19 screening questions reminding them not to report if sick.

Jurors will report on staggered schedules (to avoid crowding) and undergo point-of-entry screening, including COVID-19 symptoms, and, in some counties, thermal scanning.

All jurors will wear face masks (which will be provided if necessary).

A141

In-Person Trials

Jurors and all trial participants will follow specific routes to get to courtrooms, taking into account elevator limits (1 or 2/elevator).

A142

Once in the courtroom, jurors will be seated with 6 feet of social distance between them, typically in the gallery.

Jurors will receive personal materials (sanitizer; notepads/pens if applicable) and have access to designated restrooms and eating areas.

In-Person Trials

Courtroom setup will be modified to maintain social distancing, including by turning or moving counsel tables.

Confidential attorney-client communications will be supported through various options, including partial plexiglass dividers (that would enable seating closer than 6 feet apart) and earbuds.

A143

In-Person Jury Trials

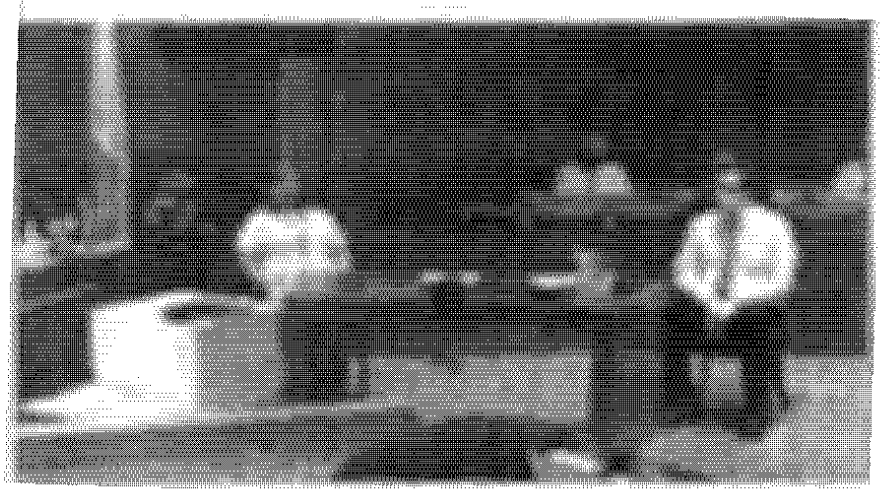
Few courtrooms are large enough to accommodate the number of jurors and other participants in a criminal trial.

The Judiciary has an obligation to reduce foot traffic in the courthouse and mitigate logistical challenges with court facilities to provide social distancing.

- At maximum capacity, a handful of trials (with social distancing) can be conducted in any vicinage.

Total in-person trial activity will be limited.

Socially Distanced Jury Trials



A145

In-Person Jury Trials

In counties without any large courtrooms, trial proceedings might be broadcast into a second courtroom so that everyone is viewing the trial in real-time but in two locations.

- This will be planned with input from attorneys.

Jurors will deliberate in person in a designated courtroom or the assembly room, but not in smaller deliberation rooms.

A1146

Potential Exposures

Jurors will not be in close contact with each other or others.

- In the event that a juror develops symptoms of COVID-19, that juror will not report for service.

- If there is any risk of exposure as defined by the CDC or NJ DOH, then the Judiciary will provide notice.

- The Court will publish and post our COVID-19 notification policy before any jurors report in person.

A147

Next Steps

The Judiciary must resume jury trials in order to provide access and justice for the people of New Jersey.

Our experience during remote operations – including 50,000+ virtual events involving almost 500,000 participants and an ongoing productive virtual grand jury pilot program – demonstrates that virtual processes are successful.

A148

Next Steps

By early fall, jury trials will start in a few counties, which will help in getting baseline data (e.g., percentage of jurors who require technology) and refining the process.

The first cases will be straightforward Criminal matters expected to take less than 2 weeks for the trial itself (4-5 weeks overall).

Next Steps

As soon as capacity is established, trial activity will expand subject to local resources, including the number of courtrooms that can accommodate socially distanced trials.

Selection of cases will depend on a variety of factors – Assignment Judges will work closely with Civil and Criminal Presiding Judges to identify appropriate cases for the first trials and later expansion.

A150

Next Steps

As Criminal and Civil jury trials resume in New Jersey, with virtual selection and in-person trials, procedures will be refined based on input from judges, attorneys, jurors, and the public.

The New Jersey courts will continue to provide information about jury trials and all current and upcoming court operations, including on our public webpage, njcourts.gov.

NOTICE TO THE BAR

COVID-19 – SEVENTH OMNIBUS ORDER ON COURT OPERATIONS AND LEGAL PRACTICE – CONCLUDING CERTAIN GENERAL EXTENSIONS; CONTINUING INDIVIDUALIZED ADJUSTMENTS

The Supreme Court has issued its Seventh Omnibus Order on Court Operations and Legal Practice during the ongoing COVID-19 pandemic. A copy of the Order is attached.

This July 24, 2020 Seventh Omnibus Order continues certain adjustments necessitated during the COVID-19 period, including the prioritization of remote proceedings and permission for electronic signatures, remote depositions, and electronic service on the State of New Jersey. It also concludes certain blanket suspensions and extensions (including as to discovery involving experts, affidavits of merit, relaxation of Rule 4:86 regarding guardianships of incapacitated persons, and depositions and appearances by medical professionals) while permitting extensions based on the facts and circumstances of an individual case.

The July 24, 2020 Seventh Omnibus Order includes the following key provisions:

- **Jury Trials.** Authorizing new jury selections and new jury trials starting on or after September 21, 2020, with selections to be conducted in a primarily virtual format and trials to be conducted in person with social distancing, consistent with the Court's July 22, 2020 Order;

- **Grand Jury.** Providing for the virtual selection of new grand jury panels on or after September 21, 2020;

- **Criminal.** Continuing excludable time provisions through September 20, 2020;

- **Special Civil Part.** Clarifying that Special Civil Part (DC) and Small Claims (SC) proceedings including trials can be conducted remotely with or without consent;

- **Family – Quasi-Criminal.** Providing that Family quasi-criminal (FO) trials shall proceed remotely only with the consent of the parties, and in the absence of consent such matters will proceed in person;

- **Family – Domestic Violence.** Amending Phase 2 of the Judiciary's Post-Pandemic Plan to allow applicants seeking a domestic violence restraining order to appear at court without an appointment; and

- **Municipal Courts.** Confirming that Municipal Court sessions will be conducted primarily using remote technologies, although in limited circumstances in-person sessions may be conducted, including for complex matters such as DWI trials and certain cases involving a consequence of magnitude.

Questions about this notice or the Court's Seventh Omnibus Order may be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

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

Dated: July 24, 2020

A153

SUPREME COURT OF NEW JERSEY

In response to the ongoing COVID-19 public health emergency, the Supreme Court has authorized various adjustments to court operations as set forth in a series of Omnibus Orders (March 27, 2020 First Omnibus Order; April 24, 2020 Second Omnibus Order; May 28, 2020 Third Omnibus Order; June 11, 2020 Fourth Omnibus Order; June 25, 2020 Fifth Omnibus Order; and July 9, 2020 Sixth Omnibus Order). The Court's early Omnibus Orders chronicled the abrupt transition from in-person to remote court operations. Read in tandem with the Court's April 20, 2020 Order on remote operations, those Orders established a structure and method of proceeding that governed court practices during Phase 1 (fully remote operations) and the transition to Phase 2 (limited on-site presence and in-person proceedings).

Guided by the recommendations of public health authorities including the Centers for Disease Control and Prevention (CDC) and the New Jersey Department of Health (NJ DOH), courts at all levels are continuing to operate primarily using remote (video and phone) technologies while adding limited in-person proceedings, including for matters that cannot be conducted in a remote format.

This Order confirms and clarifies the status of court proceedings and legal practice during the ongoing hybrid operations of the courts.

Accordingly, it is ORDERED that effective immediately:

(1) JURY TRIALS

a. Jurors will be summoned for new jury trials starting on or after September 21, 2020, beginning in the first Vicinages (Atlantic/Cape May; Bergen; Cumberland/Gloucester/Salem), and expanding statewide, as provided in the July 22, 2020 Order. Jury selection will be conducted in a hybrid manner with *voir dire* questioning primarily in a virtual format, with technology provided by the Judiciary as needed, and some follow-up questioning and the exercise of peremptory challenges in person; and

(2) GRAND JURIES

a. In-person grand jury selections and sessions remain suspended until further notice;

b. Jurors will be summoned for new grand jury selections starting on or after September 21, 2020, with those selections to be conducted in a virtual format consistent with the Court's June 9, 2020 Order;

c. Virtual grand jury sessions will continue, including but not limited to in Bergen and Mercer Counties and for State Grand Jury; and

(3) CRIMINAL

a. Based on the continued temporary suspension of jury trials and grand jury sessions, the provisions of the Court's prior Orders regarding

excludable time are extended for the additional period starting July 27 through September 20, 2020;

b. Interim modifications to the process for search warrant and communication data warrant applications and returns remain in full force and effect; and

(4) CIVIL

a. The general extension of discovery deadlines involving physical or mental examinations of persons (Rule 4:19) will conclude as of July 26, 2020, and extensions may be provided in individual cases;

b. The general extension of deadlines for filing affidavits of merit in medical and professional malpractice cases will conclude as of July 26, 2020, and extensions may be provided in individual cases;

c. The general relaxation of Rule 4:86 relating to guardianships of incapacitated persons, will conclude as of July 26, 2020. However, the court in any case may relax and modify procedural requirements, including as related to in-person examinations and communications, based on the individual circumstances of the case;

d. Landlord/tenant proceedings shall continue as provided by the July 14, 2020 Order, including as follows:

i. Lockouts of residential tenants (evictions) continue to be suspended in accordance with Executive Order 106;

ii. Landlord/tenant complaints may continue to be filed with the courts, and new complaints shall include an email address for the landlord and to the extent available an email address for the tenant, and landlords shall be required to certify as to compliance with the federal Coronavirus Aid, Relief, and Economic Security (CARES Act), 15 U.S.C. 9001 et seq.;

iii. The courts shall schedule intake and pretrial/settlement conferences; and

iv. Trials continue to be suspended until further notice, except that landlords/plaintiffs may in emergent circumstances apply for an Order to Show Cause for eviction. The basis of that landlord/tenant action cannot be nonpayment of rent, except in the case of the death of the tenant. In determining whether to issue the Order to Show Cause, the court will review the complaint and determine whether an emergency exists, and, based on that determination may schedule a landlord/tenant trial. As permitted by Executive Order 106, an eviction may proceed in the "interest of justice."

e. Consistent with the Court's April 20, 2020 Order regarding remote proceedings, Special Civil Part (DC) and Small Claims (SC) proceedings, including trials, may be conducted using remote (video or phone) technologies, with or without the consent of the parties. In limited circumstances, DC and SC trials can be scheduled in person, based on the individual circumstances of a case, including the inability of a party to participate in remote proceedings;

f. The relaxation of Rule 1:6-4 is continued so as to eliminate the requirement of courtesy copies if the total submission does not exceed 35 pages in civil matters; and

(5) FAMILY

a. The general extension of deadlines for discovery involving experts will conclude as of July 26, 2020, and extensions may be provided in individual cases;

b. The relaxation of Rule 1:6-4 is continued so as to eliminate the requirement of courtesy copies if the total submission does not exceed 35 pages in matrimonial (FM) matters;

c. The Court's April 20, 2020 Order is amended and supplemented so as to provide that Family quasi-criminal (FO) matters shall proceed

remotely only with the consent of the parties, and in the absence of consent such matters will proceed in person;

d. Phase 2 of the Judiciary's Post-Pandemic Plan (issued June 10, 2020) is amended to provide that an appointment is not required for persons seeking a domestic violence restraining order. In addition, all vicinages shall have in place an option for applying remotely for such relief; and

(6) TAX

a. The provisions of the June 11, 2020 Fourth Omnibus Order (as continued by the June 25, 2020 Fifth Omnibus Order and July 9, 2020 Sixth Omnibus Order) remain in effect; and

(7) MUNICIPAL

a. Municipal Court sessions will continue to be conducted primarily using remote technologies in the Municipal Courts. However, the court in limited circumstances may determine to conduct Municipal Court in-person sessions based on the facts and circumstances of an individual case, including complex matters such as DWI trials and certain cases involving a consequence of magnitude; and

(8) ALL COURTS

a. To the extent practicable, depositions may continue to be conducted remotely using necessary and available video technology, with court reporters authorized in those circumstances to administer and accept oaths remotely. Consistent with public health guidance, depositions also may be conducted in person with social distancing and other appropriate precautions;

b. The general suspension of depositions and appearances for any doctors, nurses, or healthcare professionals involved in responding to the COVID-19 public health emergency will conclude as of July 26, 2020, and further suspensions and extensions may be requested in individual cases based upon informal (letter) applications, which should be liberally granted;

c. The provisions of the April 7, 2020 Order relaxing Rule 4:4-4(a)(7) so as to permit electronic service of process by email on the State of New Jersey are continued;

d. The provisions of Rule 1:32-2A(c) and all other Court Rules requiring original signatures on filings are relaxed and supplemented as set forth in prior Orders; and

(9) DISCIPLINARY MATTERS & FEE ARBITRATION

a. Disciplinary hearings and fee arbitrations will continue in a virtual (video or phone) format to the extent possible based on facilities, technology, and other resources, and the nature and complexity of the matter. The Director of the Office of Attorney Ethics shall exercise discretion and proceed in relatively straightforward matters; and

(10) BOARD OF BAR EXAMINERS

a. The rules pertaining to the application for admission to the practice of law, Rules 1:24-1 et seq., are relaxed as set forth in the April 6, 2020 and July 15, 2020 Orders regarding cancellation of the July 2020 and September 2020 in-person bar examination dates, scheduling of a virtual bar examination on October 5-6, 2020, and relaxing Rule 1:21 so as to permit certain law graduates to practice subject to conditions and with supervision prior to passing the bar exam; and

(11) APPELLATE DIVISION

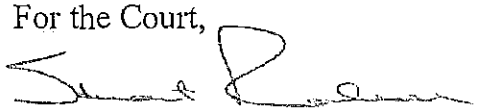
a. The provisions of the April 24, 2020 Second Omnibus Order as continued in subsequent Omnibus Orders remain in full force and effect; and

(12) Requests for extensions of time in individual cases, based on specific circumstances, may continue to be submitted by letter in lieu of a formal motion; and

(13) In recognition of the pervasive and severe effects of the COVID-19 public health crisis, the court in any individual matter consistent with Rule 1:1-2(a) may suspend proceedings, extend discovery or other deadlines, or otherwise accommodate the legitimate needs of parties, attorneys, and others in the interests of justice; and

(14) Depending on the duration of the COVID-19 pandemic, the Court may reconsider and revise the provisions of this order.

For the Court,



Chief Justice

Dated: July 24, 2020

A162

New Jersey Courts
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DIRECTIVE #11-20

Administrative Office of the Courts

GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

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Directive #11-20
[Questions or comments may be directed to the Office of Communications at (609) 815-2900 x52353]

TO: **Hon. Carmen Messano, P.J.A.D.**
Assignment Judges
Hon. Joseph Andresini, P.J.T.C.

FROM: **Glenn A. Grant, J.A.D.**

SUBJ: **Supreme Court Guidelines on Media Access and Electronic Devices in the Courts**

DATE: **April 27, 2020**

This directive promulgates the attached Supreme Court Guidelines on Media Access and Electronic Devices in the Courts ("Guidelines"), as approved by the Supreme Court to be effective immediately. The Guidelines supersede the Supreme Court Guidelines on Electronic Devices in the Courtroom promulgated by Directive #08-14 (effective February 2, 2015, as supplemented on January 28, 2015).

The updated Guidelines are founded on the premise that any attempt to define media access in and around courthouses – and to regulate access to and use of electronic devices by court users – must bridge the gap between media access concerns and court security considerations. The Guidelines integrate and balance our commitment to public access and our duty to uphold the security of our court facilities and the safety of our court users. These responsibilities apply whether court events are conducted in person or using remote (video and phone) options.

The Guidelines also articulate a distinct policy on personal access to and use of cell phones in courtrooms. Court users may keep personal phones with them in courtrooms so long as they are silenced; however, audible use of cell phones in courtrooms is prohibited, and judges may further limit access as necessary.

Questions on the Supreme Court Guidelines on Media Access and Electronic Devices in the Courts should be directed to the Office of Communications at (609) 815-2900 x52353.

Attachment

cc: Chief Justice Stuart Rabner
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Clerks of Court
Trial Court Administrators
Special Assistants to the Admin. Director

ADA Americans with Disabilities Act A163 ENSURING AN OPEN DOOR TO JUSTICE

SUPREME COURT GUIDELINES ON MEDIA ACCESS AND ELECTRONIC DEVICES IN THE COURTS

[Promulgated by Directive #11-20 (April 27, 2020)]

New Jersey Courts
Independence • Integrity • Fairness • Quality Service

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A. INTRODUCTION

Electronic devices with the capacity to record, transmit, and broadcast images, audio, and video are ubiquitous in twenty-first century society. These devices are integral to modern media practices – yet they also are used by individuals for non-media purposes. Any attempt to define media access in and around courthouses and/or to regulate access to and use of electronic devices by court users therefore must bridge the gap between media access concerns and court security considerations.

Regulation of electronic devices in and around courthouses implicates the intersection of individuals' constitutional rights to information and expression and the courts' constitutional duty to provide safety and security for court users. Ultimately, however, the courts must approach this issue from a practical, operational perspective. Recognizing the need to balance media and security interests that may be in conflict, these guidelines provide operational protocols designed to enable our courts to function safely and to administer justice fairly, including with appropriate transparency.

B. FRAMEWORK

The guidelines differentiate between court users who wish to record, transmit, and broadcast court proceedings and those who do not. Members of the first category – whether within or outside the scope of traditional press outlets – are subject to specific media policies. Other court users, even if using devices with media-type capabilities, may not be bound by media regulations if they are not seeking to or engaged in media activities. Even if not subject to media policies, such court users – including but not limited to attorneys and members of the general public – are bound by policies governing possession and use of electronic devices.

The guidelines include a substantial security component as necessitated by the increasing risks to safety posed by widespread use of electronic devices for media and non-media purposes. The guidelines define the rights, responsibilities, and restrictions on access to and use of electronic devices by individuals in and around court facilities. Some content applies to all categories of court users while other rights and/or responsibilities are assigned only to certain classes of persons (e.g., court staff are permitted to use Judiciary-issued electronic devices to communicate for work- related purposes; jurors in courtrooms and deliberation rooms must turn off or render inoperable electronic devices; emergency personnel may access, retain, and use electronic devices in all areas of the courthouse and surrounding facilities). The guidelines regulate conduct while acknowledging that in some situations it is necessary to consider not only the action but also the actor.

C. GOALS

The goals of the *Supreme Court Guidelines on Media and Electronic Devices in the Courts* are to create statewide consistency in the use of *electronic devices*, to provide security for the public, attorneys, jurors, witnesses, litigants, judiciary employees, and judges and to ensure the integrity of all court proceedings.

D. RATIONALE

The pervasiveness of *electronic devices* and their availability to the general public, requires courts to implement guidelines governing the use of *electronic devices* in and around a courthouse, so that their use does not disrupt proceedings or compromise security, fairness to litigants, efficiency and/or appropriate courtroom decorum.

E. APPLICABILITY

Courts have substantial authority to regulate media access to court proceedings as well as access to and use of electronic devices for media/broadcast and other purposes. The guidelines govern in the absence of any exercise of such authority. They do not limit or modify the court's existing authority to impose greater restrictions or to permit an exception to a general limitation or regulation. The "gray areas" – the situations in which reasonable persons may disagree about whether it is better by default to permit or to restrict access to or use of electronic devices – should be considered with the explicit understanding that if the default does not work it is subject to change by action of the court.

F. DEFINITION OF ELECTRONIC DEVICES

As utilized in these guidelines, the term "*electronic devices*" means any mechanical devices (e.g., conventional cameras, audio recorders, video cameras, etc.) and/or microprocessor- based devices (e.g., computers, cell phones, cameras, communication or recording devices, portable devices, etc.) that have the capability to transmit (wired or wireless), broadcast, record and/or take photographs or any other similar device, whether now in existence or later developed, that has the ability to store, relay, share or transmit information.

G. POSSESSION AND USE OF ELECTRONIC DEVICES

Section 1: Inside the Courtroom

This policy establishes that *electronic devices* as defined herein may be brought

into courthouses subject to all appropriate security screening. Unless authorized by the Assignment Judge, all *electronic devices* shall be powered off or maintained in silent mode prior to entering any courtroom. Persons in possession of an electronic device are not permitted to use the device to conduct phone conversations or to transmit, broadcast, take photographs, or record in any court without permission from the court. Permitted use is subject to further reasonable restrictions by the court, law enforcement, and/or facility owners so that their use does not disrupt proceedings or compromise security, fairness to litigants, efficiency and/or appropriate courtroom decorum.

- Notification

  Policies prohibiting unauthorized use of *electronic devices* and the possible sanctions for noncompliance will be prominently displayed in the courthouse (including in jury assembly and deliberation rooms) and on the Judiciary website – njcourts.gov.

- Unauthorized Use

  Any person who uses an *electronic device* to transmit, broadcast, record and/or take photographs without court approval and in willful violation of this policy may be held in contempt of court, in violation of R 1:10-1 punishable by a term of imprisonment not to exceed six (6) months or a fine of up to $1,000, pursuant to N.J.S.A. 2C:43-3 and N.J.S.A. 2C:43-8 and may be charged with a violation of N.J.S.A. 2C:29-9 (Criminal Contempt), as deemed appropriate by law enforcement. Further, any *electronic device* used in willful violation of this order may be subject to seizure and forfeiture pursuant to N.J.S.A. 2C:64-1.

The Order Restricting Access to Electronic Devices in Courtrooms (Exhibit

B) shall be prominently displayed in appropriate locations in courthouses as determined by the Chief Justice, Presiding Judge of the Appellate Division, Assignment Judge, Presiding Judge of the Tax Court, or Presiding Judge of the Municipal Court. The Notice Regarding Personal (Non-Media) Access to and Use of Cell Phones in Courtrooms (Exhibit C) shall be posted[1] in all rooms used only as courtrooms. In the Municipal Courts, that Cell Phone Notice (Exhibit C) shall be displayed when court is in session.

Section 2: Jurors

Jurors' use of *electronic devices* shall be governed by the Policy Regulating Jurors' Use of Electronic Devices During Jury Service (initially promulgated in 2010; reaffirmed as supplemented by the Judicial Council on June 21, 2018).

All jurors will be advised to turn off their electronic devices when in a courtroom or grand jury room, including rooms used for state grand jury.

Jurors who are seated on a trial or a grand jury will be instructed to turn off all electronic devices that have the capabilities described above, and that those devices cannot be used in a deliberation room or grand jury room, including rooms used for state grand jury. Use of such devices will be restricted to court recesses when a juror is outside the deliberation room or courtroom, unless ordered otherwise by the judge.

At no time during a juror's service in trial court is the juror permitted to provide an account of juror service to others, including any participants in the trial, through any electronic means, such as social media websites.

This policy does not prevent a judge from ordering additional measures regarding

[1] These Guidelines were promulgated during the COVID-19 pandemic when the New Jersey courts were operating remotely (by phone and video) rather than in courtrooms. Notices should be posted in courtrooms within a reasonable time after the courts reopen for in-person operations.

the use or possession of such devices by jurors during a trial should the judge determine that such action is necessary. Such additional measures may include requiring jurors to temporarily surrender such devices. Among other options, judges may require that jurors store devices in a visible multipart holder; secure devices in a locked storage unit; or temporarily turn over devices to court personnel to maintain securely in an internet-blocking container.

Section 3: Common Areas of the Court Facility

While in common areas of a courthouse, all persons are permitted to possess and use *electronic devices* for any purpose other than to transmit, broadcast, or record sound, video, and/or photographs of court proceedings and court business. Such permitted use is subject to further reasonable restrictions by the court, law enforcement, and/or facility owners so that their use does not disrupt proceedings or compromise security, fairness to litigants, efficiency and/or appropriate courtroom decorum.

Section 4: Court Facility Grounds

Except as otherwise provided in these guidelines, the use of *electronic devices* on the grounds outside the court facility shall be permitted. Nothing in this policy is intended to limit the authority of law enforcement to provide security for the public, attorneys, jurors, witnesses, litigants, judiciary employees, and judges.

H. REQUEST FOR PERMISSION TO PHOTOGRAPH, ELECTRONICALLY RECORD, BROADCAST, AND/OR TRANSMIT A PROCEEDING

Section 1: Permission Required

A person desiring to transmit, broadcast, or record sound, video, and/or photographs of a court proceeding ("requestor") shall request permission from the court in writing by completing the Permission Request Form and Acknowledgement of User

Guidelines attached as Exhibit"A", which shall be accessible on the Judiciary website, njcourts.gov.

The request shall be presented to the court within a reasonable time prior to the commencement of the proceeding to permit the court adequate time to consider the request. In the event that time constraints render a prior written request impracticable, the court may entertain an oral request.

Section 2: Consent of Parties Not Required

Permission to transmit, broadcast, or record sound, video, and/or photographs of court proceedings using an electronic device shall not be conditioned upon obtaining consent of any party, any party's attorney, or any witness or participant in a proceeding.

Section 3: Decision of the Court

The court shall decide whether to grant permission as soon as practicable, giving due consideration to the number of requests, the timeliness thereof, and the requestor's need for access to the proceeding. The court shall specify whether permission is granted for a specific proceeding or for all court proceedings open to the public in a given matter until it is concluded. The court retains the discretion to modify or rescind such permission in the event that circumstances relating to the proceeding warrant such measures.

Section 4: Exception for Adoptions and Special Events

An agreement for the use of *electronic devices* to transmit, broadcast, or record sound, video, and/or photographs of court proceedings, as set forth in this section, shall not be required in the case of adoptive parents and other family members present at final hearings in uncontested adoption cases, provided that the judge presiding over that hearing grants those individuals permission to photograph, electronically record, broadcast and/or transmit the hearing. In addition, an agreement for the use of *electronic*

devices to transmit, broadcast, or record sound, video, and/or photographs shall not be required for special events hosted in and around courthouses, including Law Day celebrations, provided that the electronic device used in either scenario is a small scale multiuse handheld device. All larger devices that are not multiuse will still require written permission according to the procedures outlined in these Guidelines. Advanced notice should be given to court security in the courtroom and at the magnetometers regarding all adoptions and special events.

Section 5: Exclusions

Transmission, broadcasting, recording and/or photographing is prohibited at any proceeding closed by court order, statute or Rule of Court. Attached hereto as Appendix II is a reference to New Jersey Rules of Court and New Jersey statutes that relate to the sealing of court proceedings and records. The appendix is merely a guide and is not intended to be an exhaustive list of all potentially relevant Rules of Court and statutes.

Section 6: Restrictions

The following restrictions apply to any requestor granted permission to transmit, broadcast, or record sound, video, and/or photographs of court proceedings:

- Transmission, broadcasting, recording and/or photographing victims of crime under 18 years of age at the time of trial and of witnesses under 14 years of age at the time of trial shall be allowed only at the discretion of the court.
- Transmission, broadcasting, recording and/or photographing is prohibited at juvenile proceedings. Transmission, broadcasting, recording and/or photographing of defendants 17 years of age who are charged with motor vehicle violations that are heard in municipal court is permissible.
- Transmission, broadcasting, recording and/or photographing conferences

between an attorney and client or between co-counsel of a client that occur in a courtroom or anywhere in a court facility is prohibited.

- Transmission, broadcasting, and/or recording of side-bar conferences between the court and counsel is prohibited.
- Transmission, broadcasting, recording and/or photographing of a jury, any individual juror or any other person that would permit the identification of any juror is prohibited.
- Transmission, broadcasting, recording and/or photographing of a proceeding in which one is a party, litigant, or witness is prohibited without explicit court approval.

Nothing contained herein shall prohibit the transmission, broadcasting, recording and/or photographing of any juror who has been discharged from jury service in any proceeding unless otherwise ordered by a court.

Section 7: Judicial Discretion

a. **Fair Proceeding.** The court retains discretion to impose such restrictions on the use of electronic devices necessary to implement the goals of these guidelines. There may need to be adjustments made to the approved use of electronic devices where proceedings are conducted by video rather than in person. Transmission, broadcasting, recording and/or photographing may be excluded in any proceeding where the court determines such use would cause a substantial increase in the threat of, or the potential for, harm to a litigant, juror, witness, or any other participant in the case or would otherwise unduly interfere with the integrity of the proceeding. In determining whether such substantial increase in the threat of, or the potential for, harm exists, a court may appropriately consider the potential for intimidation of

witnesses, victims and others when exercising its discretion in deciding whether to grant, limit, or deny permission to transmit, broadcast, or record sound, video, and/or photographs of a court proceeding.

b. **Order to Exclude or Vary Coverage Previously Permitted.** The court, may, upon reasonable notice with an opportunity for the requestor and any other affected person(s) to be heard, terminate, limit, or otherwise modify the conditions of transmission, broadcasting, recording and/or photographing in any court proceeding or trial.

Section 8: Pretrial Conference

The court may, at its discretion, require a requestor to attend a pretrial conference prior to the court making a decision on a request to transmit, broadcast, or record sound, video, and/or photographs of court proceedings. The purpose of such pretrial conference shall be limited to decisions regarding transmission, broadcasting, recording and/or photographing and not to substantive matters beyond the scope of these guidelines. Any such required pretrial conference shall include the court, the attorneys for the litigants, requestor(s) and/or their attorneys, and any other persons identified as necessary by the court.

At such pretrial conference, the court shall distribute and review with all present the provisions of these guidelines. Any objections to transmission, broadcasting, recording and/or photographing the particular matter shall be considered at this conference. The court shall consult with the requestors and/or their attorneys before imposing any special limitations or restrictions on transmission, broadcasting, recording and/or photographing in the particular matter.

No formal pretrial order is required. However, the court, subsequent to the pretrial

conference, shall reduce to writing or make a record of the decisions reached at the pretrial conference, including, but not limited to, any and all limitations or restrictions imposed.

Section 9: Notice

This policy shall be made available on the Judiciary website, njcourts.gov. Notice to the public and court users shall be displayed at the entrance to each courtroom and at all court facility entrances.

Section 10: Appellate Review

Any requestor aggrieved by any decision concerning transmission, broadcasting, recording and/or photographing may move for leave to appeal the decision to the Superior Court where the decision was by the Municipal Court, to the Appellate Division where the decision was by the Superior Court or Tax Court, or to the Supreme Court where the decision was by the Appellate Division. Such motions shall be made within three (3) business days after any such decision.

APPENDIX I

A. General Requirements and Responsibilities

(1) Electronic Devices. Transmission, broadcasting, recording and/or photographing equipment and related wiring shall be unobtrusive and shall be located in places designated in advance of any proceeding by the court so as not to cause disruption.

(2) Electronic Device Recordings Inadmissible. No electronic device recordings shall be admissible as evidence or used to challenge the accuracy of the official court record. Notwithstanding inadmissibility as the official court record, electronic device recordings may be used as evidence in separate proceedings in the discretion of the court. An individual who has been granted permission by the court to record trial proceedings may seek to show portions of that video or other recording during closing arguments, subject to the judge's determination.

(3) Pooling Capability Requirements. Any person who obtains permission from the court to photograph, electronically record, broadcast and/or transmit proceedings shall provide pooling capabilities, if requested, so that others may share in the coverage. Pooling requires, at a minimum, that the pooling supplier have available capabilities to pool by providing multiple electronic connections for other media representatives desiring participation by the use of their own recording equipment or by direct line hook-up. Any individual who has obtained court permission to cover proceedings shall pool his/her video/audio signals or photographs at the request of others without requiring the others to obtain further court approval.

(4) Pooling Arrangements. Participating users of electronic devices and participating still photographers are to make their own pooling arrangements, including the establishment of necessary procedures, the provision of appropriate pooling

equipment as described in these guidelines, and selection of a pool representative without calling upon the court to mediate any dispute as to the appropriate media representative, costs or equipment authorized for a particular proceeding.

B. Equipment, Sound and Light Criteria

(5) Sound or Light Distractions. No electronic device that produces distracting sound or light either from the equipment itself or from its operation shall be used to cover judicial proceedings. The court may, at its discretion, require proof that equipment meets these guidelines before approving the equipment for use at a particular proceeding. Further, the court may order operation of any equipment to cease if that equipment does not meet these guidelines.

(6) Temporary Artificial Light. Absent prior approval from the court, no temporary artificial lighting device of any kind shall be employed in connection with any electronic video television camera, electronic device or still photographic cameras.

(7) Adding Light Sources. With the approval of the court and the concurrence of the owner of the building in which a court facility is situated, modifications and additions may be made to light sources existing in the facility, provided that any such modifications or additions are installed and maintained at the user's expense.

C. Placement of Equipment

(8) Placing/Removing Equipment. Other than electronic devices capable of being hand- held, photographic equipment and electronic equipment, including still cameras, microphones, and audio/video recording equipment shall be placed in or removed from the courtroom facility only prior to commencement or after adjournment of proceedings each day, or during a recess in the proceedings.

(9) Courtroom Placement. Other than hand-held electronic devices, all other electronic video camera equipment, broadcast audio equipment and all other

electronic devices shall be positioned only in areas designated by the court. Microphones are prohibited at, on, or in the immediate vicinity of counsel tables and the judge's bench absent prior written approval of the court, to avoid capturing attorney client communications and sidebar conversations respectively. Video recording equipment that is not a component part of the video camera shall be located in an area remote from the courtroom. The areas designated shall provide reasonable access for coverage.

(10) Placement in Other Areas. When the need arises, the court may provide additional rooms or areas where others may view the proceedings. Other individuals may, at their own expense and with their own equipment, make the necessary pooling arrangements to bring an electronic signal into such additional rooms or areas for viewing and for video/audio recording of the proceedings. All camera and audio equipment not designated by the court to be in the courtroom shall be positioned only in such rooms or areas.

(11) Fixed Locations for Persons and Equipment. All persons using electronic devices shall assume fixed positions within the designated location in the courtroom and, once positioned, shall not move about the courtroom in any way in order to photograph or record court proceedings. Noncompliance with this provision may be cause for the court to order the person to leave the courtroom and/or remove equipment from the courtroom.

APPENDIX II

R. 1:2-1	Proceedings in open court
R. 1:2-2	Verbatim record of proceedings
R. 1:2-3	The verbatim record shall include references to all exhibits R. 1:38- 1 et seq. (Public access to court records and administrative records)

Closures Pursuant to Court Rule:

R. 1:20A-5	Fee arbitration matters
R. 3:6-7	Secrecy of grand jury proceedings
R. 3:6-9(c)	Hearing on request of public official after grand jury censure
R. 3:13-3(f)	Protective orders
R. 4:10-2(e)	Claims of privilege or protection of trial preparation materials
R. 4:74-7(e)	Adult civil commitment hearings
R. 5:3-2	Family actions involving/affecting the welfare of a juvenile
R. 5:12-4(b)	Hearings and trials held by Division of Child Protection and Permanency
R. 5:19-2	Confidentiality of juvenile delinquency hearings

Closures Pursuant to Statute:

N.J.S.A. 9:3-47(c), N.J.S.A. 9:3-48(b)(e)	Hearing on complaint for adoption of child is held in camera
N.J.S.A. 2C:14-7(a)	Court shall conduct in camera hearing to determine admissibility of sexual offense victim's previous sexual conduct
N.J.S.A. 9:17-42	Any proceeding held under the Uniform Parentage Act shall be held in closed court and all papers, records and information pertaining there to is confidential
N.J.S.A. 2A:84A-21.4	Upon the finding of a waiver of privilege, the court shall order the

	production of materials for in camera inspection and determination as to admissibility
N.J.S.A. 2A:61B-1d(1)	Court shall conduct hearing in camera to determine admissibility of evidence of victim's previous sexual conduct in action for sexual abuse.

But see T.S.R. v. J.C., 288 N.J. Super. 48 (App. Div. 1996) (construing that statute as authorizing the court to permit full disclosure and open trial on the victim's motion over the defendant's objection).

New Jersey Courts
Independence • Integrity
Fairness • Quality Service

New Jersey Judiciary
Request for Permission to Photograph, Electronically Record or Broadcast a Court Proceeding

Completed forms must be submitted to the Trial Court Administrator or Designee for approval.

Date of Request	Name of Requestor	Telephone Number

Affiliation	Email Address

Permission is requested for:

Name of Case/Event	Judge/Courtroom Number	Date	Time

I request permission to use recording equipment for the following activities (check all that apply):

☐ Video Recording ☐ Still Photography ☐ Live Streaming/Live Broadcast ☐ Audio Recording

Specific equipment to be used:

By signing this agreement below, I certify that:

1. I have read the attached Supreme Court Guidelines on Electronic Devices in the Courtroom and agree to comply accordingly.
2. I am aware that if I fail to abide by the provisions of these guidelines, I may be subject to discipline by the court and/or charged with contempt of court and brought before a judge for alleged violation of *R* 1:10-1, punishable by a term of imprisonment not to exceed six (6) months or a fine of up to $1,000, pursuant to *N.J.S.A.* 2C:43-3 and *N.J.S.A.* 2C:43-8 and may be charged with a violation of *N.J.S.A.* 2C:29-9 (Criminal Contempt), as deemed appropriate by law enforcement.
3. Further, any electronic device used in willful violation of this order may be subject to seizure and forfeiture pursuant to *N.J.S.A.* 2C:64-1.
4. If requested, I agree to provide pooling capabilities as required by the Supreme Court Guidelines on Electronic Devices in the Courtroom.

Requestor Signature _____ Date _____

Official Use Only

☐ **Request Denied** ☐ **Request Approved**

Judge/Trial Court Administrator/Operations Manager (or designee) _____ Date _____

Special Notations:

Revised Form Promulgated by Notice 07/29/2019, CN 11862

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EXHIBIT B

_____ Vicinage

Order Restricting Use of Electronic Devices in the Courtroom

It is hereby ORDERED that:

1. Unless authorized in writing by the Assignment Judge, all electronic devices shall be powered off or maintained in silent mode prior to entering any courtroom; and
2. The court may further restrict access to and/or use of electronic devices, including by requiring that cell phones and other devices are kept out of sight while court is in session, or that devices are powered off; and
3. A person who uses an electronic device to transmit, broadcast, record and/or take photographs without court approval and in willful violation of this policy may be held in contempt of court, in violation of R. 1:10-1, and may be punished by a term of imprisonment not to exceed six (6) months or a fine of up to $1,000, pursuant to N.J.S.A. 2C:43-3 and N.J.S.A. 2C:43-8 and may be charged with a violation of N.J.S.A. 2C:29-9 (Criminal Contempt), as deemed appropriate by law enforcement. Further, any electronic device used in willful violation of this order may be subject to seizure and forfeiture pursuant to N.J.S.A. 2C:64-1; and
4. This Order will be posted at or near the entrance to all courtrooms in the _____ Vicinage.

_____

Hon._____, Assignment Judge

EXHIBIT C

NOTICE: Restrictions on Personal (Non-Media) Cell Phone Use in Courtrooms

Attorneys, parties, and members of the public. The following provisions apply to use of cell phones and comparable electronic devices (hereinafter "cell phones") in a courtroom by attorneys, parties, and members of the public.

(a) Allowed uses: Attorneys, parties, and members of the public may use a cell phone in a courtroom to retrieve or to store information (including notetaking), and to send and receive text messages or information.

(b) Prohibited uses: Attorneys, parties, and members of the public must silence cell phones while in the courtroom. A cell phone may not be used, without permission of the court, to make or to receive telephone calls or for any other audible function while court is in session. Cell phones may not be used to communicate in any way with any courtroom participant including, but not limited to, a party, a witness, or juror at any time during any court proceedings. Cell phones may not be used to take photographs or to record audio or video in any courtroom.

(c) Any allowed use of a cell phone under this paragraph is subject to the authority of a judge to terminate activity that is disruptive or distracting to a court proceeding, or that is otherwise contrary to the administration of justice.

APPENDIX A, PART 3

ADDITIONAL COURT ORDERS AND DIRECTIVES

AUG. 3 NOTICE ON COVID-19 EXPOSURE RISKS

NOTICE TO THE BAR AND PUBLIC

COVID-19 – STATEWIDE POLICY REGARDING COVID-19 EXPOSURE RISKS IN JUDICIARY FACILITIES

The New Jersey courts are committed to following public health guidance and supporting the health and safety of attorneys, litigants, members of the public, judges, court staff, and all persons in Judiciary facilities. To that end, the Judiciary has established a statewide policy for handling COVID-19 exposure risks in courthouses and court facilities. This notice is being issued on behalf of the Chief Justice and the Administrative Director. The policy set forth herein applies to the Supreme Court, Appellate Division, Tax Court, and trial divisions of the Superior Court. For Municipal Courts, the municipality has responsibility for enforcing public health protocols regarding COVID-19 cases.

A. The Judiciary has implemented and will continue to enforce policies that minimize risks of potential exposure to COVID-19 in court facilities.

- According to public health authorities, risk of COVID-19 exposure increases with close contact.

The Centers for Disease Control and Prevention (CDC) guidelines on community-related exposures provide that individuals are at risk of COVID-19 exposure if they have **close contact** with someone who is confirmed positive for the virus. Close contact is defined as being closer than 6 feet for 15 minutes or longer. [That 15-minute threshold applies generally. A shorter time may present a risk if, for example, a person comes into direct physical contact with someone who is COVID-19 positive. Out of an abundance of caution, the Court has endorsed a shorter 10-minute threshold for defining close contact in Judiciary facilities.] A contact that is closer than 6 feet for 10 minutes or longer is considered a close contact whether or not either person was wearing a mask or other face covering.

- Contact that is not close does not increase risk of COVID-19 exposure.

According to the CDC and the New Jersey Department of Health (NJ DOH) brief or distant contacts – such as passing by someone in a hallway, sharing an elevator for a few minutes, or being briefly in a courtroom with social distancing – do not increase the risk of contracting COVID-19. Those types of interactions are like other daily life events, such as shopping at a grocery store or entering a restaurant to pick up carryout food. Provided appropriate health precautions are maintained, CDC and NJ DOH guidance indicates that those interactions do not pose an increased risk of contracting COVID-19.

- Judiciary policies are designed to prevent close contact between court users (including judges, court employees, attorneys, litigants, jurors, and others) while in court facilities.

Court users should rarely if ever have close contact with judges, court staff, and others. Consistent with the Supreme Court's June 9, 2020 Order, individuals in community settings and common areas must wear masks and maintain social

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distancing, as is required for all occupants in shared areas of government buildings pursuant to Executive Order 163 (issued July 8, 2020). Minimizing close contact and following health and safety protocols – including not coming to court facilities if symptomatic, frequently washing hands, wearing masks, and maintaining social distance – should limit exposure risks in Judiciary facilities.

B. Public health departments are responsible for investigating COVID-19 cases and performing contact tracing to identify and inform individuals who are or may be at heightened risk of developing COVID-19. The Judiciary will cooperate in all contact tracing efforts by the CDC, NJ DOH, and/or local health departments.

Contact tracing is a process used to identify those individuals who have come into contact with persons who have tested positive for a contagious disease, including COVID-19. The State of New Jersey is using contact tracing to identify individuals who have had contact with individuals who test positive for COVID-19. When a person tests positive for COVID-19, the testing lab loads the test data onto the State's secure epidemiological surveillance system, the Communicable Disease Reporting and Surveillance System (CDRSS). The positive case is then shared with the individual's local health department, which will call the positive individual to determine the names of those who they were in close contact with for a specific number of days. Notification of those individuals (the close contacts of the COVID-19 case) is handled by the applicable health department.

The Judiciary will continue to cooperate with public health authorities regarding potential exposures in court facilities, including for purposes of contact tracing and to request additional cleaning of court facilities if recommended by health authorities. The Judiciary also will continue to enforce internal policies that require employees to inform Human Resources if they test positive for COVID-19 (or if they develop symptoms consistent with the virus) and to submit negative test results before reporting to work.

C. Where the Judiciary (rather than a health department) is aware of an actual or suspected case of COVID-19 in court facilities, the Judiciary will notify court users who are or may be at risk.

In some situations, the Judiciary may become aware of a suspected or confirmed COVID-19 case involving a judge, court employee, or other court user. In those cases, the Judiciary will take appropriate next steps, which may include additional cleaning and notification to court users.

- The Judiciary requires judges and employees to disclose if they test positive for COVID-19 or develop symptoms consistent with the virus without other explanation. If a judge or employee has or is suspected of having COVID-19, the Judiciary will provide notice to all close contacts. Notice will be provided as promptly as possible, meaning that the first notification could be by phone, email, or text message. Formal written notice will be provided as soon as possible.

  In the event the Judiciary becomes aware of a <u>potential</u> COVID-19 exposure or a situation that requires notification even in the absence of close contact, all

appropriate steps will be taken, which may include requiring anyone symptomatic to leave the courthouse; suspending any affected court proceedings; appropriate cleaning of the affected area of the court facility; and immediately notifying all individuals currently or recently in the affected area.

- The Judiciary cannot require individuals other than judges and employees to disclose (to the Judiciary) a COVID-19 diagnosis or symptoms. If an attorney, litigant, juror, or other court user who has been in a Judiciary facility discloses that they have or may have COVID-19, the Judiciary will take appropriate next steps based on the situation, which may include arranging for additional cleaning of affected areas; suspending court proceedings; rescheduling in-person court events as virtual proceedings; and providing appropriate notice to judges, court employees, litigants, jurors, and others.

    - **Example #1**: An empaneled juror contacts the court to advise that they cannot report as scheduled because they have symptoms consistent with COVID-19 without other explanation. In this situation, there should be no actual risk to other trial participants based on compliance with health protocols, including wearing masks, maintaining social distancing, and practicing good hygiene by washing hands or using hand sanitizer. However, from a psychological safety perspective, it is reasonable to expect that other jurors would have difficulty feeling comfortable and focusing on the trial based on fear of potential exposure. In general, it would be appropriate for the judge to suspend trial proceedings for 14 days (the quarantine period for asymptomatic individuals with a potential COVID-19 exposure) and then resume with or without the one juror after that period. The court would promptly notify all trial participants using available phone, text, and email options (including, for jurors, through the Jury Management System) of the possible COVID-19 case, the minimal actual risk to them, and the extra steps that the Judiciary is taking to support their safety. The notice would not disclose the name of the symptomatic juror.

    - **Example #2**: An empaneled juror contacts the court to advise that they are not reporting because their spouse has been exposed to COVID-19, and although the spouse is asymptomatic, just to be safe the entire household is self-quarantining for 14 days. In this case, there is no actual risk to the trial participants and no reason that the trial cannot continue without the absent juror. The judge would give an instruction to the jury similar to any other case in which a juror becomes unavailable midtrial.

    - **Example #3**: An attorney contacts the court the day after appearing for an hourlong in-person hearing to advise that although they do not have symptoms, they just tested positive for COVID-19. The attorney reports that they wore a face mask and had no close contact with the judge, other counsel, their client, or other court users. In this situation, there is no increased risk to other court users. Regular cleaning of the courtroom and common areas of the courthouse already would have been conducted. The Judiciary would not provide notice (since there are no close contacts).

Conclusion and Questions

All court users are required to follow Judiciary policies and guidelines issued by the CDC and NJ DOH, including not visiting court facilities when sick, washing hands, wearing masks, and maintaining social distance. By doing so, the risk of exposure to COVID-19 in Judiciary facilities will remain very low. In the event of an actual or potential exposure – whether confirmed or unconfirmed – the Judiciary will take appropriate steps to safeguard the privacy of individuals with COVID-19 while providing notice to close contacts and arranging for cleaning.

Questions should be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

Chief Justice Stuart Rabner

Hon. Glenn A. Grant, J.A.D.

Dated: August 3, 2020

AUG. 12 NOTICE ON COURT OPERATIONS

NOTICE

COVID-19 – UPDATE ON COURT OPERATIONS DURING PHASE 2 OF THE SUPREME COURT'S POST-PANDEMIC PLAN

The Supreme Court's Post-Pandemic Plan (issued June 10, 2020) outlines in general terms the transition from Phase 1 (fully remote operations) to Phase 2 (incremental return of limited numbers of judges and court staff to Judiciary facilities). This notice provides additional guidance on current and future court operations, including as to ongoing monitoring and potential responses to statewide and local COVID-19 trends.

(1) On-Site Presence and In-Person Events

The Court's Post-Pandemic Plan summarizes the phases of the gradual return to court facilities and in-person services as follows:

- Phase 1: (March 18-June 21, 2020) Status Quo / Remote Operations – less than 5% of judges and staff onsite; buildings closed to attorneys and the public

- Phase 2: (June 22, 2020) Gradual and Limited Return – starting with up to 10-15% of judges and staff onsite; certain matters that cannot proceed remotely may be conducted onsite

- Phase 3: New Operations – ongoing remote operations with gradually increasing onsite events, eventually including new jury trials; up to 50-75% of judges and staff onsite (with staggered schedules)

- Phase 4: Ongoing Model – once a vaccine is available and/or herd immunity is established; up to 75-80% of judges and staff onsite

As stated in the Plan, the intent during Phase 2 was to start with up to 10-15% of judges and staff on-site. As intended, that percentile range already has supported the resumption of certain matters than could not proceed remotely.

This notice provides clarification on two important issues. First, in addition to matters that require consent to proceed remotely, judges may determine to schedule an in-person event based on the individual facts and circumstances of a case. Second, the percentages outlined in the Plan are a framework that may be adjusted based on the fluid nature of the evolving COVID-19 crisis. This means, for example, that during Phase 2 there may be a particular day when more than 10-15% of judges and staff could be on-site. On other dates, less than 10% of judges and staff may work on-site. Consistent with public health recommendations, court operations that can be performed remotely should be conducted remotely, subject to ongoing adjustment.

(2) Monitoring and Responding to Public Health Trends

Consistent with the June 10, 2020 Post-Pandemic Plan, the Judiciary is continuing to monitor specific COVID-19 trends, including hospitalizations, new cases, and deaths, both at the statewide and local level. We also are reviewing additional factors, including but not limited to the statewide transmission rate and reports of local flare-ups or new clusters of COVID-19 cases, including those arising from crowded gatherings convened in contravention of current Executive Orders.

In addition to staying abreast of statewide pronouncements, the Judiciary recognizes the potential for emergency declarations by individual counties. While that situation to date has not occurred, restrictions on movement within a city or municipality could have a significant effect on vicinage-level court operations. Among potential scenarios, for example, attorneys and litigants should not be directed to appear for in-person court events if doing so would conflict with a regional stay-at-home order.

As the COVID-19 crisis evolves, the Judiciary will continue to monitor: (i) statewide and local public health trends, including but not limited to those highlighted in the June 10, 2020 Plan; (ii) state-level orders and advisories that affect in-person gatherings; and (iii) any local declarations that restrict members of any community from accessing and participating in in-person court events.

(3) Potential Future Operational Adjustments

The fluid nature of the COVID-19 public health situation requires agility and adaptability. To the extent that public health trends and other factors support a gradual transition to Phase 3 (increased on-site presence and more in-person court events), the Post-Pandemic Plan will proceed as announced on June 10, 2020. However, if those trends and factors suggest that such greater on-site presence would present untenable risks to judges, court employees, and court users, then the Judiciary would instead hold steady in Phase 2 – or, conceivably, even revert to Phase 1 (fully remote operations). Any statewide decision to move forward, or to move back, will be made by the Chief Justice and the Administrative Director in consultation with the Assignment Judges and Trial Court Administrators. Court operations also may need to be adjusted at the county or vicinage level, possibly even on short notice (e.g., based on new local restrictions).

The Judiciary will continue to provide information about current court operations, including on its public website njcourts.gov. Questions about this notice should be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

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

Dated: August 12, 2020

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NOTICE TO THE BAR

COVID-19 – Update on Resumption of Criminal and Civil Jury Trials; Next Steps

The COVID-19 pandemic forced the New Jersey courts to suspend jury trials in mid-March 2020. Since the onset of the public health crisis, the Supreme Court has authorized temporary modifications to jury operations in order to safely resume criminal and civil jury trials as necessary to protect the rights of the people of New Jersey. This notice provides a comprehensive update on the rollout of hybrid jury trials, which will include primarily virtual selections and socially distanced in-person trials, and answers questions posed by attorneys and jurors.

Summoning Jurors

Modified juror summonses are being issued for petit (trial) jury selections. As adjusted during COVID-19, the summonses inform prospective jurors of the virtual aspects of jury service, noting that the Judiciary will provide electronic devices (with internet capacity as necessary) and assistance to jurors who require technology in order to participate.

Qualification

Jurors still are encouraged to qualify online using the eResponse Juror Portal, which enables responses to the standard questionnaire regarding eligibility to serve as a juror in general and availability to serve as scheduled. Jurors who do not timely respond online receive a hard copy questionnaire that can be completed and returned by mail. Consistent with pre-COVID-19 trends, more than 70% of responding jurors thus far have qualified using the online option. Early data suggests a juror yield similar to pre-pandemic jury pools.

Pre-Reporting Disqualifications and Excusals

Jurors who do not meet the qualification criteria established by N.J.S.A. 2B:20-1 are required to contact the court and substantiate disqualification. Jurors who seek to be excused for any of the grounds set forth by N.J.S.A. 2B:20-10 also must contact the Jury Management Office and supply documentation as necessary

to substantiate their claim. Consistent with N.J.S.A. 2B:20-9 and pre-COVID-19 practices, pre-reporting excusals are handled by the Assignment Judge or designee.

COVID-19 Prescreening

Jury Management staff is communicating with all confirmed jurors to provide information about reporting in a virtual format, explain the health and safety precautions implemented in courthouses, and reiterate COVID-19 screening questions applicable to all persons who report to or occupy Judiciary facilities.

During COVID-19, jurors complete a supplemental questionnaire, which asks if they have tested positive for COVID-19 in the past 21 days; if they have any reason to believe that they or anyone in their household has contracted COVID-19; if they have been in close proximity to anyone who has tested positive or been quarantined for COVID-19; and if they have traveled outside of New Jersey in the past 21 days. Staff also asks each juror if they have any reason why they cannot report for service, whether related directly to COVID-19 (e.g., current diagnosis with the virus) or indirectly (e.g., underlying condition causing an elevated risk of exposure).

Any juror who claims a medical inability to report for service, whether based on COVID-19 or another condition, is required to submit a note from a healthcare provider (without any confidential medical information).

Technology Prescreening and Support

As detailed in the Supreme Court's Plan for Resuming Jury Trials, the first phases of jury selection are being conducted using virtual technology. Accordingly, court staff contacts each juror before the selection date to ask the following questions:

1. Do you have private, uninterrupted access to the internet via a computer or tablet for a few hours each day of the week you are summoned to report?
2. Do you have a functional electronic device (desktop computer, laptop, tablet, or smartphone)?
3. Does your electronic device have a functional web camera, microphone, and speakers?
4. Do you have experience with web conferencing platforms such as Zoom?
5. If known, who is your internet provider?

6. Do you have any limitations on your data or internet plan?

For the virtual phase of petit jury selection, the Judiciary provides technology and assistance to jurors who otherwise could not participate. Jury management staff schedules an appointment to bring a tablet (with Broadband if necessary) to the juror's home. Jurors alternatively may request to pick up technology at the courthouse if they prefer.

Selection of Cases for Trial

Consistent with the Court's July 22, 2020 Order, the first jury trials will be criminal cases involving detained defendants. Jury selections and trials are scheduled in the first three counties: Bergen (September 21, 2020); Atlantic (September 28, 2020); and Cumberland (October 5, 2020).

Courts are notifying attorneys in cases that might proceed to trial soon, and judges are scheduling conferences and walk-throughs in preparation for trials. Judges also are addressing any COVID-19 issues on a case-by-case basis (e.g., current COVID-19 diagnosis of an attorney, party, or witness). Preparations in some counties already have expanded to civil cases, which will quickly follow the first criminal trials.

Locations for Jury Proceedings

Criminal and civil jury trials will be conducted on-site in a courtroom large enough to accommodate all trial participants with social distancing. Courtrooms in each county were selected based on a rigorous review to confirm that jurors and all trial participants could be seated, with appropriate sightlines, with at least six feet of social distancing.

During in-person socially distanced trials, all jurors will be in the same courtroom as the judge and attorneys. Additional locations in the courthouse may be used for sidebar communications, juror breaks, and real-time viewing by family, friends, media, and public observers.

Courthouse Screening

All persons seeking entry to or occupancy of court facilities are screened for COVID-19, with many court locations using thermal scanning as part of that point-of-entry screening process. Individuals – including jurors, attorneys, and other trial participants – who are symptomatic for COVID-19 or otherwise at risk of spreading the virus are not permitted to enter or remain in court facilities.

In addition to the COVID-19 information posted on the Judiciary's Jurors webpage and covered during juror orientation, jurors scheduled to report for the in-person phase of selection and in-person trials also will receive a text message reminding them not to report if they may be exposed to or at risk of transmitting the virus.

Face Masks

The Supreme Court's June 9, 2020 Order requires face masks and social distancing by all persons in non-private areas of court facilities. Signage is posted in lobbies, elevators, hallways, and courtrooms reminding court users of those universal requirements, which are subject to limited exceptions for medical need. Within courtrooms, judges also may temporarily remove or lower their mask, or direct other participants to do so, as may be necessary for audibility and appropriate when other precautions (e.g., plexiglass barriers) are used.

The Judiciary has procured clear face masks that will be provided to all trial jurors and certain other trial participants, including criminal defendants. Jurors will store the mask they are wearing when they report to the courthouse. While participating in trial, they will wear the clear mask, which will be discarded at the end of each day. Jurors will then wear their own stored masks when leaving the courthouse.

Social Distancing

All trial participants are required to avoid close contact, meaning that individuals never will be situated with less than six feet of social distance for more than 10 minutes. Alternative precautions, such as plexiglass barriers, may be used to support brief conversations between attorneys and clients, or between judges and attorneys, in closer proximity (again, for under 10 minutes).

Breaks

Jurors and other trial participants are required to follow public health recommendations and Judiciary safety protocols even during approved breaks. Jurors will enter and leave courtrooms on staggered schedules, with appropriate staff to escort them as necessary, to avoid bottlenecks in shared spaces. To maximize comfort during in-person trials, judges may provide more frequent breaks.

Alternates

As typical for lengthier trials before COVID-19, judges may determine to empanel additional alternate jurors in case some jurors develop conflicts during trial.

Arrangement of the Courtroom

Courtrooms have been reconfigured for jury trials to ensure unobstructed views of participants, including jurors. In many counties, counsel tables have been rearranged to support clear sight lines of jurors who will be seated in the gallery (rather than in the jury box).

Public Access

The Court's July 22, 2020 Order reiterates that public access will be provided for jury trials, including through livestreaming the first Criminal jury trials. Public access also may be provided to interested parties, family, friends, media, and members of the public via live feed to an alternate location in the courthouse. Individuals seeking to observe jury selection should request access in advance, as provided by the Court's April 20, 2020 Order and Directive #12-20, which may be provided by individual invitation to the virtual session or in-person selection phase.

Public access to virtual proceedings is intended to parallel access during pre-COVID-19 in-person operations, meaning, for example, that an observer viewing a virtual jury selection will be permitted access to the main jury room but will not have access to private sidebar questioning conducted in a virtual breakout room.

Sidebars

Sidebar communications can be supported in a number of ways depending on the layout of the courtroom, the duration of the discussion, and other factors. A separate September 11, 2020 notice details options for sidebar communications conducted in courtrooms, in chambers, and in alternate courthouse locations.

Confidential Attorney-Client Communications

The Judiciary will support confidential attorney-client communications in all Criminal and Civil jury trials (and in other virtual and in-person proceedings). Attorneys may speak quietly with their clients while wearing masks and separated by plexiglass barriers or may use available technological options for private communications. Judges will work closely with attorneys to identify one or more acceptable options for communications during trial (and during jury selection) in advance.

Exhibits/Evidence

Depending on courtroom layout and seating arrangements, various technological options may be used to support juror views of witnesses and evidence. Large display screens, individual tablets, and other alternatives will be integrated as necessary. Judges will consult with attorneys and parties before trial to select and implement technological solutions as necessary.

Food

Empaneled jurors will use designated eating areas and will have the option to bring and store their lunch. Court staff also will facilitate ordering and delivery of food to courthouse locations.

Cleaning

The Judiciary has implemented enhanced cleaning protocols for all court facilities, including frequent cleaning of high-traffic and high-touch areas. All areas used by jurors and trial participants – including courtrooms, lunch and break areas, and restrooms – will be cleaned regularly. Hand sanitizer and sanitizing wipes also will be readily available in courtrooms and other shared locations to support as-needed cleaning throughout the day. In the event of any confirmed or

potential COVID-19 exposure in a court facility, the Judiciary will coordinate with the building owner for specialized cleaning as necessary.

Notification of Potential Exposure

The Judiciary recognizes the possibility that a trial participant may be diagnosed or develop symptoms consistent with the COVID-19 virus. In the event of an actual or potential exposure – whether confirmed or unconfirmed – the Judiciary will take appropriate steps to safeguard the privacy of individuals with COVID-19 while providing notice to close contacts and arranging for cleaning.

In the context of jury trials, additional precautions also apply, including existing agreements with the Department of Corrections and County Jails to ensure regular testing of inmates scheduled to appear for in-person court events.

As emphasized in the August 3, 2020 notice, the Judiciary always will prioritize the physical and psychological safety of trial participants, rather than moving forward with a trial despite risk of exposure to COVID-19. If a trial participant discloses a positive COVID-19 test result or advises the court or displays symptoms of COVID-19, the judge will suspend the trial and will not resume until it is safe to do so. Jurors will be informed of notification protocols during the virtual orientation process. Judges also will reiterate COVID-19 restrictions and notification protocols at the start of trial and periodically as necessary.

Future Trials

As established by the Court's July 22, 2020 Order, the first jury trials will be criminal cases involving a single detained defendant. Civil trials will follow shortly thereafter in the first counties (Atlantic, Bergen, and Cumberland). All counties are on target to select juries for criminal trials by the end of the calendar year, and most counties will proceed with civil trials (and multiple criminal trials) in 2020. Ongoing trial frequency will vary by county based on overall volume and resources.

The Supreme Court is committed to prioritizing trials for detained defendants. Notwithstanding the benefits of an initial straightforward trial, the expectation is for subsequent criminal trials to involve multiple defendants and lengthier terms as necessary.

Ongoing Oversight

The Court continues to solicit input from attorneys and others regarding jury trials and all aspects of COVID-19 court operations. As one method of supporting ongoing feedback, the Judiciary has established a new Working Group on COVID-19 Jury Operations ("Working Group").

The Working Group brings together judges, attorneys, and court staff with expertise and involvement in both longstanding and COVID-19 focused groups, including the Supreme Court Working Group on Remote Grand Jury Operations, the Judiciary's Post-Pandemic Planning Committee on Resuming Jury Trials, and the Supreme Court Committee on Jury Selection in Civil and Criminal Trials. It includes representatives of stakeholder organizations, including the Office of the Attorney General, the Office of the Public Defender, the New Jersey State Bar Association, the County Prosecutors Association of New Jersey, the Association of Criminal Defense Lawyers of New Jersey, the New Jersey Association for Justice, the Garden State Bar Association, the Hispanic Bar Association, the American Civil Liberties Union, and private attorneys.

Going forward, the Working Group will serve as one vehicle for suggesting potential refinements and additional options for exploration. It will provide an avenue for stakeholders to offer real-time commentary regarding virtual and in-person jury operations. The Working Group will consider issues including, but not limited to, technology, health/safety precautions, courtroom protocols, and juror concerns.

The Judiciary will continue to provide information about jury trials and all court operations, including on its public website njcourts.gov. Questions about this notice should be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

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

Dated: September 11, 2020

NOTICE TO THE BAR

COVID-19 – EIGHTH OMNIBUS ORDER ON COURT OPERATIONS AND LEGAL PRACTICE

The Supreme Court has issued its Eighth Omnibus Order on Court Operations and Legal Practice during the ongoing COVID-19 pandemic. A copy of the Order is attached.

This September 17, 2020 Eighth Omnibus Order continues certain adjustments necessitated during the COVID-19 period, including the prioritization of remote proceedings and permission for electronic signatures, remote or socially distanced depositions, and electronic service on the State of New Jersey. It also reinforces provisions of the Court's September 17, 2020 Order on the first jury trials, including as to the additional option of conducting *voir dire* in a fully virtual format with the consent of the attorneys and parties and the approval of the trial judge.

The September 17, 2020 Eighth Omnibus Order includes the following new or updated provisions:

- **Grand Jury.** Confirming that all counties are virtually selecting new grand jury panels, and providing that grand juries in all counties will be equipped and ready to convene in a virtual format on or before December 1, 2020;

- **Criminal.** Continuing excludable time provisions through October 11, 2020; and

- **Civil.** Relaxing Rule 4:64-8(b) during the term of the Federal Housing Administration's foreclosure and eviction moratorium for borrowers with FHA-insured Single Family mortgages covered under the Coronavirus Aid, Relief, and Economic Security (CARES) Act and HUD Agency Letter 2020-27, so as to provide that a plaintiff will not be required to file a new complaint to reinstate a foreclosure matter that has been dismissed twice for lack of prosecution.

Questions about this notice or the Court's Eighth Omnibus Order may be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

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

Dated: September 17, 2020

SUPREME COURT OF NEW JERSEY

In response to the ongoing COVID-19 pandemic, the Supreme Court has authorized various adjustments to court operations and legal practice as set forth in a series of Omnibus Orders (March 27, 2020 First Omnibus Order; April 24, 2020 Second Omnibus Order; May 28, 2020 Third Omnibus Order; June 11, 2020 Fourth Omnibus Order; June 25, 2020 Fifth Omnibus Order; July 9, 2020 Sixth Omnibus Order; and July 24, 2020 Seventh Omnibus Order).

Those Omnibus Orders detail the significant changes implemented by the New Jersey Courts over the past six months, from the abrupt transition from in-person to remote court operations to the ongoing, incremental resumption of in-person events at court facilities.

Guided by the recommendations of public health authorities including the Centers for Disease Control and Prevention (CDC) and the New Jersey Department of Health (NJ DOH), courts at all levels are continuing to operate primarily using remote (video and phone) technologies while continuing to expand in-person proceedings, including for matters that cannot be conducted in a remote format. Those in-person proceedings soon will include socially distanced criminal and civil jury trials, beginning to the extent feasible with criminal trials involving detained defendants, as provided by the Court's July 22, 2020 and September 17, 2020 Orders.

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This Order confirms and clarifies the status of court proceedings and legal practice during the ongoing hybrid operations of the courts.

Accordingly, it is ORDERED that effective immediately:

(1) JURY TRIALS

a. Jurors have been summoned for new jury trials starting on or after September 21, 2020, beginning in Bergen, Atlantic, Cumberland, Mercer, and Passaic Counties. Jury selection will be conducted in a hybrid manner with *voir dire* questioning primarily in a virtual format, with technology provided by the Judiciary as needed, and some follow-up questioning and the exercise of peremptory challenges in person. As provided by the September 17, 2020 Order, judges also may approve fully virtual *voir dire* questioning with the consent of all attorneys and parties; and

(2) GRAND JURIES

a. In-person grand jury selections and sessions remain suspended until further notice;

b. Jurors have been summoned for new grand jury selections starting on September 29, 2020 (in Passaic County) and expanding statewide by the end of October 2020. Those selections of new grand jury panels

will be conducted in a virtual format consistent with the Court's June 9, 2020 Order;

c. Existing grand jury panels will continue to participate in virtual sessions, including but not limited to in Bergen, Mercer, and Atlantic Counties and for State Grand Jury;

d. On or before December 1, 2020 all counties will have new grand jury panels equipped and ready to convene in a virtual format; and

(3) CRIMINAL

a. Based on the continued temporary suspension of jury trials and grand jury sessions (in many counties), the provisions of the Court's prior Orders regarding excludable time are extended for the additional period starting September 21 through October 11, 2020;

b. Interim modifications to the process for search warrant and communication data warrant applications and returns remain in full force and effect; and

(4) CIVIL

a. Landlord/tenant proceedings shall continue as provided by the July 14, 2020 Order, including as follows:

i. Lockouts of residential tenants (evictions) continue to be suspended in accordance with Executive Order 106;

ii. Landlord/tenant complaints may continue to be filed with the courts, and new complaints shall include an email address for the landlord and to the extent available an email address for the tenant, and landlords shall be required to certify as to compliance with the federal Coronavirus Aid, Relief, and Economic Security (CARES Act), 15 U.S.C. 9001 et seq.;

iii. The courts shall schedule intake and pretrial/settlement conferences; and

iv. Trials continue to be suspended until further notice, except that landlords/plaintiffs may in emergent circumstances (e.g., drug offenses, threats against landlord, theft) apply for an Order to Show Cause for eviction. The basis of that landlord/tenant action cannot be nonpayment of rent, except in the case of the death of the tenant. In determining whether to issue the Order to Show Cause, the court will review the complaint and determine whether an emergency exists, and, based on that determination may schedule a landlord/tenant trial. As permitted by Executive Order 106, an eviction may proceed in the "interest of justice."

b. The relaxation of Rule 1:6-4 is continued so as to eliminate the requirement of courtesy copies if the total submission does not exceed 35 pages in civil matters;

c. Rule 4:64-8(b) is relaxed during the term of the Federal Housing Administration's foreclosure and eviction moratorium for borrowers with FHA-insured Single Family mortgages covered under the Coronavirus Aid, Relief, and Economic Security (CARES) Act and HUD Agency Letter 2020-27, so as to provide that a plaintiff will not be required to file a new complaint to reinstate a foreclosure matter that has been dismissed twice for lack of prosecution. All other provisions of Rule 4:64-8 related to the foreclosure lack of prosecution process remain unchanged; and

(5) FAMILY

a. The relaxation of Rule 1:6-4 is continued so as to eliminate the requirement of courtesy copies if the total submission does not exceed 35 pages in matrimonial (FM) matters;

(6) TAX

a. The provisions of the June 11, 2020 Fourth Omnibus Order (as continued by the June 25, 2020 Fifth Omnibus Order, July 9, 2020

Sixth Omnibus Order, and July 24, 2020 Seventh Omnibus Order) remain in effect; and

(7) MUNICIPAL

a. Municipal Court sessions will continue to be conducted primarily using remote technologies in the Municipal Courts. However, the court in limited circumstances may determine to conduct Municipal Court in-person sessions based on the facts and circumstances of an individual case, including complex matters such as DWI trials and certain cases involving a consequence of magnitude; and

(8) ALL COURTS

a. To the extent practicable, depositions may continue to be conducted remotely using necessary and available video technology, with court reporters authorized in those circumstances to administer and accept oaths remotely. Consistent with public health guidance, depositions also may be conducted in person with social distancing and other appropriate precautions;

b. The provisions of the April 7, 2020 Order relaxing Rule 4:4-4(a)(7) so as to permit electronic service of process by email on the State of New Jersey are continued;

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c. The provisions of Rule 1:32-2A(c) and all other Court Rules requiring original signatures on filings are relaxed and supplemented as set forth in prior Orders; and

(9) DISCIPLINARY MATTERS & FEE ARBITRATION

a. Disciplinary hearings and fee arbitrations will continue in a virtual (video or phone) format to the extent possible based on facilities, technology, and other resources, and the nature and complexity of the matter. The Director of the Office of Attorney Ethics shall exercise discretion and proceed in relatively straightforward matters; and

(10) BOARD OF BAR EXAMINERS

a. The provisions of the April 24, 2020 Second Omnibus Order as continued in subsequent Omnibus Orders remain in full force and effect; and

(11) APPELLATE DIVISION

a. The provisions of the April 24, 2020 Second Omnibus Order as continued in subsequent Omnibus Orders remain in full force and effect; and

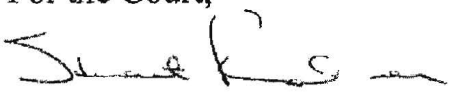
(12) Except as modified herein, the provisions of the July 24, 2020 Seventh Omnibus Order remain in full force and effect; and

(13) Requests for extensions of time in individual cases, based on specific circumstances, may continue to be submitted by letter in lieu of a formal motion; and

(14) In recognition of the pervasive and severe effects of the COVID-19 public health crisis, the court in any individual matter consistent with Rule 1:1-2(a) may suspend proceedings, extend discovery or other deadlines, or otherwise accommodate the legitimate needs of parties, attorneys, and others in the interests of justice; and

(15) Depending on the duration of the COVID-19 pandemic, the Court may reconsider and revise the provisions of this order.

For the Court,



Chief Justice

Dated: September 17, 2020

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SEPT. 17 NOTICE AND ORDER: ADDITIONAL INFORMATION RE FIRST NEW JURY TRIALS

NOTICE TO THE BAR

COVID-19 - FIRST NEW JURY TRIALS - ADDITIONAL INFORMATION ON STATEWIDE SCHEDULE, SELECTION OF CASES, AND OPTIONS FOR VIRTUAL SELECTION

The Supreme Court has provided additional guidance on the first new jury trials to resume since the mid-March suspension of trials resulting from the COVID-19 pandemic. As detailed in the Court's July 22, 2020 Order and appended Plan for Resuming Jury Trials, new jury trials will be conducted in a hybrid format involving primarily virtual selection followed by socially distanced in-person trials.

The Court's attached September 17, 2020 Order emphasizes that the resumption of jury trials is necessary to protect the rights of criminal defendants, including more than 2,500 indicted defendants who are detained awaiting trial, and for litigants in more than 9,000 ready civil cases. As with all aspects of COVID-19 court operations, the New Jersey courts will resume hybrid jury trials in a manner that supports the health and safety of all court users.

The Court's September 17, 2020 Order clarifies and supplements the provisions of the Court's July 22, 2020 Order as follows:

- Announcing the schedule for the first five jury selections and trials, which will proceed in Bergen, Atlantic, Cumberland, Mercer, and Passaic Counties;

- Reinforcing the prioritization of criminal matters involving detained defendants while providing that the Chief Justice in individual matters may authorize an initial trial not involving a detained defendant, if, for example, multiple cases identified for trial that involve detained defendants are resolved by plea shortly before the trial date, and no other detained cases can practically be prepared and scheduled;

- Permitting as an additional option fully virtual jury selection (rather than a hybrid process involving both virtual and in-person phases), with the consent of the attorneys and approval of the trial judge;

- Confirming that where jury selection is conducted in a hybrid format, judges may permit attorneys to ask limited follow-up questions during the final in-person phase of selection;

- Providing that individual juror responses to the supplemental COVID-19 questionnaire will be provided to attorneys upon request on the condition that those questionnaires must be kept confidential; and

- Clarifying that based on the significant public interest in the resumption of jury trials, the first several jury trials will be livestreamed, while public access going forward may be provided in other ways, including by allowing observers to view proceedings from within the courtroom with social distancing, from another court location with a video feed, or remotely by individual invitation to the Zoom proceeding (which would not be livestreamed).

Questions should be directed to the Office of the Administrative Director at (609) 376-3000.

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

Dated: September 17, 2020

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SUPREME COURT OF NEW JERSEY

The Supreme Court in its July 22, 2020 Order authorized the incremental resumption of criminal and civil jury trials in a hybrid format, with primarily virtual jury selection followed by socially distanced in-person trials.

The decision to resume a limited number of jury trials is motivated by the ongoing restrictions of the rights of criminal defendants, including more than 2,500 defendants who have been indicted and are detained in jail awaiting trial, as well as the rights of victims of crime seeking access to the courts to complete a critical step in their recovery. In addition, the extended delay in the administration of civil justice, including more than 9,000 cases awaiting trial today, also compels the resumption of jury trials.

Jury trials are the catalyst for resolving cases, both in criminal and civil matters. This is true even though only a small percentage of cases ultimately are decided by a jury. The availability of a judge and jury ready to hear a case prompts pleas in criminal matters and settlements in civil cases. In contrast, the unavailability of jury trials removes the impetus for case resolution and stalls the wheels of justice. Countless individuals are adversely affected as a result.

For more than six months, the New Jersey courts have sustained court operations to the greatest extent possible without jury trials. During that time, public health authorities have confirmed that COVID-19 trends in New Jersey no

longer require all residents to stay at home, and those same authorities have issued guidance for how businesses, schools, and other institutions including the courts can safely resume some level of in-person activity. Guided by the public health experts and recognizing its duty to uphold the rule of law even when it is difficult to do so, the Court authorized the resumption of jury trials.

The Court's July 22, 2020 Order directed that trials would resume in a limited number of counties and gradually expand statewide. Additional details were provided in an accompanying Notice to the Bar and "Plan for Resuming Jury Trials" (which was updated on August 14, 2020).

Since the date of that Order, a great deal of preparation has taken place in the counties. As of today, jurors in several counties have received summonses and have completed qualification, prescreening, and onboarding for participation in virtual jury selection. Additionally, measures have been implemented in furtherance of safe socially distanced in-person trials.

As we approach the dates for the initial hybrid jury trials, this Order provides additional details about the schedule for new jury trials and clarifies certain requirements for initial and future trials. The information in this Order is consistent with the earlier Order and Plan. It is being issued in part in response to questions and suggestions from stakeholders, including the Judiciary Working Group on COVID-19 Jury Operations.

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In furtherance of the incremental resumption of criminal and civil jury trials in a hybrid format, it is ORDERED that:

1. Virtual jury selections will begin first in Bergen County (week of September 21, 2020), Atlantic County (week of September 28, 2020), and Cumberland County (week of October 5, 2020); followed by Mercer County and Passaic County (week of October 19, 2020).
2. To the extent feasible, the first new jury trials in each of the above-listed counties will be criminal cases involving a single detained defendant. The basis for setting those criteria was twofold: one, to prioritize criminal cases involving detained defendants, and, two, to enable each county to gain experience with the hybrid jury trial process in relatively straightforward matters before proceeding to more complex cases. If those criteria cannot be met in in any particular county, the Chief Justice may permit limited adjustments. For example, if multiple cases identified for trial that involve detained defendants are resolved by plea shortly before the trial date, and no other detained cases can practically be prepared and scheduled for trial, trial of a non-detained defendant may be considered. The overall approach, however, will be for all counties to prioritize criminal cases involving detained defendants, while also expanding to civil cases.

3. In lieu of the jury selection process set forth in the Court's July 22, 2020 Order (primarily virtual but with an in-person component), attorneys may request and consent to select a jury in an entirely virtual format. Judges may authorize this fully virtual jury selection alternative with the consent of all attorneys and parties.

4. Where jury selection is conducted as set forth in the Court's July 22, 2020 Order (primarily virtual but with an in-person component), judges may permit attorneys to ask limited follow-up questions during the in-person phase of selection.

5. Attorneys may request and receive copies of the supplemental COVID-19 questionnaire completed by jurors who report for selection on the condition that those completed questionnaires shall be kept confidential and viewed only by the attorney and the client.

6. Because of widespread public interest in the resumption of jury trials, the first several socially distanced in-person jury trials will be livestreamed to the public. Thereafter, public access to particular jury trials may be supported through livestreaming or other options, including permitting observers to be physically present in the courtroom (if consistent with social distancing), or in another location in the courthouse (viewing the proceeding

by video), or via individual invitation to view a non-livestreamed Zoom event.

7. Except as set forth in this Order, all provisions of the Court's July 22, 2020 Order remain in full force and effect.

For the Court,

Chief Justice

Dated: September 17, 2020

A214

SEPT. 22 NOTICE ON PHASE 2.5

NOTICE TO THE BAR AND PUBLIC

COVID-19 – UPDATE ON COURT OPERATIONS DURING "PHASE 2.5" OF THE SUPREME COURT'S POST-PANDEMIC PLAN

The Supreme Court's Post-Pandemic Plan (issued June 10, 2020) outlined in general terms the transition from Phase 1 (fully remote operations) to Phase 2 (incremental return of limited numbers of judges and court staff to Judiciary facilities). Based on current public health recommendations and COVID-19 trends, the New Jersey courts will be expanding the scope of on-site court events, including for new jury trials, but without transitioning fully to Phase 3 as previously anticipated. For lack of a better description, the courts are now moving to "Phase 2.5." This notice provides additional guidance as to events that may under appropriate circumstances be conducted on-site even while our court system overall continues to follow a "remote first" model.

As stated in the Plan, the intent during Phase 2 was to start with up to 10-15% of judges and staff on-site, with that range eventually increasing to up to 50-75% in Phase 3. However, as noted above, we are now moving to Phase 2.5 rather than Phase 3. Effective immediately, in Phase 2.5, the limit on the total number of judges and staff who may be in the courthouses at any one time is increased to a maximum of 25% of judges and staff taking into account both facilities and operational need.

As announced in the August 12, 2020 clarifying notice, in Phase 2.5 judges may determine to schedule an in-person event based on the individual facts and circumstances of a case, including where one or more parties is unable to meaningfully participate using virtual formats or where virtual options have been attempted unsuccessfully.

Subject to local resources and need, during Phase 2.5 certain additional categories of court matters (in addition to those listed as potentially occurring on-site during Phase 2, as described in the June 10, 2020 Plan) including but not limited to the following events may be conducted on-site:

- New Criminal and Civil jury selections and trials;
- Civil: Orders to Show Cause to prevent illegal lockouts; bench trials for more significant or urgent matters;

- Family: applications for a domestic violence temporary restraining order (TRO); DNA testing; child welfare mediation; supervised visitation;

- Municipal: trials of more serious matters; mediations; certain first appearances; and

- Probation: increased substance abuse testing; in-person reporting to court facilities; drug court calendars; risk assessments.

Additional court events beyond those listed above may be scheduled on-site as appropriate. Court services, including customer service appointments with the Ombudsman or other areas, also may be conducted in person. Notwithstanding the above adjustments, and except in emergent circumstances including applications for a TRO or to prevent an illegal lockout, court users should appear in person only if they have a scheduled court matter or an appointment.

As always, the Judiciary will make every effort to serve individuals who contact or appear at a courthouse with an emergent need. Court users who are unable to use available virtual options may be accommodated on-site. Where available, court users may be provided access to and use of a "technology space" within a courthouse that can support virtual participation in remote events.

The Judiciary will continue to provide information about current court operations, including on its public website njcourts.gov. Questions about this notice should be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

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

Dated: September 22, 2020

A216

OCT. 8 NOTICE AND ORDER

NOTICE TO THE BAR

COVID-19 – NINTH OMNIBUS ORDER ON COURT OPERATIONS AND LEGAL PRACTICE – EXPANDING GRAND JURIES; EXCLUDABLE TIME; RELAXING PRE-INDICTMENT DISCOVERY; PROVISIONAL NEW PRE-INDICTMENT HEARING

The Supreme Court has issued the attached Ninth Omnibus Order on Court Operations and Legal Practice during the ongoing COVID-19 pandemic.

This October 8, 2020 Ninth Omnibus Order continues certain adjustments necessitated during the COVID-19 period, including the prioritization of remote proceedings and permission for electronic signatures, remote or socially distanced depositions, and electronic service on the State of New Jersey. It also includes substantive changes designed to ensure that defendants detained without indictment promptly will have their cases presented to grand juries. To that end, the October 8, 2020 Ninth Omnibus Order includes the following new or updated provisions:

- Reinforcing that grand juries will be selected virtually, and confirming that before December 1, 2020 all counties will have the capacity for virtual grand juries;
- Permitting in-person grand juries, either in court locations, or, if court locations are not available, then in non-court locations as coordinated by the County Prosecutor, with court approval;
- Concluding pre-indictment excludable time in phases, starting with defendants who were arrested and committed to jail before the onset of COVID-19;
- Effective November 1, 2020, relaxing Rule 3:13-3(a) on a temporary basis so that defendants detained more than 90 days are provided discovery sooner; and
- Provisionally adopting new Rule 3:4-7 ("Pre-Indictment Hearing"), to provide a hearing involving the presentation of at least one witness, without adding excludable time attributable to the defendant.

Questions about this notice or the Court's Ninth Omnibus Order may be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

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

Dated: October 8, 2020

SUPREME COURT OF NEW JERSEY

In response to the ongoing COVID-19 public health emergency, the Supreme Court has authorized various adjustments to court operations as set forth in a series of Omnibus Orders (March 27, 2020 First Omnibus Order; April 24, 2020 Second Omnibus Order; May 28, 2020 Third Omnibus Order; June 11, 2020 Fourth Omnibus Order; June 25, 2020 Fifth Omnibus Order; July 9, 2020 Sixth Omnibus Order; July 24, 2020 Seventh Omnibus Order; and September 17, 2020 Eighth Omnibus Order).

Those Omnibus Orders detail the significant changes implemented by the New Jersey courts over the past six months, from the abrupt transition from in-person to remote court operations to the ongoing, incremental resumption of in-person events at court facilities. Consistent with guidance issued by the Centers for Disease Control and Prevention (CDC) and the New Jersey Department of Health (NJ DOH), the New Jersey courts have adopted a "remote first" approach to court events, with most proceedings being handled using virtual technologies. At the same time, based on updated health recommendations, additional events are being handled in person. With the first jury trials having resumed in late September 2020, the Judiciary is in the process of resuming those critical in-person proceedings in a manner consistent with public health guidance.

For more than six months, the Court has continued the suspension of in-person grand jury selections and sessions while requiring virtual selections of new

grand jury panels and permitting virtual grand jury sessions. Based on the unavailability of ready grand juries in all counties, the Court also has extended pre-indictment excludable time through October 11, 2020.

More than 2,700 defendants currently are detained in county jails without indictment and without the possibility of indictment (except in those counties with virtual grand juries). That number of unindicted detained defendants will continue to grow unless grand juries are established in all counties and enabled to perform their critical function effectively, efficiently, and consistent with public health requirements.

To that end, this Order announces a comprehensive plan to ensure that all counties have a grand jury panel equipped and ready to convene in a virtual format, and that in addition to those virtual grand juries all counties may convene in-person grand juries if possible consistent with public health recommendations and Judiciary policies. This Order also sets forth a series of steps designed to expedite resolution in cases involving defendants arrested and committed to county jails before or during COVID-19, including by gradually ending pre-indictment excludable time and by allowing eligible defendants detained for more than 90 days to promptly obtain discovery.

Accordingly, it is ORDERED that the following provisions are effective immediately except as otherwise stated herein:

(1) GRAND JURIES

a. In-person grand jury selections remain suspended until further notice;

b. Jurors in all counties have been summoned for new grand jury selections, which will be conducted in a virtual format;

c. Existing grand jury panels also may continue to convene for virtual sessions;

d. On or before December 1, 2020, all counties will have new grand jury panels equipped and ready to convene in a virtual format (with all participants using remote technology);

e. In addition to new virtual grand jury panels, Assignment Judges and County Prosecutors are authorized to convene in-person grand jury panels in court facilities consistent with social distancing and other health precautions (including as to wearing face masks);

f. County Prosecutors also may submit a proposal to conduct grand jury sessions in a non-Judiciary location where (a) there is no reasonable or sufficient Judiciary location available or (b) use of Judiciary facilities would reduce capacity for handling jury trials or other court proceedings. Consistent with those criteria, it is expected that Bergen, Burlington, Camden, Cumberland, Essex, Gloucester, Hunterdon, Morris, Passaic, Salem, Sussex, and Warren Counties may pursue use of non-court locations for grand jury meetings. Any proposal to

convene an in-person grand jury panel in a non-Judiciary location must be approved by the Assignment Judge and the Administrative Director of the Courts; and

(2) CRIMINAL

a. With the empanelment of grand juries in every county on or before December 1, 2020, and the requirement that all counties have at least one virtual grand jury panel and that counties also may have one or more in-person grand jury panels:

(i) For those eligible defendants who have not yet been indicted and were committed to the county jail before March 16, 2020, the provisions of the Court's prior orders regarding pre-indictment excludable time are extended until January 15, 2021, at which time that extension will end;

(ii) For those eligible defendants who have not yet been indicted and were committed to the county jail on or after March 16, 2020 through May 31, 2020, the provisions of the Court's prior orders regarding pre-indictment excludable time are extended until February 14, 2021, at which time that extension will end;

(iii) For those eligible defendants who have not yet been indicted and were committed to the county jail on or after June 1, 2020 through October 11, 2020, the provisions of the Court's prior orders regarding excludable are extended until March 14, 2021, at which time that extension will end; and

(iv) For those eligible defendants who have not yet been indicted and are committed to the county jail on or after October 12, 2020, the provisions of the Court's prior orders regarding pre-indictment excludable time are extended until March 30, 2021.

b. In the calculation of the time period for the commencement of trial for an eligible defendant detained in the county jail, the additional period from October 12, 2020 through January 15, 2021, shall be excluded due to exceptional circumstances, pursuant to N.J.S.A. 2A:162-22(b)(1)(f), and on account of good cause for the delay, pursuant to N.J.S.A. 2A:162-22(b)(1)(l), namely, the statewide limited capacity for jury trials, which period shall be attributable to the court;

c. Pursuant to N.J. Const. Art. VI, sec. 2, par. 3, effective November 1, 2020, and until further order, Rule 3:13-3(a) ("Pre-Indictment

Discovery") of the Rules Governing the Courts of the State of New Jersey is supplemented and relaxed so as to require the prosecutor to provide defense counsel, within seven business days of receipt of a written request for discovery, for an eligible defendant who has not been indicted and has been detained in the county jail for more than 90 days, all available relevant material that would be discoverable at the time of indictment, except as set forth in that paragraph. Notwithstanding the exceptions, any exculpatory information or material shall be provided to defense counsel;

d. The Court here provisionally adopts new Rule 3:4-7 ("Pre-Indictment Hearing") as attached to this Order, pursuant to which an eligible defendant detained without indictment would have the right to a hearing at which the State would be required to produce at least one witness and establish probable cause to support the criminal charges. At the new pre-indictment hearing, the defendant would be afforded the right to cross-examine witnesses who appear at the hearing, to testify, to present witnesses, and to present information by proffer or otherwise. The Court will consider any public comments submitted through October 23, 2020, and may make modifications before formally adopting the new Rule; and

(3) JURY TRIALS

a. Jury selection will continue to be conducted in a hybrid manner with *voir dire* questioning primarily in a virtual format, with technology provided by the Judiciary as needed, and some follow-up questioning and the exercise of peremptory challenges in person. As provided by the September 17, 2020 Order, judges also may approve fully virtual *voir dire* questioning with the consent of all attorneys and parties; and

(4) OTHER MATTERS.

The following provisions of the Court's September 17, 2020 Eighth Omnibus Order remain in full force and effect:

- 3b -- Search warrants and communication data warrants
- 4a -- Landlord/tenant proceedings
- 4b -- Courtesy copies in civil matters
- 4c -- Relaxation of Rule 4:64-8(b) for certain foreclosures
- 5a -- Courtesy copies in family matters
- 6 -- Tax Court
- 7 -- Municipal Court
- 8a -- Remote and socially distanced depositions
- 8b -- Electronic service of process on the State of New Jersey
- 8c -- Electronic signatures
- 9 -- Disciplinary matters and fee arbitration

- 10 -- Board of Bar Examiners
- 11 -- Appellate Division

(5) Requests for extensions of time in individual cases, based on specific circumstances, may continue to be submitted by letter in lieu of a formal motion; and

(6) In recognition of the pervasive and severe effects of the COVID-19 public health crisis, the court in any individual matter consistent with Rule 1:1-2(a) may suspend proceedings, extend discovery or other deadlines, or otherwise accommodate the legitimate needs of parties, attorneys, and others in the interests of justice; and

(7) Depending on the duration of the COVID-19 pandemic, the Court may reconsider and revise the provisions of this order.

For the Court,

Chief Justice

Dated: October 8, 2020

Provisional New Rule 3:4-7 ("Pre-Indictment Hearing")

3:4-7. Pre-Indictment Hearing

(a) Eligible Defendant. The court shall conduct a pre-indictment hearing for an eligible defendant, as defined in N.J.S.A. 2A:162-15, who has been charged with an indictable offense, has not been indicted, and is detained.

(b) Scheduling. The court shall schedule the hearing to occur before the expiration of the 90-day period for the return of the indictment pursuant to N.J.S.A. 2A:162-22, adjusted for excludable time, and not earlier than 15 calendar days before that expiration date.

(c) Discovery. Unless previously provided, the prosecutor shall provide to the defendant all available relevant material pursuant to R. 3:13-3(a) no later than three business days prior to the hearing date.

(d) Hearing and Finding. At the hearing, the State must establish probable cause to support the criminal charges. To meet that burden, the State must present oral testimony from at least one witness. The defendant shall be afforded the right to cross-examine any witness who appears at the hearing, to testify, to present witnesses, and to present information by proffer or otherwise. Hearsay testimony is permissible. The hearing shall be held remotely unless the court finds good cause to conduct the hearing in-person.

(1) Probable Cause. If from the evidence presented by the prosecutor, the court finds probable cause to believe the offense has been committed and the defendant

committed it, the court may allocate an additional period of time, not to exceed 20 days, in which the return of an indictment shall occur.

(2) No Probable Cause. If from the evidence presented by the prosecutor, the court does not find probable cause, the court shall dismiss the complaint and discharge the defendant. A discharge does not preclude the prosecutor from filing a new complaint and prosecuting the defendant for the same offense.

(e) Return of Indictment. The hearing shall not be held if an indictment has been returned against the defendant.

ANNOTATED

APPENDIX B

OAE DIRECTOR'S MEMORANDUM ON RECOMMENCEMENT OF HEARINGS

JUNE 19, 2020

(ANNOTATED WITH CITATIONS TO COURT ORDERS)

OFFICE OF ATTORNEY ETHICS
OF THE
SUPREME COURT OF NEW JERSEY

CHARLES CENTINARO
DIRECTOR

PHONE: (609) 403-7800
FAX: (609) 403-7802

P.O. BOX 963
TRENTON, NEW JERSEY 08625

MEMORANDUM

TO: District Ethics Committee Officers and Hearing Panel Chairs

FROM: Charles Centinaro, Director

SUBJECT: **Procedures for the Recommencement of Hearings before the District Ethics Committee Hearing Panels and Special Ethics Masters via Video or Phone**

DATE: June 19, 2020

The Office of Attorney Ethics (OAE) is providing the following directions to the officers of the District Ethics Committees (DECs), and to all hearing panel chairs, as to the procedures in place for the resumption of attorney disciplinary hearings. All DEC officers and members, including all who serve on DEC hearing panels, are on notice of their obligation to comply with these directions. See R. 1:20-6(a)(4)(D). These directions shall also apply equally to all hearings before special ethics masters. See R. 1:20-6(b).

As a first step in the scheduling of hearings, all hearing panel chairs should schedule, by July 1, the date on which a mandatory prehearing conference will be held, with the conference to be conducted by July 24, in accord with the procedures set forth below. The parties should commit, at that conference, to reserve specific dates on which the hearing would be conducted remotely, starting on August 1, 2020 and thereafter. The dates would need to be confirmed through the OAE, in accord with the procedures set forth below. No hearing can commence until all prehearing issues will have been addressed and resolved by the hearing panel chair. In scheduling hearing dates, the hearing panel chair and the parties are expected to have considered and factored in the time that it will take to submit and to resolve any prehearing or *in limine* motions, objections, and/or other applications. No hearing can commence until the hearing panel chair will have resolved all such issues.

All hearings must conform with these directions. These directions follow from the Court Rules, in addition to the Orders of the Supreme Court addressing the COVID-19 pandemic and

B1

its impact on Court proceedings, dated March 27,[1] April 20,[2] April 24,[3] May 28,[4] and June 11,[5] 2020, and the Post-Pandemic Plan approved by the Supreme Court, dated June 10, 2020:[6]

1. For attorney disciplinary matters, for computing time periods under the Court Rules for "purposes of grievances, formal pleadings, hearings and procedural deadlines," the Court has deemed the period from March 16, 2020 through May 10, 2020 "the same as a legal holiday," and directed that all deadlines "thus shall be tolled[.]" See March 27 Order, p. 12, sec. 8(a)(i); April 24 Order, p. 12, sec. 8(a)(i). ↳A13 ↳A38
2. "Effective May 11, 2020, disciplinary hearings . . . will resume in a virtual (video or phone) format to the extent possible based on facilities, technology, and other resources; and the nature and complexity of the matter. The Director of the Office of Attorney Ethics shall exercise discretion and proceed in relatively straightforward matters[.]" April 24 Order, pp. 12-13, sec. 8(b).

A38-A39

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[1] Supreme Court Order, "Omnibus Order on COVID-19 Issues," March 27, 2020, available as of June 10, 2020, at https://www.njcourts.gov/notices/2020/n200327a.pdf?c=cW3. The Notice to the Bar for this Order (March 29, 2020), is available as of June 10, 2020, at https://www.njcourts.gov/notices/2020/n200329a.pdf?c=SJr (cited herein as "March 27 Order"). ↳ A1-A14

[2] Notice to the Bar and Order of the Supreme Court, "COVID-19 – Updated Guidance on Remote Proceedings in the Trial Courts; Options for Observing Court Events and Obtaining Video and Audio Records; Court Authority to Suspend the Commencement of Certain Custodial Terms," April 20, 2020, available as of June 10, 2020, at https://www.njcourts.gov/notices/2020/n200420a.pdf?c=SQs (cited herein as "April 20 Order"). ↳ A15-A24

[3] Notice to the Bar and Order of the Supreme Court, "COVID-19 – Second Omnibus Order on Court Operations and Legal Practice – More Operations to Be Conducted Remotely; Limited Discovery Extensions and Tolling Periods," April 24, 2020, available as of June 10, 2020, at https://www.njcourts.gov/notices/2020/n200424a.pdf?c=ivL (cited herein as "April 24 Order"). ↳ A25-A42

[4] Notice to the Bar and Order of the Supreme Court, "COVID-19 – Third Omnibus Order on Court Operations and Legal Practice," May 28, 2020, available as of June 10, 2020, at https://www.njcourts.gov/notices/2020/n200529a.pdf?c=Sh9 (cited herein as "May 28 Order"). ↳ A43-A48

[5] Notice to the Bar and Order of the Supreme Court, "COVID-19 – Fourth Omnibus Order on Court Operations and Legal Practice," June 11, 2020, available as of June 15, 2020 at https://www.njcourts.gov/notices/2020/n200612a.pdf?c=26B (cited herein as "June 11 Order"). ↳ A81-A88

[6] Notice to the Bar and Plan, "COVID 19 – New Jersey Courts Post-Pandemic Plan – Transition from Phase 1 (Remote Operations) to Phase 2 (Limited Onsite Presence and In-Person Court Events)," June 10, 2020, available as of June 15, 2020, at https://www.njcourts.gov/notices/2020/n200610b.pdf?c=1BV (cited herein as "June 10 Post-Pandemic Plan"). ↳ A49-A80

3. The Court Orders do ***not*** allow the resumption of attorney disciplinary proceedings at this time in other than "a virtual (video or phone) format[.]" See April 24 Order, p. 12, sec. 8(b). The Court has directed that "current health guidance suggests that in-person court operations will not resume in full for some time." May 28 Order, p. 1; June 11 Order, p. 1. Accordingly, unless and until otherwise authorized by the Court, hearing panel chairs ***must*** conduct ***all*** proceedings in disciplinary matters remotely by video or phone conferencing, ***only,*** unless the proceedings cannot be handled remotely.

4. Should the hearing panel chair determine that the particular attorney disciplinary proceedings cannot be handled remotely, the hearing panel chair is directed to send written notice of the case-specific facts and circumstances which support that determination in a letter addressed to the OAE Director, who will provide further guidance for proceeding in the specific circumstances presented. See April 24 Order, pp. 12-13, sec. 8(b) ("Effective May 11, 2020, disciplinary hearings . . . will resume in a virtual (video or phone) format to the extent possible based on facilities, technology, and other resources; and the nature and complexity of the matter. The Director of the Office of Attorney Ethics shall exercise discretion and proceed in relatively straightforward matters[.]").

5. The Supreme Court has issued the Post-Pandemic Plan that the Court has approved "for the gradual resumption of certain in-person court events," as the courts transition from Phase 1 to Phase 2 of the gradual reopening of court facilities and proceedings. See June 10 Post-Pandemic Plan, p. 2. That Plan specifies the specific "court events that cannot be handled remotely (e.g., based on lack of consent to proceed remotely or Judiciary determination that it should be in person) [which] may be conducted onsite" during Phase 2 of the reopening of the courts. Id. at p. 17. The Court has ***not*** included attorney disciplinary hearings in the category of proceedings which may be conducted onsite in a courthouse during Phase 2. See id. at pp. 19, 22, 24, 26-27.

6. Hearing panels include three volunteer members of the DECs (two attorney members and one public member). R. 1:20-6(a)(1). The OAE Director is responsible for administering the programs of the DECs, and making sure that the health and safety issues of DEC members will be considered and protected. See R. 1:20-2(b)(9). It is the determination of the OAE Director that no hearing panel member should attend any disciplinary hearing in-person unless and until the Supreme Court determines that in-person Court proceedings are safe to resume. Until such time, all disciplinary hearings must be conducted only by use of the remote technologies and the procedures described herein.

7. The DECs should continue to conduct all hearings "remotely using video and/or phone options to the greatest extent possible," with no hearings involving the live presence in the same location of any member of the hearing panel, the parties, the witnesses, or any attorney. See generally April 20 Order, p. 1, sec. 1; April 24 Order, p. 11, sec. 7(b).

8. "Based on current information, the need to use this alternate approach" for attorney disciplinary hearings "will continue for a ***number of months,***" with no end date specified by the Court. See April 20 Order, p. 1, para. 1; April 24 Order, p. 1, paras. 3-4; May 28 Order, p. 1; see also June 11 Order, p. 1 (noting the continuing "public health

emergency," and that "current health guidance suggests that in-person court operations will not resume in full ***for some time***" [emphasis added]).

9. The scheduling of all attorney disciplinary hearings must be arranged through the Director of the OAE. Contact person: Jan Vinegar, CourtSmart Coordinator at the OAE. Phone: 609-403-7800, ext. 34172. Janice.Vinegar@NJCourts.gov. No hearing panel chair or DEC officer can schedule any hearing to proceed unless the arrangements have been confirmed through and by Jan Vinegar.

10. The hearings shall be recorded on CourtSmart as the official hearing record, unless the OAE Director shall give prior authorization for a court reporter to act in place of CourtSmart for the preservation of the hearing record. See generally March 27 Order, p. 11, sec. 7(a); April 20 Order, p. 1, sec. 1; see also R. 1:20-6(c)(2)(A). The services of a court reporter must be arranged by and through the OAE (contact person: Jan Vinegar).

A12

A18

11. Any video and/or phone technology options to be used in an attorney disciplinary hearing or in related proceedings must conform with the technologies approved by the Administrative Director of the Courts, to whom the Court has delegated sole authority to make such determinations. See April 20 Order, pp. 2-3, sec. 4. The Administrative Director has approved the use of Zoom or Teams (in addition to phone) for these purposes, but the particular system to be used must be overseen by OAE staff, in coordination with Ms. Vinegar, and with CourtSmart recording in place to record the proceedings.

A19-A20

12. "Because the Judiciary's ability to livestream court events that are conducted remotely will be limited by the availability of finite resources," it is expected that no attorney disciplinary proceedings will be livestreamed. See April 20 Order, p. 3, sec. 5(a).

A20

13. All hearing panel chairs have a continuing responsibility to make sure that no confidential information (including confidential personal identifiers, R. 1:38-7(a)) will be, or will have been, disclosed on the record in any attorney disciplinary proceedings, and that proper redaction of hearing records will occur before the testimony or exhibit is made part of the public record. The hearing panel chair should make sure that a protective order is in place where necessary or appropriate to "prohibit the disclosure of specific information to protect the interests of a grievant, witness, third party or respondent." R. 1:20-9(h). The hearing panel chairs should also make sure that the home address and telephone information of the parties and any witnesses will not be included as part of the public record. See generally R. 1:20-6(a)(4(D).

quoting A20

14. The Court Orders have recognized the ***increased risk in a virtual setting of "inadvertent disclosure of confidential information,"*** which may be heightened when the audio and/or video record of the proceedings may be available in a manner which the attorney disciplinary system had not previously experienced. Hearing panel chairs need to be alerted to the duty of the hearing panel and the parties to ensure that they preserve the confidentiality of all categories of information that must be protected against public disclosure, including, but not limited to the following categories of information:

    a. attorney disciplinary records, whose confidentiality is mandated by R. 1:20-9, unless they are public records within the scope of R. 1:20-9(d);

b. records of any fee arbitration proceedings;

c. civil commitments;

d. expungements;

e. medical, psychological or mental health;

f. disability issues; see R. 1:20-9(c)(5);

g. sexual abuse or harassment matters concerning any identified or identifiable victim;

h. domestic violence;

i. restraining orders;

j. family part proceedings;

k. guardianship or adoptions;

l. juvenile-family crisis or juvenile delinquency proceedings;

m. child protection or child placement matters;

n. paternity issues; or

o. any administrative, court, or other records excluded from public access.

See generally April 20 Order, p. 3, sec. 5(b). → A20

15. All parties, as well as the grievant (if any), must be given ***at least 25 days' notice of the initial scheduled hearing date*** for any hearing that will proceed remotely by audio or video technology. See R. 1:20-6(c)(2)(A). That notice must include information that the proceedings will be conducted virtually, using video or phone technology. That notice must also be provided for the continuation of any hearings that were in progress, but not concluded, as of March 27, 2020. The hearing panel chair must address at the prehearing conference the specific steps that the panel chair will take to make sure that such adequate written notice will be given to the parties and the grievant of the date and time of the hearing, and how it will be broadcast virtually.

16. R. 1:20-6(c)(2)(D) sets forth the right of the grievant "to be present at all times during the hearing." The Court Rules do not accord the grievant the right to participate in the proceedings, unless called as a witness during the proceedings by one of the parties. See generally R. 1:20-4(g)(3); R. 1:20-6(c)(2)(D). The grievant must be given the right to view the proceedings through the virtual medium, as the proceedings take place in real time.

17. Should any "[i]nterested person[], including members of the public and the media, . . . request real-time access to observe" an attorney disciplinary matter, such request must be submitted in writing to the OAE Director, at least five business days before the date of the scheduled attorney disciplinary hearing. Such requests must not be determined by the hearing panel chair or any DEC officer. See generally April 20 Order, p. 3, sec. 5(c). → A20

18. Hearing panel chairs should instruct
    (a) the parties at the prehearing conference, and
    (b) on the record, before the start of the hearing, all who will observe the proceedings in any capacity,

    that all observers of the proceedings must comply with the Supreme Court Guidelines on Media Access and Electronic Devices in the Courts (Directive #11-20). A163-A184

19. Hearing panel chairs should instruct
    (a) the parties at the prehearing conference, and
    (b) on the record, before the start of the hearing, all who will observe the proceedings in any capacity,

    that the Supreme Court has directed that the unauthorized recording and/or use of the audio or video record of the hearing shall subject the individual involved to criminal charges, including a violation of the New Jersey Anti-Piracy Act, N.J.S.A. 2C:21-21, among other possible charges.

20. The OAE Director is giving notice to all hearing panel chairs that a prehearing conference ***must*** be held for ***every*** hearing to be scheduled after May 10, 2020. See R. 1:20-5(b). For any case in which a prehearing conference was conducted prior to May 10, 2020, an ***additional*** prehearing conference must be scheduled and conducted to address specifically the implementation of the procedures set forth in the Court's COVID-19 Orders of March 27, April 20 and 24, May 28, and June 11, 2020. The hearing panel chair must give the parties at least 14 days written notice of the date of the conference, which may be held by telephone or video, without need for CourtSmart recording, except in unusual circumstances (which should be specified in writing by the party making the request and addressed to the hearing panel chair). See R. 1:20-5(b)(1). The date of the prehearing conference should be set by July 1, 2020, to be held at least 14 days thereafter, but not later than July 24, 2020.

21. The hearing panel chair should direct the parties to file the prehearing report, in accord with the procedures and specifications set forth in R. 1:20-5(b)(2). The hearing panel chair should make sure that the parties will address in their prehearing reports all issues relating to matters that need to be addressed and resolved by the hearing panel chair prior to the start of the hearing, and with specific focus on the virtual nature of the proceedings. All issues relating to
    - the admissibility of evidence;
    - the marking, redaction, and preservation of evidence;
    - whether a protective order will be needed; and
    - how each hearing panel member and party will have, at the time of the hearing, copies of all exhibits and of the pleadings (in hard copy or in electronic PDF format, as the hearing panel chair should determine) for their individual use,

    will need to be specifically resolved prior to the start of the hearing.

22. The hearing panel chair will also need to inform the parties at the prehearing conference of the specific technology (Zoom, Teams, or phone) to be used during the hearing, so that any issues relating to use of that technology may be addressed and resolved prior to the hearing date. Any hearing conducted on Zoom or Teams must be conducted through a

Judiciary account, conforming with Judiciary security restrictions, and only as arranged through and by Judiciary staff.

23. The hearing panel chair, prior to as well as during the prehearing conference, should direct the parties to the resources that have been made available by the Judiciary online for using Zoom or Teams technology for virtual hearings. The parties should be directed to follow the instructions set forth in "How to Join and Participate in a Zoom Virtual Courtroom," and "How to Join a Teams Meeting through the Teams Client," which are available online at https://njcourts.gov/attorneys/remote.html. The OAE has also provided to all hearing panel chairs the document entitled "How to Join and Participate in a Zoom Virtual Courtroom" for Attorney Disciplinary Hearings, which is the adaptation of the Judiciary instructions specific to attorney disciplinary proceedings. The hearing panel chairs should make sure that all participants in any hearing to proceed by Zoom will have been provided with those instructions. → Appendix C

24. The hearing panel chair should instruct the parties at the prehearing conference of the deadline for the filing of any applications or motions to the hearing panel chair with regard to any objections as to the manner in which the hearing will proceed, and any issues relating to any proposed exhibit or witness. The hearing panel chair must have ruled on all such applications and motions prior to the date on which the hearing is to commence.

25. The hearing panel chair must also set in place at the prehearing conference the procedures to ensure that the grievant will be given timely notice of the hearing, along with meaningful opportunity to observe the proceedings remotely, as they occur.

26. The hearing panel chair should determine at the prehearing conference whether there are any issues relating to disability or language barriers for the respondent or for any witness that would need to be accommodated at the hearing. The hearing panel chair must send formal notice of such requests for accommodation to the OAE, to the attention of Isabel McGinty, the Statewide Ethics Coordinator. Any interpreter or translator used for the proceedings must conform with Judiciary guidelines for Court proceedings. Any arrangements for an interpreter or translator must be coordinated through Jan Vinegar of the OAE.

27. The prehearing conference shall not be open to the public. R. 1:20-9(c)(2). The hearing panel chair shall preside at the prehearing conference, without the attendance or participation of the other members of the hearing panel. R. 1:20-6(a)(4)(A).

28. The hearing panel chair must address at the prehearing conference all of the "objectives" set forth in R. 1:20-5(b)(3).

29. Within seven days following the prehearing conference, the hearing panel chair must issue a case management order, in accord with the requirements of R. 1:20-5(b)(4).

30. The hearing panel chair alone should decide prehearing motions, with the decisions on all motions provided to the parties in writing prior to the date on which the hearing is to commence. R. 1:20-6(a)(4)(B).

31. The hearing date should be scheduled within 60 days of the date of the prehearing conference, with the hearing to be concluded within 45 days of its commencement. The hearing report and the hearing record should be provided to the OAE for transmittal to the Disciplinary Review Board within 60 days of the hearing's conclusion. R. 1:20-5(b)(5).

32. "Requests for extensions of time in individual cases, based on specific circumstances, may be submitted by letter in lieu of a formal motion." April 24 Order, p. 15, sec. 12. Such decisions may be made by the hearing panel chairs for additional time, but the extensions must be documented in writing and included in the hearing record by the hearing panel chair. → A41

33. "In recognition of the pervasive and severe effects of the COVID-19 public health crisis," the OAE Director may authorize actions to "accommodate the legitimate needs of parties, attorneys, and others in the interests of justice[.]" See April 24 Order, p. 15, sec. 13. In recognition of similar concerns relating to the public health crisis, the OAE Director will not authorize any attorney disciplinary proceedings, including but not limited to conferences or hearings, to go forward with any of the parties or participants appearing in person in the same location as the hearing panel, unless and until the Court releases a further order or other directive that makes clear that the Court has determined that the issues relating to the public health crisis have ended or improved to the extent that in-person proceedings should resume for attorney disciplinary matters. → A41

34. For all hearings that will proceed by Zoom, the hearing panel chair should notify the parties before and at the prehearing conference of the following hardware and software requirements. That same information will also need to be provided in advance to all

participants in the hearing. These specifications are included in the OAE version of the Judiciary document entitled "How to Join and Participate in a Zoom Virtual Courtroom" described above at paragraph 23: Appendix C

Judiciary Hardware & Software Requirements - Zoom

- Hardware specifications:
  - PC Intel processor – 6th Generation 3.X GHz or faster
  - PC AMD processors – Bulldozer series – 3.X GHz or faster
  - Mac with Intel 6th Generation processor SKYLAKE or later
  - 4GB of RAM or more
- Operating systems:
  - Windows 10 (32 and 64 bit)
  - Mac OS X version 10.10 (Yosemite) or higher, Intel CPU only
- Internet browsers:
  - Google Chrome (version 70 and later)
  - Internet Explorer (version 11 and later, PC)
  - Firefox (version 63 and later)
  - Safari (version 10 and later)

Important:

The video resolution quality will be impacted by minimum hardware requirements

- Speakers or Headphones
- Webcam with Microphone
  - OR integrated camera with microphone)
- Network:
  - 100 MBit NIC or higher
    - High speed broadband Internet access, hardwired strongly encouraged
      - Minimum of 5 Mbps upstream and 5 Mbps downstream
      - Speed Test sites
        - http://openspeedtest.com/ .OR http://www.speedtest.net/
  - Firewall Ports open
    - Inbound TCP: 80, 443, 7070, 5060, 55000 - 60000
    - Inbound UDP: 55000 - 60000
    - Outbound TCP: ANY
    - Outbound TCP: ANY

OFFICE OF ATTORNEY ETHICS
OF THE
SUPREME COURT OF NEW JERSEY

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P.O. BOX 963
TRENTON, NEW JERSEY 08625

MEMORANDUM

TO: All Special Ethics Masters

FROM: Charles Centinaro, Director

SUBJECT: **Procedures for the Recommencement of Hearings before the Special Ethics Masters via Video or Phone**

DATE: June 19, 2020

The Office of Attorney Ethics (OAE) is providing the following directions to the Special Ethics Masters, as to the procedures in place for the resumption of attorney disciplinary hearings. All Special Ethics Masters are on notice of their obligation to comply with these directions. See R. 1:20-6(a)(4)(D).

As a first step in the scheduling of hearings, all Special Ethics Masters should schedule, by July 1, the date on which a mandatory prehearing conference will be held, with the conference to be conducted by July 24, in accord with the procedures set forth below. The parties should commit, at that conference, to reserve specific dates on which the hearing would be conducted remotely, starting on August 1, 2020 and thereafter. The dates would need to be confirmed through the OAE, in accord with the procedures set forth below. No hearing can commence until all prehearing issues will have been addressed and resolved by the Special Ethics Master. In scheduling hearing dates, the Special Ethics Master and the parties are expected to have considered and factored in the time that it will take to submit and to resolve any prehearing or *in limine* motions, objections, and/or other applications. No hearing can commence until the Special Ethics Masters will have resolved all such issues.

All hearings must conform with these directions. These directions follow from the Court Rules, in addition to the Orders of the Supreme Court addressing the COVID-19 pandemic and

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its impact on Court proceedings, dated March 27,[1] April 20,[2] April 24,[3] May 28,[4] and June 11,[5] 2020, and the Post-Pandemic Plan approved by the Supreme Court, dated June 10, 2020:[6]

1. For attorney disciplinary matters, for computing time periods under the Court Rules for "purposes of grievances, formal pleadings, hearings and procedural deadlines," the Court has deemed the period from March 16, 2020 through May 10, 2020 "the same as a legal holiday," and directed that all deadlines "thus shall be tolled[.]" See March 27 Order, p. 12, sec. 8(a)(i); April 24 Order, p. 12, sec. 8(a)(i). → A13 → A38
2. "Effective May 11, 2020, disciplinary hearings . . . will resume in a virtual (video or phone) format to the extent possible based on facilities, technology, and other resources; and the nature and complexity of the matter. The Director of the Office of Attorney Ethics shall exercise discretion and proceed in relatively straightforward matters[.]" April 24 Order, p. 12, sec. 8(b).

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[1] Supreme Court Order, "Omnibus Order on COVID-19 Issues," March 27, 2020, available as of June 10, 2020, at https://www.njcourts.gov/notices/2020/n200327a.pdf?c=cW3. The Notice to the Bar for this Order (March 29, 2020), is available as of June 10, 2020, at https://www.njcourts.gov/notices/2020/n200329a.pdf?c=SJr (cited herein as "March 27 Order"). → A1-A14

[2] Notice to the Bar and Order of the Supreme Court, "COVID-19 – Updated Guidance on Remote Proceedings in the Trial Courts; Options for Observing Court Events and Obtaining Video and Audio Records; Court Authority to Suspend the Commencement of Certain Custodial Terms," April 20, 2020, available as of June 10, 2020, at https://www.njcourts.gov/notices/2020/n200420a.pdf?c=SQs (cited herein as "April 20 Order"). → A15-A24

[3] Notice to the Bar and Order of the Supreme Court, "COVID-19 – Second Omnibus Order on Court Operations and Legal Practice – More Operations to Be Conducted Remotely; Limited Discovery Extensions and Tolling Periods," April 24, 2020, available as of June 10, 2020, at https://www.njcourts.gov/notices/2020/n200424a.pdf?c=ivL (cited herein as "April 24 Order"). → A25-A42

[4] Notice to the Bar and Order of the Supreme Court, "COVID-19 – Third Omnibus Order on Court Operations and Legal Practice," May 28, 2020, available as of June 10, 2020, at https://www.njcourts.gov/notices/2020/n200529a.pdf?c=Sh9 (cited herein as "May 28 Order"). → A43-A48

[5] Notice to the Bar and Order of the Supreme Court, "COVID-19 – Fourth Omnibus Order on Court Operations and Legal Practice," June 11, 2020, available as of June 15, 2020 at https://www.njcourts.gov/notices/2020/n200612a.pdf?c=26B (cited herein as "June 11 Order"). → A81-A88

[6] Notice to the Bar and Plan, "COVID 19 – New Jersey Courts Post-Pandemic Plan – Transition from Phase 1 (Remote Operations) to Phase 2 (Limited Onsite Presence and In-Person Court Events)," June 10, 2020, available as of June 15, 2020, at https://www.njcourts.gov/notices/2020/n200610b.pdf?c=1BV (cited herein as "June 10 Post-Pandemic Plan"). → A49-A80

3. The Court Orders do ***not*** allow the resumption of attorney disciplinary proceedings in other than "a virtual (video or phone) format[.]" See April 24 Order, p. 12, sec. 8(b). A38 The Court has directed that "current health guidance suggests that in-person court operations will not resume in full for some time." May 28 Order, p. 1; June 11 Order, p. 1. Accordingly, unless and until otherwise authorized by the Court, Special Ethics Masters ***must*** conduct ***all*** proceedings in disciplinary matters remotely by video or phone conferencing, ***only***, unless the proceedings cannot be handled remotely. A44 A83

4. Should the Special Ethics Master determine that the particular attorney disciplinary proceedings cannot be handled remotely, the Special Ethics Master is directed to send written notice of the case-specific facts and circumstances which support that determination in a letter addressed to the OAE Director, who will provide further guidance for proceeding in the specific circumstances presented. See April 24 Order, pp. 12-13, sec. 8(b) ("Effective May 11, 2020, disciplinary hearings . . . will resume in a virtual (video or phone) format to the extent possible based on facilities, technology, and other resources; and the nature and complexity of the matter. The Director of the Office of Attorney Ethics shall exercise discretion and proceed in relatively straightforward matters[.]"). A38-A39

5. The Supreme Court has issued the Post-Pandemic Plan that the Court has approved "for the gradual resumption of certain in-person court events," as the courts transition from Phase 1 to Phase 2 of the gradual reopening of court facilities and proceedings. See June 10 Post-Pandemic Plan, p. 2. That Plan specifies the specific "court events that cannot be handled remotely (e.g., based on lack of consent to proceed remotely or Judiciary determination that it should be in person) [which] may be conducted onsite" during Phase 2 of the reopening of the courts. Id. at p. 17. The Court has ***not*** included attorney disciplinary hearings in the category of proceedings which may be conducted onsite in a courthouse during Phase 2. See id. at pp. 19, 22, 24, 26-27. A51 A66 A68, A71, A73, A75-A76

6. The OAE Director is responsible for making sure that the health and safety issues of those involved in attorney disciplinary proceedings will be considered and protected. See generally R. 1:20-2(b). It is the determination of the OAE Director that no Special Ethics Master should attend any disciplinary hearing in-person until the Supreme Court will determine that in-person Court proceedings are safe to resume. Until such time, all disciplinary hearings must be conducted only by use of the remote technologies and the procedures described below.

7. Special Ethics Masters should continue to conduct all hearings "remotely using video and/or phone options to the greatest extent possible," with no hearings involving the live presence in the same location of any presider, the parties, the witnesses, or any attorney. See generally April 20 Order, p. 1, sec. 1; April 24 Order, p. 11, sec. 7(b). A18 A37

8. "Based on current information, the need to use this alternate approach" for attorney disciplinary hearings "will continue for a ***number of months***," with no end date specified by the Court. See April 20 Order, p. 1, para. 1; April 24 Order, p. 1, paras. 3-4; May 28 Order, p. 1; see also June 11 Order, p. 1 (noting the continuing "public health emergency," and that "current health guidance suggests that in-person court operations will not resume in full ***for some time***" [emphasis added]).

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9. The scheduling of all attorney disciplinary hearings must be arranged through the Director of the OAE. Contact person: Jan Vinegar, CourtSmart Coordinator at the OAE. Phone: 609-403-7800, ext. 34172. Janice.Vinegar@NJCourts.gov. No Special Ethics Master can schedule any hearing to proceed unless the arrangements have been confirmed through and by Jan Vinegar.

10. The hearings shall be recorded on CourtSmart as the official hearing record, unless the OAE Director shall give prior authorization for a court reporter to act in place of CourtSmart for the preservation of the hearing record. See generally March 27 Order, p. 11, sec. 7(a); April 20 Order, p. 1, sec. 1; see also R. 1:20-6(c)(2)(A). The services of a court reporter must be arranged by and through the OAE (contact person: Jan Vinegar).

11. Any video and/or phone technology options to be used in an attorney disciplinary hearing or in related proceedings must conform with the technologies approved by the Administrative Director of the Courts, to whom the Court has delegated sole authority to make such determinations. See April 20 Order, pp. 2-3, sec. 4. The Administrative Director has approved the use of Zoom or Teams (in addition to phone) for these purposes, but the particular system to be used must be overseen by OAE staff, in coordination with Ms. Vinegar, and with CourtSmart recording in place to record the proceedings..

12. "Because the Judiciary's ability to livestream court events that are conducted remotely will be limited by the availability of finite resources," it is expected that no attorney disciplinary proceedings will be livestreamed. See April 20 Order, p. 3, sec. 5(a).

13. All Special Ethics Masters have a continuing responsibility to make sure that no confidential information (including confidential personal identifiers, R. 1:38-7(a)) will be, or will have been, disclosed on the record in any attorney disciplinary proceedings, and that proper redaction of hearing records will occur before the testimony or exhibit is made part of the public record. The Special Ethics Masters should make sure that a protective order is in place where necessary or appropriate to "prohibit the disclosure of specific information to protect the interests of a grievant, witness, third party or respondent." R. 1:20-9(h). The Special Ethics Masters should also make sure that the home address and telephone information of the parties and any witnesses will not be included as part of the public record. See generally R. 1:20-6(a)(4(D).

14. The Court Orders have recognized the ***increased risk in a virtual setting of "inadvertent disclosure of confidential information,"*** which may be heightened when the audio and/or video record of the proceedings may be available in a manner which the attorney disciplinary system had not previously experienced. Special Ethics Masters need to be alerted to the duty of the presider and the parties to ensure that they preserve the confidentiality of all categories of information that must be protected against public disclosure, including, but not limited to the following categories of information:

    a. attorney disciplinary records, whose confidentiality is mandated by R. 1:20-9, unless they are public records within the scope of R. 1:20-9(d);

    b. records of any fee arbitration proceedings;

    c. civil commitments;

d. expungements;

e. medical, psychological or mental health;

f. disability issues; see R. 1:20-9(c)(5);

g. sexual abuse or harassment matters concerning any identified or identifiable victim;

h. domestic violence;

i. restraining orders;

j. family part proceedings;

k. guardianship or adoptions;

l. juvenile-family crisis or juvenile delinquency proceedings;

m. child protection or child placement matters;

n. paternity issues; or

o. any administrative, court, or other records excluded from public access.

See generally April 20 Order, p. 3, sec. 5(b). A20

15. All parties, as well as the grievant (if any), must be given ***at least 25 days' notice of the initial scheduled hearing date*** for any hearing that will proceed remotely by audio or video technology. See R. 1:20-6(c)(2)(A). That notice must include information that the proceedings will be conducted virtually, using video or phone technology. That notice must also be provided for the continuation of any hearings that were in progress, but not concluded, as of March 27, 2020. The Special Ethics Master must address at the prehearing conference the specific steps that the Special Ethics Master will take to make sure that such adequate written notice will be given to the parties and the grievant of the date and time of the hearing, and how it will be broadcast virtually.

16. R. 1:20-6(c)(2)(D) sets forth the right of the grievant "to be present at all times during the hearing." The Court Rules do not accord the grievant the right to participate in the proceedings, unless called as a witness during the proceedings by one of the parties. See generally R. 1:20-4(g)(3); R. 1:20-6(c)(2)(D). The grievant must be given the right to view the proceedings through the virtual medium, as the proceedings take place in real time.

17. Should any "[i]nterested person[], including members of the public and the media, . . . request real-time access to observe" an attorney disciplinary matter, such request must be submitted in writing to the OAE Director, at least five business days before the date of the scheduled attorney disciplinary hearing. Such requests must not be determined by the Special Ethics Master. See generally April 20 Order, p. 3, sec. 5(c).

18. Special Ethics Masters should instruct A20

(a) the parties at the prehearing conference, and

(b) on the record, before the start of the hearing, all who will observe the proceedings in any capacity,

that all observers of the proceedings must comply with the Supreme Court Guidelines on Media Access and Electronic Devices in the Courts (Directive #11-20). A163-A184

19. Special Ethics Masters should instruct
    (a) the parties at the prehearing conference, and
    (b) on the record, before the start of the hearing, all who will observe the proceedings in any capacity,

    that the Supreme Court has directed that the unauthorized recording and/or use of the audio or video record of the hearing shall subject the individual involved to criminal charges, including a violation of the New Jersey Anti-Piracy Act, N.J.S.A. 2C:21-21, among other possible charges.

20. The OAE Director is giving notice to all Special Ethics Masters that a prehearing conference ***must*** be held for ***every*** hearing to be scheduled after May 10, 2020. See R. 1:20-5(b). For any case in which a prehearing conference was conducted prior to May 10, 2020, an ***additional*** prehearing conference must be scheduled and conducted to address specifically the implementation of the procedures set forth in the Court's COVID-19 Orders of March 27, April 20 and 24, May 28, and June 11, 2020. The Special Ethics Master must give the parties at least 14 days written notice of the date of the conference, which may be held by telephone or video, without need for CourtSmart recording, except in unusual circumstances (which should be specified in writing by the party making the request and addressed to the Special Ethics Master). See R. 1:20-5(b)(1). The date of the prehearing conference should be set by July 1, 2020, to be held at least 14 days thereafter, but not later than July 24, 2020.

21. The Special Ethics Master should direct the parties to file the prehearing report, in accord with the procedures and specifications set forth in R. 1:20-5(b)(2). The Special Ethics Master should make sure that the parties will address in their prehearing reports all issues relating to matters that need to be addressed and resolved by the Special Ethics Master prior to the start of the hearing, and with specific focus on the virtual nature of the proceedings. All issues relating to
    - the admissibility of evidence;
    - the marking, redaction, and preservation of evidence;
    - whether a protective order will be needed; and
    - how the Special Ethics Master and each party will have, at the time of the hearing, copies of all exhibits and of the pleadings (in hard copy or in electronic PDF format, as the Special Ethics Master should determine) for their individual use,

    will need to be specifically resolved prior to the start of the hearing.

22. The Special Ethics Master will also need to inform the parties of the specific technology (Zoom, Teams, or phone) to be used during the hearing, so that any issues relating to use of that technology may be addressed and resolved prior to the hearing date. Any hearing conducted on Zoom or Teams must be conducted through a Judiciary account, conforming with Judiciary security restrictions, and only as arranged through and by Judiciary staff.

23. The Special Ethics Master, prior to as well as during the prehearing conference, should direct the parties to the resources that have been made available by the Judiciary online

for using Zoom or Teams technology for virtual hearings. The parties should be directed to follow the instructions set forth in "How to Join and Participate in a Zoom Virtual Courtroom," and "How to Join a Teams Meeting through the Teams Client," which are available online at https://njcourts.gov/attorneys/remote.html. The OAE has also provided to all Special Ethics Masters the document entitled "How to Join and Participate in a Zoom Virtual Courtroom" for Attorney Disciplinary Hearings, which is the adaptation of the Judiciary instructions specific to attorney disciplinary proceedings. The Special Ethics Masters should make sure that all participants in any hearing to proceed by Zoom will have been provided with those instructions. → Appendix C

24. The Special Ethics Master should instruct the parties at the prehearing conference of the deadline for the filing of any applications or motions, with regard to any objections as to the manner in which the hearing will proceed, and any issues relating to any proposed exhibit or witness. The Special Ethics Master must have ruled on all such applications and motions prior to the date on which the hearing is to commence.

25. The Special Ethics Master must also set in place at the prehearing conference the procedures to ensure that the grievant will be given timely notice of the hearing, along with meaningful opportunity to observe the proceedings remotely, as they occur.

26. The Special Ethics Master should determine at the prehearing conference whether there are any issues relating to disability or language barriers for the respondent or for any witness that would need to be accommodated at the hearing. The Special Ethics Master must send formal notice of such requests for accommodation to the OAE, to the attention of Jason Saunders, the First Assistant Ethics Counsel. Any interpreter or translator used for the proceedings must conform with Judiciary guidelines for Court proceedings. Any arrangements for an interpreter or translator must be coordinated through Jan Vinegar of the OAE.

27. The prehearing conference shall not be open to the public. R. 1:20-9(c)(2).

28. The Special Ethics Master must address at the prehearing conference all of the "objectives" set forth in R. 1:20-5(b)(3).

29. Within seven days following the prehearing conference, the Special Ethics Master must issue a case management order, in accord with the requirements of R. 1:20-5(b)(4).

30. The Special Ethics Master should provide decisions on all motions to the parties in writing prior to the date on which the hearing is to commence. R. 1:20-6(a)(4)(B).

31. The hearing date should be scheduled within 60 days of the date of the prehearing conference, with the hearing to be concluded within 45 days of its commencement. The hearing report and the hearing record should be provided to the OAE for transmittal to the Disciplinary Review Board within 60 days of the hearing's conclusion. R. 1:20-5(b)(5).

32. "Requests for extensions of time in individual cases, based on specific circumstances, may be submitted by letter in lieu of a formal motion." April 24 Order, p. 15, sec. 12. Such decisions may be made by the Special Ethics Master for additional time, but the → A41

extensions must be documented in writing and included in the hearing record by the Special Ethics Master.

33. "In recognition of the pervasive and severe effects of the COVID-19 public health crisis," the OAE Director may authorize actions to "accommodate the legitimate needs of parties, attorneys, and others in the interests of justice[.]" See April 24 Order, p. 15, sec. 13. In recognition of similar concerns relating to the public health crisis, the OAE Director will not authorize any attorney disciplinary proceedings, including but not limited to conferences or hearings, to go forward with any of the parties or participants appearing in person in the same location as the Special Ethics Master, unless and until the Court releases a further order or other directive that makes clear that the Court has determined that the issues relating to the public health crisis have ended or improved to the extent that in-person proceedings should resume for attorney disciplinary matters.

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34. For all hearings that will proceed by Zoom, the Special Ethics Master should notify the parties before and at the prehearing conference of the following hardware and software requirements. That same information will also need to be provided in advance to all

participants in the hearing. These specifications are included in the OAE version of the Judiciary document entitled "How to Join and Participate in a Zoom Virtual Courtroom" described above at paragraph 23:

Appendix C

Judiciary Hardware & Software Requirements - Zoom

- Hardware specifications:
  - PC Intel processor – 6th Generation 3.X GHz or faster
  - PC AMD processors – Bulldozer series – 3.X GHz or faster
  - Mac with Intel 6th Generation processor SKYLAKE or later
  - 4GB of RAM or more
- Operating systems:
  - Windows 10 (32 and 64 bit)
  - Mac OS X version 10.10 (Yosemite) or higher, Intel CPU only
- Internet browsers:
  - Google Chrome (version 70 and later)
  - Internet Explorer (version 11 and later, PC)
  - Firefox (version 63 and later)
  - Safari (version 10 and later)

Important:

The video resolution quality will be impacted by minimum hardware requirements

- Speakers or Headphones
- Webcam with Microphone
  - OR integrated camera with microphone)
- Network:
  - 100 MBit NIC or higher
    - High speed broadband Internet access, hardwired strongly encouraged
      - Minimum of 5 Mbps upstream and 5 Mbps downstream
      - Speed Test sites
        - http://openspeedtest.com/ OR http://www.speedtest.net/
  - Firewall Ports open
    - Inbound TCP: 80, 443, 7070, 5060, 55000 - 60000
    - Inbound UDP: 55000 - 60000
    - Outbound TCP: ANY
    - Outbound TCP: ANY

APPENDIX B, PART 2

OAE DIRECTOR'S SECOND MEMORANDUM ON RECOMMENCEMENT OF HEARINGS

OCTOBER 13, 2020

OFFICE OF ATTORNEY ETHICS
OF THE
SUPREME COURT OF NEW JERSEY

CHARLES CENTINARO
DIRECTOR

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P.O. BOX 963
TRENTON, NEW JERSEY 08625

MEMORANDUM

TO: Special Ethics Masters, Hearing Panel Chairs, and District Ethics Committee Officers

FROM: Charles Centinaro, Director

SUBJECT: **OAE Director's Second Memorandum: Procedures for the Recommencement of Hearings before the District Ethics Committee Hearing Panels and Special Ethics Masters via Video or Phone**

DATE: October 13, 2020

By initial memorandum, issued June 19, 2020 (First OAE Memorandum), the Office of Attorney Ethics (OAE) had provided guidance and direction to the Special Ethics Masters, the Hearing Panel Chairs,[1] and the officers and members of the District Ethics Committees (DECs) on the resumption of attorney disciplinary hearings. The First OAE Memorandum followed at that time from the four Omnibus Orders that the Supreme Court had already issued, as of June 19, 2020, on the procedures and adjustments to be put in place for court operations to proceed during the COVID-19 Pandemic.

This Second OAE Memorandum follows from the additional Omnibus Orders issued by the Court, as well as the Court's July 22 Order and implementation plan for the resumption of jury trials (**A96-A151**),[2] and the additional Notices, Orders and directives of the Court issued

[1] The Special Ethics Masters and/or Hearing Panel Chairs are referred to herein as the "**presider**."

[2] On July 24, 2020, the OAE issued the *Office of Attorney Ethics Manual on Conducting Virtual Remote Proceedings* (cited herein as *OAE Hearings Manual*), as a compendium of information for the recommencement of hearings. The OAE has issued the second, updated

since June 19 relating to the resumption of court functioning during the pandemic. The Court has directed that its Omnibus Orders issued to date have "established a structure and method of proceeding that governed court practices during Phase 1 [of the Judiciary's Post-Pandemic Plan] (fully remote operations) and the transition to Phase 2 (limited on-site presence and in-person proceedings)." **A154**. This Second Memorandum incorporates the further guidance provided to the OAE by the Court for the resumption of proceedings in attorney disciplinary matters.

All DEC officers and members, including all who serve on DEC Hearing Panels, and all Special Ethics Masters, are on continuing notice of their obligation to comply with these directions. See R. 1:20-6(a)(4)(D). All presiders must make sure that they have conducted one or more Case Management Conferences (after June 19, 2020) to address the relevant issues, and that they have issued Case Management Orders following from those conferences. See **Appendix H** (templates for Case Management Orders); R. 1:20-5(b). All presiders are on continuing notice that no hearing can commence until all prehearing issues will have been addressed and resolved by the presider. In scheduling hearing dates, the presider and the parties are expected to have considered and factored in the time that it will take to submit and to resolve all prehearing or *in limine* motions, objections, and/or other applications. The presider should issue a ruling, either in the form of a written decision or a Case Management Order, or other form of Order, setting forth the reasons upon which the presider has based the decision as to each and all of the parties' prehearing motions, objections, and/or applications. All hearings must conform with the directions set forth in this memorandum and in the First OAE Memorandum.

A. Supreme Court Directives That Attorney Disciplinary Cases Should Proceed Only Through Virtual Technology, at Present

1. The Supreme Court has announced that, as of July 22, 2020, the New Jersey Judiciary had conducted, during the period of remote operations relating to the COVID-19 pandemic, "50,000+ virtual events involving almost 500,000 participants'" which "demonstrates that virtual processes are successful." **A148**.
2. The volume of virtual proceedings cited by the Court, and the number of virtual participants, also illustrates that proceedings on virtual platforms such as Zoom are now common and accessible to anyone with a computer or a Smartphone. The use of internet technologies such as Zoom has become the norm since the start of the COVID-19 emergency.

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edition of the *OAE Hearings Manual* on October 13, simultaneous with the release of this Second OAE Memorandum.

The *OAE Hearings Manual* includes additional documents as its Appendixes, and the citations in this memorandum to any Appendix or to pages of particular documents (e.g., "**A161**") refer to the Appendixes included in the *OAE Hearings Manual*.

The First OAE Memorandum is included in Appendix B, but it has been updated with annotations by hand to include citations to the Court Orders (as the pages are numbered in Appendix A).

3. The Court announced at the same time, as of July 22, 2020, the priority that it needed to give to the incremental resumption of new Civil and Criminal jury trials, particularly where the defendant was incarcerated, which would necessitate the focusing of Judiciary resources and facilities on those specific cases identified by the Court for in-person proceedings. See **A96, A107**. The Court has identified the need to resume jury trials as "necessary – and it is urgent." **A110.** In its September 17 directive to the Bar, the Court has further identified the delays in resumption of jury trials, in particular as to incarcerated defendants, as having "stall[ed] the wheels of justice." **A210**; see **A212.**

4. In order for in-person proceedings to be conducted at this time in the category of cases identified by the Court as the priority (jury trials, with criminal cases involving incarcerated defendants being the top priority), the number of such cases to proceed at once would need to be purposely limited, to allow for "gradually resuming on-site presence and in-person proceedings, including for matters that cannot be conducted in a remote format." **A100.** The Court specifically allowed jury trials to be resumed in accord with the terms and procedures of the July 22, 2020 Order, with the following warning and precautions: "In light of public health approval for limited on-site presence (with appropriate precautions), and technological resources that support virtual operations, a ***limited number of jury trials can be resumed at this time***." **A100** (emphasis added).

5. The Court has also made clear that, in order for the limited number of jury trials to proceed, the number of other proceedings occurring at the same time in any courthouse must also be ***deliberately limited***. See, e.g., **A144** ("The Judiciary has an obligation to reduce foot traffic in the courthouse and mitigate logistical challenges with court facilities to provide social distancing. . . . Total in-person trial activity will be limited.").

6. The Court has also determined that the Judiciary must take specific precautions and follow set procedures to ensure the health and safety of all who would be using the courthouses at the same time. The Court has directed courthouse users to recognize that there are presently "severe space restrictions." **A108**. The Court has identified the following as specific safety procedures to be set in place for jury trials to resume:

    a. COVID-19 screening procedures for those persons involved with jury trials, to include point-of-entry screening, thermal scanning, designation of a specific route for personnel to get to the assigned courtroom(s) to be used for the specific court event, and including specification of elevator protocols (**A141, A142**);

    b. specific duties and procedures in place to be followed by Judiciary employees as to COVID screening that must take place before the hearing date, and reporting of information within the Judiciary (mandatory for Judiciary employees) (**A186**);

    c. staggered schedules for movement in courthouses of juror groups, with Judiciary staff to serve as escorts (**A195**);

    d. steps to be taken to make sure proper distancing occurs in courtrooms, including through measures such as use of plexiglass barriers, and reconfiguration of courtrooms (**A96, A104, A195**);

e. "rigorous review" to be conducted for any courtroom or court space to be used for the specific proceedings, to address in advance where "all trial participants could be seated, with appropriate sightlines, with at least six feet of social distancing" (**A193**);

f. provision of personal materials such as "sanitizer; notepads/pens if applicable," and clear face masks for use while the proceedings are underway (**A142, A194**);

g. "access to designated restrooms and eating areas" (**A141-A142; A196**);

h. arrangements for additional cleaning and disinfecting procedures to be followed, and for sanitizing procedures to be arranged with courthouse building owners (**A97, A101, A196-A197**);

i. careful planning to make sure that public access to criminal trials will be protected and accommodated, and that such access will not be impeded by other proceedings being conducted or accommodated in the courthouse at the same time (**A195, A209, A213**);

j. strict adherence to the Court's mandate that "the Judiciary always will prioritize the physical and psychological safety of trial participants," as the Court resumes criminal jury trials, to be followed by civil jury trials, with the scheduling or arrangements for any other matters not to interfere with the Court's oversight of the priority given to jury trials (**A197**);

k. strict adherence to the mandate that "[t]he Supreme Court is committed to prioritizing trials for detained defendants," in scheduling use of courthouse facilities at this time (**A197;** see **A200-A204** [detailing which proceedings may presently be scheduled for in-person hearings in courthouses, until further order of the Court]; **A212** ["The overall approach . . . will be for all counties to prioritize criminal cases involving detained defendants, while also expanding to civil cases."]).

7. Even that partial list of specific safety procedures detailed by the Court for in-person proceedings in any courthouse highlights why attorney disciplinary proceedings cannot proceed at this time in an in-person format, and instead must be scheduled to proceed only using remote (video and phone) technologies. The OAE does not have the resources, ability, or staff in place on-site in any courthouse to be able to accommodate any of the categories of precautions that the Court has identified as necessary to resume in-person proceedings.

8. As a separate issue compelling the same conclusion, the OAE also cannot arrange for any in-person proceedings in any courthouse in the State, where the Court has directed all Judiciary personnel – including the OAE – to take no action to interfere with the deliberate and careful steps being taken by the Court to address the priority and urgency of the safe resumption of jury trials across the State. See **A144**.

B. OAE Implementation of the Court's Directives, with Attorney Disciplinary Cases to Proceed Only Through Virtual Technology (Zoom or Phone), at Present

9. With that additional information from the Court, it is the continuing determination of the OAE Director that attorney disciplinary proceedings will only be scheduled for the foreseeable future to be conducted in "a virtual (video or phone) format," and that no attorney disciplinary proceedings will be scheduled for the foreseeable future to proceed in-person. See **A38-A39; A161; A206**.

10. In the circumstances presented during the COVID-10 pandemic, the Court has identified how court proceedings should be conducted, including through use of virtual technology (video or phone), as "a **temporary** solution to an unprecedented situation, with "in-person operations" to recommence only "when it is safe to do so." See **A109** (original emphasis); see also **A99.** The Court has directed that "current health guidance suggests that in-person court operations will not resume in full for some time." See **A44, A83**; see also **A111** (Court "cannot predict if or when" certain court proceedings "will be able to resume in a pre-COVID-19 format").

11. Accordingly, unless and until otherwise authorized by the Court, all presiders ***must*** conduct ***all*** proceedings in disciplinary matters remotely by video or phone conferencing, ***only,*** unless the proceedings cannot be handled remotely, in which case they would need to be stayed at present. See **A111** (Directive of the Court: "The Judiciary is responsible to ensure the fair and timely administration of justice.").

12. The procedures for the scheduling of remote attorney disciplinary hearings are as set forth in the First OAE Memorandum. **B4** (para. 9); **B13** (para. 9). All presiders should take prompt action, including through the scheduling of additional Pre-Hearing Conferences (to be conducted remotely, using virtual technology, including phone), if needed, to make sure that all attorney disciplinary hearings will be conducted and completed as expeditiously as may be accomplished, in the circumstances presented in the individual case.

13. In accord with the procedure specified in the First OAE Memorandum (**B3** (para. 4); **B12** (para. 4)), should the presider determine that the particular attorney disciplinary proceedings cannot be handled remotely, the presider is directed to send written notice of the case-specific facts and circumstances which support that determination in a letter addressed to the OAE Director, who will provide further guidance for proceeding in the specific circumstances presented. See **A38-A39**, **A161**.

14. Consistent with the Supreme Court's Omnibus Orders of April 24 and July 24, 2020 (**A38, A161**), the OAE has identified for the Court certain types of violations as potentially straightforward matters, which should proceed to a hearing remotely, depending on the facts, issues in dispute, and circumstances of the particular case, as determined by the presider. This analysis is very fact-specific. The presider would need to address these issues on a case-by-case basis at the Pre-Hearing Conference. ***If the presider determines the matter should not proceed, the presider should notify the OAE Director in the manner specified in the preceding paragraph.*** These matters are listed as follows:

i. Gross neglect, RPC 1.1
ii. Failure to abide by a client's directions, RPC 1.2
iii. Lack of diligence, RPC 1.3
iv. Failure to provide the basis or rate of a fee, RPC 1.5(b)
v. Failure to maintain client confidentiality, RPC 1.6
vi. Conflicts of interest, RPC 1.7, 1.8, 1.9
vii. Failure to safeguard, commingling of client funds, and/or negligent misappropriation, RPC 1.15(a)
viii. Failure to return client funds, RPC 1.15(b)
ix. Failure to safeguard disputed funds, RPC 1.15(c)
x. Recordkeeping violations, R. 1:21-6 and RPC 1.15(d)
xi. Frivolous litigation, and/or failure to expedite litigation, RPC 3.1 and RPC 3.2
xii. Candor to the tribunal, RPC 3.3
xiii. Trial misconduct, RPC 3.4
xiv. Ex parte communications and/or engaging in conduct disrupting the tribunal, RPC 3.5
xv. Lawyer acting as an advocate at a trial in which the lawyer is a likely witness, RPC 3.7
xvi. False statements in the representation of a client, RPC 4.1
xvii. Communicating with a person represented by counsel, RPC 4.2
xviii. Failure to supervise, RPCs 5.1, 5.2 and 5.3
xix. Fee sharing, RPC 5.4(a)
xx. Unauthorized practice of law, RPC 5.5
xxi. Advertising violations, RPC 7.1 to RPC 7.5
xxii. False statements to disciplinary authorities and/or failure to cooperate, RPC 8.1(a) and (b)
xxiii. Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, RPC 8.4(c)
xxiv. Conduct prejudicial to the administration of justice, RPC 8.4(d)
xxv. Engaging in a professional capacity in discrimination, RPC 8.4(g)

15. Certain additional types of matters may not be straightforward so as to be able to proceed to a hearing in the first group of attorney disciplinary proceedings to move forward through virtual proceedings. The presider should determine through the parties' submissions and through the presider's direct inquiry of the parties at the Pre-Hearing Conference the feasibility of trying the specific case virtually. The presider would need to address these issues on a case-by-case basis at the Pre-Hearing Conference. If the presider determines the matter should not proceed, the presider should notify the OAE Director in the manner specified in paragraph 13. The following list includes examples of the types of matters which generally may be anticipated to present substantial

impediments, if they were to be included in the initial group of cases scheduled to proceed to a virtual hearing at this time:[3]

i. Knowing misappropriation, in violation of RPC 1.15(a), RPC 8.4(b) and (c), In re Wilson, 81 N.J. 451 (1979), In re Hollendonner, 102 N.J. 21 (1986), and In re Siegal, 133 N.J. 162 (1993).

ii. Fee overreaching matters, in violation of RPC 1.5(a) and In re Ort, 134 N.J. 146 (1993).

iii. Certain complex financial conflicts of interest, in violation of RPC 1.7 and RPC 1.8.

iv. Certain complex financial cases charging negligent misappropriation, failure to safeguard, and failure to return funds, including those matters alleging the systematic failure to return government recording charges in real estate matters. In re Fortunato, 225 N.J. 3 (2016).

v. Misconduct cases, in violation of RPCs 3.1, 3.4, and/or 8.4(c) or (d), where the matter also involves voluminous documents, or where the complexity of the underlying litigation makes it impractical to try the case virtually.

vi. Certain types of fraud allegations involving a long and systematic pattern of misconduct over the course of many years involving many victims. For example, those matters involving mortgage modification, debt relief fraud, real estate fraud, with multiple transactions and victims, in violation of RPC 8.4(b) and/or RPC 8.4(c).

C. ***Zoom Connection Test Information***

16. In accord with the procedures specified in the *OAE Hearings Manual*, the parties and the full Hearing Panel or Special Ethics Master are required to participate in a practice internet connection test for Zoom (a "**Zoom Connection Test**"), which will be overseen by OAE hearings support staff. At the Zoom Connection Test, the participants will test their equipment, software, and bandwidth to be used on the Zoom platform, prior to the scheduled hearing date. The Zoom Connection Test is intended to serve as a mandatory, basic, preparation step in ensuring the hearing will proceed without avoidable technical issues, starting with the ability of all participants to connect through Zoom.

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[3] Please note that certain types of cases within the listed categories may nonetheless be anticipated to proceed without impediment to a virtual hearing, depending on the specific facts and circumstances, such as those which include pretrial fact stipulations, admissions contained in the pleadings, and/or stipulations with regard to the admissibility of evidence.

17. Any participant who has attended the Zoom Connection Test for any hearing from August 19, 2020, forward would not need to re-attend the session in connection with their participation in any other hearing. The Zoom Connection Test need only be attended once.

18. The participants are urged to attend the Zoom Connection Test at the same time, if that can be arranged. For a variety of reasons (including prior completion of the Test by a hearing participant, or scheduling conflict), that may not be practical or possible or necessary.

19. Where manageable, for those cases to be heard before a Hearing Panel (rather than a Special Ethics Master), the Panel Chair should coordinate with the other members of the Hearing Panel so the Hearing Panel will participate in the Zoom Connection Test together, on the same date. The parties (including both Respondent and Respondent's counsel, in addition to the Presenter) should also arrange to attend the Zoom Connection Test at that time.

20. The OAE expects to schedule Zoom Connection Tests periodically on certain weekday mornings (to be determined by the OAE, based on available staff and technologies), starting at 8:45 a.m. and ending by 9:30 a.m. It is expected that the Zoom Connection Test for any participant would be completed in roughly 20 minutes, unless technical issues are presented.

21. At the Case Management Conference, the presider should notify the parties of the date on which the Hearing Panel Members will participate in the Zoom Connection Test, and the parties should make every effort to attend the Zoom Connection Test at the same time. The presider will need to confirm the scheduling of the Zoom Connection Test with Janice Vinegar of the OAE prior to the date of the Zoom Connection Test (***email to be sent to*** Janice.Vinegar@NJCourts.gov ***and*** OAE.mbx@NJCourts.gov; ***subject line***: "Zoom Connection Test Scheduling"), in order for Ms. Vinegar to make sure that the Zoom notices and invitations to the Zoom Connection Test will be issued on time, and to the proper recipients. Any party or Hearing Panel Member who cannot attend the Zoom Connection Test when it is scheduled by the presider will need to make their own separate arrangements.

22. If a Hearing Panel Member or Special Ethics Master fails to participate in the Zoom Connection Test before the date on which the hearing is scheduled to begin, the hearing cannot go forward until that person attends and completes the Zoom Connection Test.

23. The Respondent is required to participate in the Zoom Connection Test, whether represented by counsel or appearing *pro se*. If a party – Presenter, Respondent, and/or Respondent's counsel – fails to participate in the Zoom Connection Test before the date on which the hearing is scheduled to begin, that party may be subject to sanctions to be imposed by the presider, pursuant to R. 1:20-5(c).

24. If either Respondent or Respondent's counsel fails to participate in the Zoom Connection Test, the Respondent will be deemed to have waived any objection at the time of the hearing as to any technical matters that they had notice and opportunity to address in advance, but declined to do so. See *OAE Hearings Manual*, at sec. 3(c).

25. The hearing should not be delayed by any requests for additional time, or for technical assistance or any technical problems on Zoom encountered by a party who failed to schedule or to attend the mandatory Zoom Connection Test. If the circumstances warrant it, the presider may require the party to proceed by telephone, which the Supreme Court has identified as an acceptable virtual technology for hearings.

26. The Zoom Connection Test may be scheduled at any time during the pendency of the hearing, and no hearing date need be set for a participant to contact the OAE to schedule a Zoom Connection Test. The parties are expected to make use of that lead time prior to the hearing to address any issues identified at the Zoom Connection Test, or otherwise identifiable through Zoom resources readily available on the internet, that warrant follow-up by the party before the hearing, to ensure that party will be able to participate in the hearing on Zoom without technical impediments or complications.

27. The parties should also participate in the Zoom Connection Test with the goal of making sure the party will be able, separately, to provide relevant information (e.g., about testifying on Zoom and connecting to the hearing on Zoom) and assistance to any witnesses to be called by that party at the hearing.

28. Should any party seek to have their witnesses or the Grievant included in a Zoom Connection Test, such ***specific application*** should be submitted to the presider in writing, with notice to the adverse party, at least 14 days prior to the hearing date. The presider should consider the application, and, if the presider determines the requested relief to be appropriate and necessary, the presider should send an email to OAE Hearings Coordinator Janice Vinegar (***email to be sent to*** Janice.Vinegar@NJCourts.gov ***and*** OAE.mbx@NJCourts.gov; ***subject line***: "Zoom Connection Test for Witnesses") at least one week prior to the scheduled hearing date.

29. Where shorter lead times may necessitate conducting the Zoom Connection Test closer to the scheduled hearing date, the OAE will make every effort to accommodate the priorities and requests specified by the presider for that particular hearing.

D. Templates Made Available to the Presiders for Use in All Disciplinary Cases, Including Case Management Orders, and Opening and Closing Statements

30. The OAE has made available to presiders templates for Case Management Orders which address issues specific to virtual hearings.

31. The two Case Management Orders, which should be issued in all cases (with Word versions available on request from the OAE), are in **Appendix H**, and they are the following:

    1. **Sample Case Management Order for Virtual Hearing: Case Management Order, Pursuant to R. 1:20-5(b)(4)**
       (to be issued in all cases by the presider within 7 days following prehearing conference; R. 1:20-5(b)(4). It includes all categories encompassed in the Court Rule, to be addressed before hearing proceeds.)

    2. **Supplemental Case Management Order, Pursuant to R. 1:20-5(b)(4): Instructions for the Public Hearing to be Conducted in this Attorney Disciplinary Case**
       (to be issued in all cases by the presider, to give notice and comprehensive instructions to all parties as to the procedures in place for attorney disciplinary hearings to be conducted virtually)

32. The OAE has also made available to the presiders the text of the introductory statement that should be read into the record by the presider to open the hearing, and the closing statement which should be read into the record by the presider to close the hearing. The presider should also fill out the checklist of the hearing record while the hearing record is still being captured on audio (before turning off CourtSmart).

33. The templates are contained in **Appendix J** (for Hearing Panel Chairs) and **Appendix K** (for Special Ethics Masters), with Word versions available on request from the OAE:

Appendix J:

Templates for Use by the Hearing Panel Chair to Open and Close the Hearing:

1. Instructions for the Hearing Panel Chair to Open the Hearing (includes the **Opening** Statement which should be read into the record by the Panel Chair to start the hearing)
2. **Closing** Remarks to Be Read into the Record by the Hearing Panel Chair
3. Hearing Panel Chair's **Checklist** to be completed at the end of the hearing (confirming the exhibits in evidence and what else constitutes the documents in the hearing record)

Appendix K:

Templates for Use by the Special Ethics Master to Open and Close the Hearing:

1. Instructions for the Special Ethics Master to Open the Hearing (includes the **Opening** Statement which should be read into the record by the Special Ethics Master to start the hearing)
2. **Closing** Remarks to Be Read into the Record by the Special Ethics Master
3. Special Ethics Master's **Checklist** to be completed at the end of the hearing (confirming the exhibits in evidence and what else constitutes the documents in the hearing record)

E. Added Steps to Ensuring the Hearings Will Go Forward with Technical Issues Anticipated and Addressed Before the Hearing

34. The parties are responsible for providing their witnesses with the information contained in the two resource guides: (i) "How to Join and Participate in a Zoom Virtual Courtroom" (**Appendix C**); and (ii) "Witness Instructions for Remote Disciplinary Proceedings" (**Appendix E**). The parties are also responsible for addressing with the witnesses whom they choose to call any issues that that witness may encounter as to proceeding on Zoom.

35. During the hearing, the presider should ask the parties and other members of the Hearing Panel (if the matter is being heard before a Hearing Panel) at the end of each witness's testimony if anyone involved experienced any technical problems that affected their ability to hear and/or observe the proceedings during the witness's testimony. In addition, the OAE recommends that the presider should ask the parties and other members of the Hearing Panel at the end of each day of the hearing if anyone involved experienced such problems. The presider should take immediate corrective action, such as by directing that any portion of the witness's testimony be repeated, if the presider should determine that technical issues affected the hearing or viewing by a participant of the specific portion of the testimony.

36. The OAE will issue all invitations for the Zoom Connection Test and hearing, and any other events to be scheduled using the Judiciary's Zoom account. Each invitation is specific to the person to whom that invitation is sent by the OAE. ***No recipient may forward that Zoom invitation, or the information about logging in to the proceeding on Zoom, to any other recipient.*** In order to have the Zoom invitation sent to the grievant, to any witnesses, or to any third party, the party seeking that action must first ask the presider to authorize the request, and the presider must then inform the OAE of the specific action to be taken. In particular, ***the Presenter is responsible for taking the necessary steps to make sure that the information about logging in to the hearing will be sent by the OAE to the Grievant in a timely manner.*** The OAE will need the list of

names and email addresses to which the presider is requesting that Zoom invitations will be sent by the OAE.

37. The procedures to be followed by the presider where any "[i]nterested person[], including members of the public and the media, . . . request real-time access to observe" an attorney disciplinary matter are set forth in the First OAE Memorandum at p. 5, para. 17 (**B5**).

38. The OAE Zoom Moderator will activate the **ScreenShare feature of Zoom** for counsel at the start of the direct and/or cross examination of any witness, should counsel seek to use ScreenShare to display any exhibit. But counsel is responsible for having taken sufficient steps to have learned in advance (***before*** the hearing date) how to use ScreenShare, and for determining how -- if at all -- ScreenShare will be used during the hearing.

F. CHART: Overview of Issues Relating to Remote Proceedings

39. The **CHART** on the following pages provides an overview in summary form of some of the basic issues presented as to remote disciplinary proceedings. It is intended to serve as an additional resource to assist presiders in addressing legal and other issues which may be submitted by the parties.

CHART:

OVERVIEW OF ISSUES RELATING TO REMOTE PROCEEDINGS[4]

Contents:

1. **At This Time, No Hearing Can Be Conducted In-Person, and Ethics Hearings Can Only Proceed Virtually (on Zoom)** 14
2. **Attorney Disciplinary Hearings Are Public, Unless a Protective Order Has Been Issued, Prior to the Hearing** 14
3. **Purpose of the Attorney Disciplinary System** 15
4. **Issues that Will Require the Adjournment of a Hearing** 16
5. **Technological Issues** 17
6. **Recording issues (CourtSmart)** 19
7. **Presider: Hearing Panel Chair or Special Ethics Master** 20
8. **Parties, Participants, and Viewers** 20
9. **Consultations of Respondent with Counsel** 21
10. **Exhibits, and Exhibit Lists** 22
11. **Order of the Proceedings** 23
12. **Objections and/or Motions and/or Applications** 23
13. **Issues of Confidentiality** 24
14. **Hearing Panel Decisions Will Be Subject to DRB and Supreme Court Review** 25
15. **Issues That Should Not Be Made Part of the Proceedings, or That Are Outside the Presider's Authority** 25

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[4] The OAE Director's first memorandum on the procedures for disciplinary hearings to be conducted remotely, dated June 19, 2020, is cited herein as "**OAE 1st Memo, 6/19/20.**" It appears as **Appendix B, Part 1**, to the *OAE Hearings Manual.*

The OAE Director's second memorandum on the procedures for disciplinary hearings to be conducted remotely, dated October 13, 2020, is cited herein as "**OAE 2nd Memo, 10/13/20.**" It appears as **Appendix B, Part 2**, to the *OAE Hearings Manual.*

1. At This Time, No Hearing Can Be Conducted In-Person, and Ethics Hearings Can Only Proceed Virtually (on Zoom):

Topic	*Comment*	*Authority or Cite*
Authority for Proceeding Remotely by Zoom	The Omnibus and Other Orders of the Supreme Court address the reasons why the Court has mandated that attorney disciplinary hearings must proceed by virtual technology (Zoom or phone), with no hearings conducted at this time with the parties and participants appearing in person in any courtroom, as the result of the COVID-19 global health emergency. The Supreme Court's Orders are included, in full, in Appendix A (through Sept. 17, 2020). The OAE Director's Memoranda of June 19 and October 13, 2020, implementing those Orders are set forth in Appendix B, with citations to the Orders included therein.	Appendix A (Orders) and B (Director's Memos) OAE 1st Memo, 6/19/20, at p. 1-2; pp. 3-4, ¶¶ 3-8; p. 8, ¶ 33 OAE 2nd Memo, 10/13/20, pp. 2-7
Authority to Proceed by Telephone	R. 1:20-6(c)(2)(A) provides that, "[i]f special circumstances dictate, the trier of fact may accept testimony of a witness by ***telephone*** and/or video conference." ***Telephone testimony has been allowed under the Court Rules for these hearings since 1995.*** The 1995 Official Comment to the Rule states that the provision for telephone and video testimony was added to clarify an already-existing practice (as of 25 years ago).	R. 1:20-6(c)(2)(A)

2. Attorney Disciplinary Hearings Are Public, Unless a Protective Order Has Already Been Issued, Prior to the Hearing:

Public Hearings	All attorney disciplinary hearings are public hearings, unless there is a protective order in place.	R. 1:20-6(c)(2)(F)

		OAE 1st Memo, 6/19/20, p. 5, ¶ 17
What Must Happen Before Any Part of the Public Record Can Be Sealed, or Before a Protective Order May Be Issued	Any application for a protective order should have occurred before the hearing date, and in accord with the terms of the Case Management Order. No application for a protective order should be made orally on the public record. Any party who makes an oral application for a protective order during the hearing on Zoom, or who otherwise discloses confidential or otherwise protected information, is on notice that such disclosure may have already effected the dissemination of the confidential information live on the internet, with worldwide contemporaneous dissemination of that irretrievable information. See RPC 8.4(d) (conduct prejudicial to the administration of justice). It should be obvious to the parties and the participants why the need to be vigilant against the public disclosure of information that must remain confidential is particularly serious for hearings conducted using virtual technology. Such damage, once done, cannot be undone.	OAE 1st Memo, 6/19/20, pp. 4-5, ¶¶ 13-14

3. Purpose of the Attorney Disciplinary System:

Why the Attorney Disciplinary System Exists	To protect and promote public confidence in the Bar, in the Courts, and in our system of justice.	See generally In re Gallo, 178 N.J. 115, 122 (2003)
To Whom Attorney Disciplinary Authorities Are Themselves Accountable	The Supreme Court has established the attorney disciplinary system, and determined who shall serve in that system, with members of the District Ethics Committees all appointed by Court Rule (R. 1:20-3(a) and (b)), and with all DEC members and all representatives of the attorney disciplinary system bound to abide by the Court Rules and the RPCs. The Supreme Court also has established and oversees the OAE, pursuant to R. 1:20-2. The Supreme Court also appoints Special Ethics Masters. R. 1:20-6(b)(2)	R. 1:20-2, 1:20-3, and 1:20-6

4. Issues that Will Require the Adjournment of a Hearing:

ADA Issues; Translator or Interpreter Needed	Hearing cannot proceed ***unless*** OAE has been given timely notice by presider of special accommodations or arrangements requested for hearing, ***and*** OAE has been able to respond	OAE 1st Memo, 6/19/20, p. 7, ¶ 26
Grievant Not Notified of Hearing	Presenter was responsible to give notice to Grievant. Hearing cannot proceed.	R. 1:20-6(c)(2)(D) OAE 1st Memo, 6/19/20, p. 5, ¶ 16; p. 7, ¶ 25
Presider Has Not Held Pre-Hearing Conference(s) to Address Issues Specific to Remote Proceedings	Hearing cannot proceed. And if no Pre-Hearing Conference has been held since June 19 (the date the OAE Director issued the memo spelling out what had to be addressed specifically at such a conference), hearing cannot proceed.	OAE 1st Memo, 6/19/20, p. 1; pp. 6-7, ¶¶ 21-29 OAE 2nd Memo, 10/13/20, p. 2
Presider Has Not Required Parties to Submit Objections in Writing or by Motion	Presider is responsible for making sure the hearing record is complete, with issues preserved for further review by the Disciplinary Review Board and/or the Supreme Court. Hearing cannot proceed.	OAE 1st Memo, 6/19/20, p. 1; p.7, ¶¶ 24, 30 OAE 2nd Memo, 10/13/20, p. 2
Presider Has Not Issued Decisions on the Parties' Applications or Motions Before the Hearing Date	Presider is responsible for making sure the hearing record is complete, with issues preserved for further review by the Disciplinary Review Board and/or the Supreme Court. Hearing cannot proceed.	OAE 1st Memo, 6/19/20, p. 1; p. 7, ¶¶ 24, 30 OAE 2nd Memo, 10/13/20, p. 2

5. Technological Issues:

Zoom Connection Test	Parties and Hearing Panel **must** attend the Zoom Connection Test prior to the date of the hearing Case Management Order must specify requirement to attend Zoom Connection Test, and warn parties of application of R. 1:20-5(c) (sanctions) for any party who fails to comply. See **Appendix G:** "The Zoom Connection Test: Making Sure the Participants Will Be Ready to Go Forward on Zoom on the Day of the Hearing"	OAE 1st Memo, 6/19/20, pp. 6-9, ¶¶ 22-23, 34 OAE 2nd Memo, 10/13/20, pp. 7-9, ¶¶ 16-30
Parties' Access to and Use of Zoom	OAE will send Zoom invitation with login details no later than 4 days before hearing Parties are required to attend Zoom Connection Test before hearing Parties are responsible for their own hardware, software, ability to use both, and resolving any technological problems, limitations, challenges, deficiencies, or impediments See **Appendix G:** "The Zoom Connection Test: Making Sure the Participants Will Be Ready to Go Forward on Zoom on the Day of the Hearing"	OAE 1st Memo, 6/19/20, p. 4, paras. 9, 11; pp. 6-8, ¶¶ 22-23, 34 OAE 2nd Memo, 10/13/20, pp. 7-9, ¶¶ 16-29; p. 11, ¶ 37
Witnesses' Access to and Use of Zoom	Each party is responsible for any technological or Zoom issues relating to that witness The parties must submit a written request to the presider if they seek to schedule a Zoom Connection Test for any witnesses. The presider would oversee those arrangements with the OAE. R. 1:20-6(c) provides that, "[i]f special circumstances dictate, the trier of fact may accept testimony of a witness by ***telephone*** and/or video conference." See **Appendix G:** "The Zoom Connection Test: Making Sure the Participants Will Be Ready to Go Forward on Zoom on the Day of the Hearing"	OAE 1st Memo, 6/19/20, p. 4, ¶¶ 7, 11; pp. 6-8, paras. 22-23, 34 OAE 2nd Memo, 10/13/20, pp. 2-3, pp. 5-6

OAE Staff Assistance to the Presider During Hearing	OAE technical support staff will not speak on the record unless specifically addressed by the presider, unless there a technical issue arises that must be brought to presider's attention. OAE staff will first identify themselves on the record and briefly state the issue to be brought to the presider's attention.	
Waiting Room	The presider may ask OAE technical staff to have witnesses or parties moved to the "waiting room" on Zoom for specific reasons (e.g., sequestration; until other party rejoins the proceedings)	
Any Technical Issues Relating to Zoom	Zoom is a technology or an online platform used by the Judiciary for attorney disciplinary proceedings through the Judiciary's Zoom accounts. Zoom and the Judiciary are wholly independent entities. If a party has any question about Zoom, that party is responsible for contacting Zoom or consulting resources made available by Zoom to address and to resolve such an issue. Any issue relating to Zoom that could be recognized prior to the hearing must be addressed by formal motion prior to the hearing, on the schedule set by the presider, or such issues shall be deemed waived. See **Appendix G**: "The Zoom Connection Test: Making Sure the Participants Will Be Ready to Go Forward on Zoom on the Day of the Hearing"	See **Appendix C** (resources for using Zoom)
ScreenShare Feature of Zoom	The parties may decide whether to use ScreenShare to display exhibits during the hearing. The OAE Zoom Moderator will activate ScreenShare for each party at the start of the questioning (direct or cross-examination) of any witness. The mechanics of how to use Screen Share are the sole responsibility of the party seeking to use it, and such skills need to be acquired prior to the date of the hearing. See **Appendix G**: "The Zoom Connection Test: Making Sure the Participants Will Be Ready to Go Forward on Zoom on the Day of the Hearing"	OAE 2nd Memo, 10/13/20, p. 11-12, ¶ 38

6. Recording issues (CourtSmart):

Hearing Record	CourtSmart is the only official hearing record, unless the OAE will have arranged for a court reporter to transcribe the proceedings as they occur. The CourtSmart recording would be converted to a print transcript, if a transcript of the proceedings should later be requested or needed. The OAE does not expect that the Zoom session will be preserved for any hearing. Zoom is not the official record of the proceeding. Any recording from the Zoom session could not and would not be made available to anyone who requests the official hearing record, and the Zoom recording would not be made available to anyone for any purpose. The presider bears the responsibility for maintaining the complete hearing record, which must be turned over to the OAE for transmittal to the Disciplinary Review Board on the completion of the hearing and issuance of the Hearing Panel Report. See R. 1:20-6(c)(2)(E).	OAE 1st Memo, 6/19/20, p. 4, ¶ 10
CourtSmart	After the CourtSmart recording of the hearing commences, the CourtSmart recording will continue without interruption, unless the presider directs: (a) that CourtSmart should be paused or stopped, or (b) that a Zoom Breakout session is authorized. The OAE CourtSmart monitor will keep track to make sure at all times whether the CourtSmart recording is proceeding properly. Anything said during the hearing will be captured on CourtSmart, and it is important for the presider to announce that "we are now on the record," and that "we are now off the record" when those events occur	OAE 1st Memo, 6/19/20, p. 4, ¶ 10
Recording of any part of the proceedings by any participants or viewers	**Expressly prohibited by the Supreme Court** **Criminal penalties may attach**; see OAE Director's June 19, 2020 Memo, p. 6, paras. 18-19.	OAE 1st Memo, 6/19/20, p. 6, ¶¶ 18-19

7. Presider: Hearing Panel Chair or Special Ethics Master:

Responsible to Oversee the Proceedings, and the Record, at All Times	The presider should enforce the same rules of procedure as in a Court hearing. The parties may only speak when recognized by the presider, except for when they request permission to be heard.	
Ex parte communications	They cannot occur. Presider is responsible for making sure that the Hearing Panel or Special Master engages in no discussion of the case unless both parties are included in that discussion. Such discussions must be disclosed by the presider to the excluded party, if they occur, for that party to determine if any application for relief (e.g., recusal) is warranted in the circumstances. This is an extremely important issue, warranting the vigilance and attention of all participants in the proceedings at all times. The presider should take steps to avoid opening the Zoom session with any party unless the adverse party is also present.	

8. Parties, Participants, and Viewers:

Respondent	Respondent is required to attend the complete hearing. Respondent cannot be excused from attending the hearing. If a Respondent declines to attend the hearing, the hearing could nonetheless proceed in the Respondent's absence, if the Respondent has otherwise been given proper notice of the proceedings. Respondent must appear on camera at all times during the hearing, and Respondent's counsel must also appear on camera, even if they share the same computer for the Zoom session.	R. 1:20-6(c)(2)(D) RPC 8.1(b); 8.4(d)
Grievant	Must be given notice of hearing Should be able to watch proceedings on Zoom, with ***camera off*** and ***microphone muted*** Cannot be sequestered, because of right to attend full hearing	R. 1:20-6(c)(2)(D)

		OAE 1st Memo, 6/19/20, p. 5, ¶ 16; p. 7, ¶ 25
Public	Right to view hearing as it occurs, with ***camera off*** and ***microphone muted,*** if permission to attend has been sent by presider to OAE and granted in accord with procedure set in OAE Director's June 19 Memo at p. 5, para. 17 See **Appendix L:** "Instructions for Any Grievants and/or Members of the Public Who Seek to View an Attorney Disciplinary Hearing on Zoom"	OAE 1st Memo, 6/19/20, p. 5, ¶ 17
Any other category of viewer	Only the Hearing Panel (or Special Master) and the parties, and a witness during the duration of that witness's testimony, may appear on camera at any time on Zoom. All others must keep ***camera off*** and ***microphone muted*** See **Appendix L:** "Instructions for Any Grievants and/or Members of the Public Who Seek to View an Attorney Disciplinary Hearing on Zoom"	
Subpoenas	If a party seeks the issuance of a subpoena, the party would have to have addressed that with the presider at the Pre-Hearing Conference, and made the appropriate arrangements prior to the hearing. No issue relating to the issuance of a subpoena should delay the hearing.	R. 1:20-5(b)(3)(G) OAE 1st Memo, 6/19/20, p. 7, ¶ 28

9. Consultations of Respondent with Counsel:

Alternative Ways Available to Respondent to Consult with Counsel During Zoom Hearing	Respondent's Counsel may request to consult with client in Breakout Room (not recorded or in any way heard or monitored on CourtSmart; CourtSmart will be paused for all participants during Breakout sessions). Respondent may also use text, phone call, or email.	

	Respondent cannot have a separate internet video connection with counsel during hearing, because of Court's prohibition on taping of proceedings; see above at p. 25 (**criminal penalties may attach**).	

10. Exhibits, and Exhibit Lists:

Exhibit Lists	Must be provided by each party prior to hearing to each member of Hearing Panel (or Special Master); adversary; Jan Vinegar of OAE. It is recommended that they be in the form specified in the Supplemental Case Management Order, pp. 23-24 (**Appendix H, Part 2**)	
Copies of exhibits	Must be provided by each party prior to hearing to each member of Hearing Panel (or Special Master) and to adversary, with Respondent and Respondent's counsel each to have been provided with a separate copy by presenter. Parties must have addressed at Pre-Hearing Conference whether exhibits will be provided in hard or electronic (PDF) form, and that has to have happened before hearing, or hearing cannot proceed. Case Management Order should address issue of how exhibits are to be made available for the hearing.	OAE 1st Memo, 6/19/20, p. 6, ¶ 21; p. 7, ¶ 24
Hard Copy of all Exhibits Must Be Provided Before Hearing to the Presider	Each party has to have provided the presider with a hard copy of all exhibits, to constitute the original hearing record, or the hearing cannot proceed. Presider must mark each exhibit as it is entered into evidence in hard copy, and presider is responsible for the preservation of the record at all times.	OAE 1st Memo, 6/19/20, p. 6, ¶ 21; p. 7, ¶ 24

11. Order of the Proceedings:

Opening statement	Presenter bears burden of proof of violation; Presenter goes first for opening statements.	R. 1:20-6(c)(2)(C)
Closing statement and/or summation brief	Presenter bears burden of proof of violation; Respondent submits written summation or presents oral argument first.	R. 1:20-6(c)(2)(c)

12. Objections and/or Motions and/or Applications:

Pre-Hearing Conferences	Must have been conducted to address all prehearing issues (and must have been conducted after June 19, 2020). Parties were required to have given notice to presider of issues, admissions/stipulations, factual and legal contentions, deadlines for completion of discovery, hearing date and estimated length, subpoenas, pre-marking and distribution of exhibits, witnesses, and schedule for submission and resolution of all pre-hearing motions and issues.	OAE 1st Memo, 6/19/20, p. 1; pp. 6-7, ¶¶ 21-29 OAE 2nd Memo, 10/13/20, p. 2
Case Management Orders	Must have been issued by presider following Pre-Hearing Conference; R. 1:20-5(b)(4) ("[w]ithin seven days").	R. 1:20-5(b)(4) OAE 1st Memo, 6/19/20, p. 7, ¶ 29
Objections to the proceedings	Must have been submitted in writing to the presider, in accord with requirements of the Case Management Order, or they would be deemed waived. No objections that could have been raised prior to the hearing date should be considered on or after the date on which the hearing commences.	OAE 1st Memo, 6/19/20, p.7, ¶¶ 24, 30

Objections that arise during the proceedings, including those relating to Zoom	Circumstances giving rise to the objection should be put on the record as they occur.	
Constitutional issues, and any objections founded on constitutional issues	Presider is without authority to address or resolve.	R. 1:20-4(e); R. 1:20-15(h); see R. 1:20-16(f)(1)
Motions	Should be identified in Case Management Order, with briefing schedule set. Must be submitted and resolved, with decision issued by presider as to all issues, prior to the hearing date.	OAE 1st Memo, 6/19/20, p. 7, ¶¶ 24, 29-30 OAE 2nd Memo, 10/13/20, pp. 2, 4

13. Issues of Confidentiality:

Confidential Information, and Duty to Preserve all Categories of Confidential Information	The duty to maintain and protect confidentiality is borne by every attorney participant in the proceedings (parties and Special Master or Hearing Panel Attorney Members). The categories of issues subject to confidentiality protection include, but are not limited to, those itemized in the OAE Director's 6/19/20 Memorandum.	OAE 1st Memo, 6/19/20, p. 4, ¶¶ 13-24
Protective Order	Timeline for party's request for protective order should be specified in Case Management Order.	R. 1:20-9(h)

14. Hearing Panel's and Special Ethics Master's Decisions Will Be Subject to DRB and Supreme Court Review:

Authority of the Hearing Panel or Special Ethics Master	All decisions subject to review by Disciplinary Review Board (DRB). Presider will issue a Hearing Report specifying: 1. findings of fact, including credibility determinations; these are essentially recommendations as to which charges specified in Complaint should be determined by the DRB to be supported by clear and convincing evidence, 2. recommendations of discipline, to be reviewed by the DRB and Supreme Court.	1:20-15(e)-(f); R. 1:20-16(a)-(b)

15. Issues That Should Not Be Made Part of the Proceedings, or That Are Outside the Presider's Authority:

Diversion	Only the OAE Director can determine whether a matter should proceed by diversion. There should be no mention of diversion issues at the hearing, and the Hearing Panel and Special Ethics Master have no authority to address diversion issues. See R. 1:20-3(i)((2)(A) ("sole discretion of the Director").	R. 1:20-3(i)((2)(A)
Procedures for Submitting to the DRB Directly on Consent – Should Not Be a Reason for Adjourning a Scheduled Hearing Date	Hearing Panel or Special Ethics Master should have no involvement in discussions between the parties as to whether to proceed by Motion for Discipline by Consent or Disciplinary Stipulation. Such discussions must be completed before the scheduled hearing date, with paperwork completed, finalized, and signed by Respondent before the hearing date. ***No hearing should be adjourned to allow such discussions to proceed.*** Any Respondent who seeks to proceed in such a manner must take the steps to work with the Presenter so the Presenter will have already submitted the signed paperwork to the OAE for transmittal to the DRB ***before*** the hearing date.	R. 1:20-6(c)(1); R. 1:20-10

APPENDIX C

HOW TO JOIN AND PARTICIPATE IN A ZOOM VIRTUAL COURTOOM

JUNE 2020

How to Join and Participate in a Zoom Virtual Courtroom

Using a PC, Laptop, or Mobile Device
For Attorney Disciplinary Hearings

Pre-requisites to Join a Virtual Courtroom

Peripheral Devices

Plug in any peripheral devices you are using - USB webcam, speakers, headphones, etc. See **Appendix A** for Virtual Courtroom Participant system requirements.

Note: Remove personal photos, distinguishable information, and any other personal items you do not want the public to see in your background camera view.

Install the ZOOM Client

If using a **Windows PC or MAC**, install the ZOOM Desktop Client from. (for MAC install see **Appendix B**)
https://zoom.us/download

If using an **iPad or iPhone**, install the Zoom client by going to the "App Store" and searching for "ZOOM". After installing, it will ask for server and login credentials – ignore this and close the app – Accept prompts for access to camera and microphone.
https://itunes.apple.com/us/app/id546505307

If using an **Android phone**, install the ZOOM client by going to the "Google Play Store" and searching for ZOOM Mobile. After installing, it will ask for server and login credentials -Accept prompts for access to camera and mic.
https://play.google.com/store/apps/details?id=us.zoom.videomeetings

Joining from a web browser

How to Join a Zoom Virtual Courtroom from a Browser on a PC – **Appendix C**

Test Audio and Video Settings

Test audio and video prior to the meeting time. If audio and video settings are incorrect, they cannot be changed while in the meeting. You must leave the meeting, change the settings and rejoin the meeting.

ZOOM Test Connection Room
https://zoom.us/test

ZOOM Virtual Courtroom Invitation

You will need a virtual courtroom invitation and associated meeting PIN to join the meeting.

Zoom Breakout Rooms – **Appendix D**

Zoom Hearing Guidelines

All attorney disciplinary hearings will proceed remotely, using video or phone technology. Participants are to conduct themselves as they normally would in an in-person hearing. This includes:

- Turn off or silence your cell phone.
- Refrain from speaking to or otherwise distracting participants in the hearing.
- Always obey the instructions from the presider.
- The hearing will be recorded by a sound-recording system (CourtSmart). Everything you say in the hearing will be on the record.
- All behavior during the hearing must be courteous and respectful.

Before the hearing starts

Attending a hearing via Zoom will run more smoothly if you ensure:

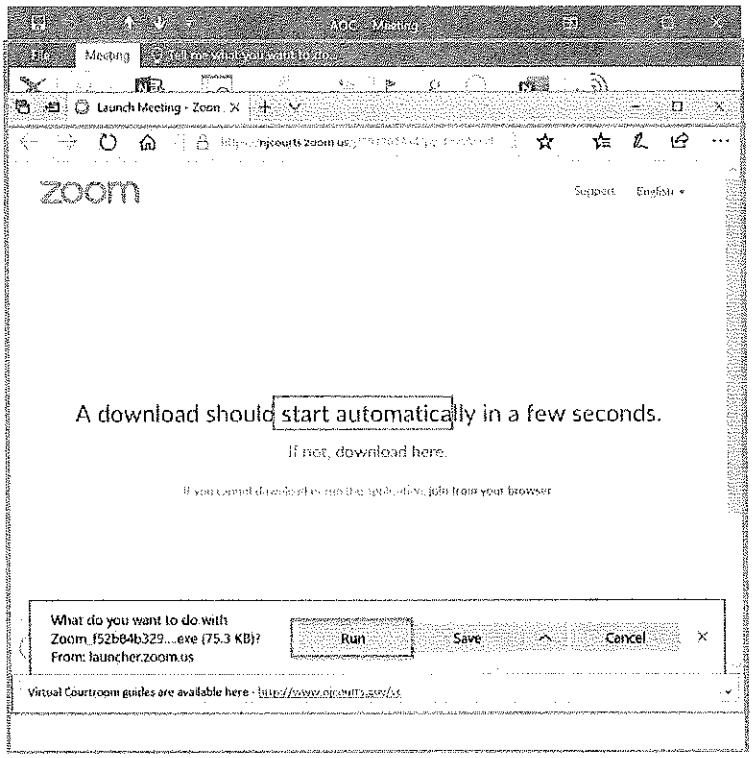
- that your laptop/device is sufficiently charged and that you have the charging cable at the ready if needed;
- that all unnecessary applications on your device are closed;
- that you are in a quiet space where you will not be interrupted or distracted;
- that you are able to take notes either electronically or by handwriting; and
- that you have a glass of water handy for when you are speaking.

You may also want to join the hearing early to give yourself some time to work out any technical issues before the hearing starts.

The hearing coordinator will open the Zoom hearing room 15 minutes prior to the start of the hearing.

Join a Zoom Virtual Courtroom

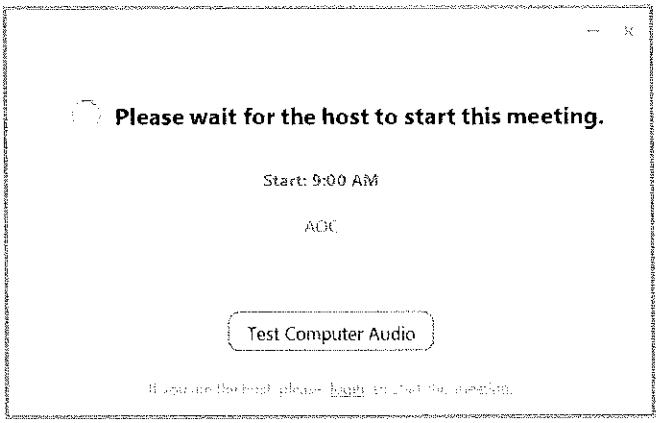
Access the Virtual Courtroom meeting invitation from either your email Inbox or your calendar. Select the meeting invitation link in the email to join the meeting.
(If you do not have a virtual courtroom meeting invitation and the associated meeting PIN, contact **Jan Vinegar** at the Office of Attorney Ethics (Janice.Vinegar@NJ Courts.gov, 609 403-7800, ext. 34172).



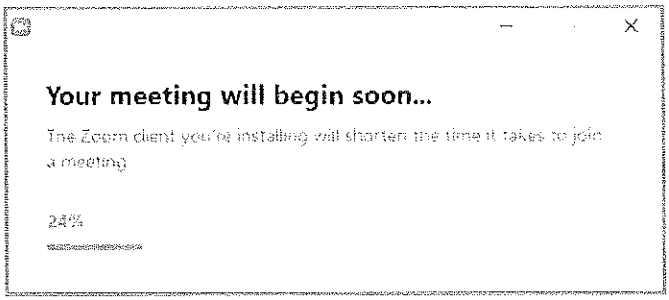
Selecting the link will open an internet browser and prompt you to Run/Save the Zoom Client
When prompted select Run

If you do not see the Run button, select 'download here' to install the Client.

A Moderator must join and start the meeting in order to allow all participants.



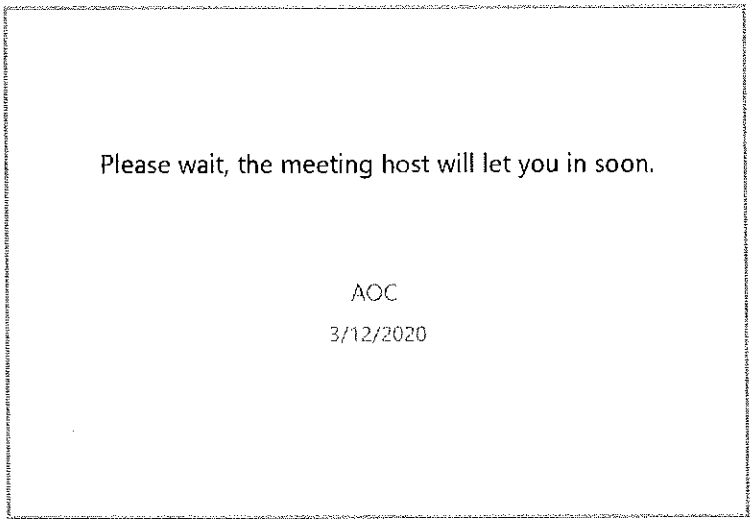
Once the moderator joins the meeting you will see a notification



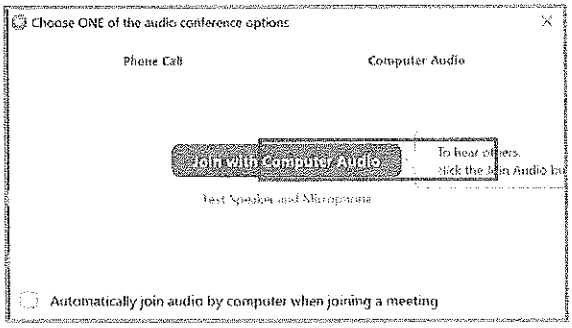
When prompted enter your name

You will see a video preview of your camera.
If you do not see an image you will have to troubleshoot your equipment.

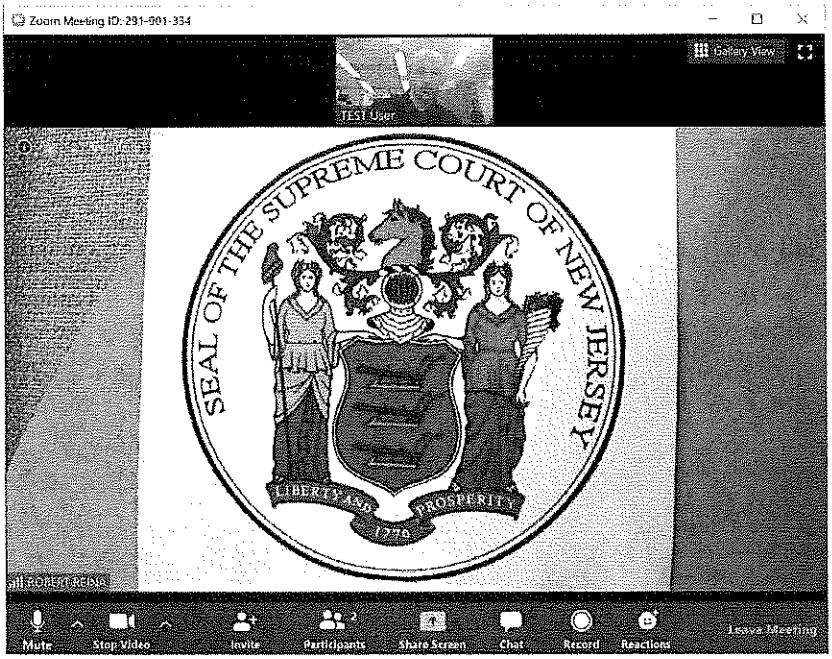
The Moderator will need to let you into the meeting



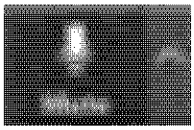
Once admitted to the meeting select the Join with Computer Audio button

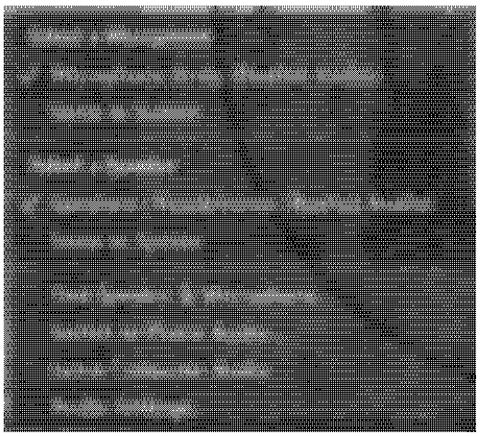


Once connected you will see your camera atop the other participants in the meeting

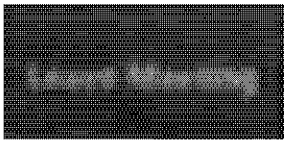


Microphone and Speaker Adjustment


The Mute icon has additional options that will allow other Speaker/Microphone options



Leave a meeting


Leave meeting icon will end the current meeting

Appendix A

Judiciary Hardware & Software Requirements - Zoom

- Hardware specifications:
  - PC Intel processor – 6th Generation 3.X GHz or faster
  - PC AMD processors – Bulldozer series – 3.X GHz or faster
  - Mac with Intel 6th Generation processor SKYLAKE or later
  - 4GB of RAM or more
- Operating systems:
  - Windows 10 (32 and 64 bit)
  - Mac OS X version 10.10 (Yosemite) or higher, Intel CPU only
- Internet browsers:
  - Google Chrome (version 70 and later)
  - Internet Explorer (version 11 and later, PC)
  - Firefox (version 63 and later)
  - Safari (version 10 and later)

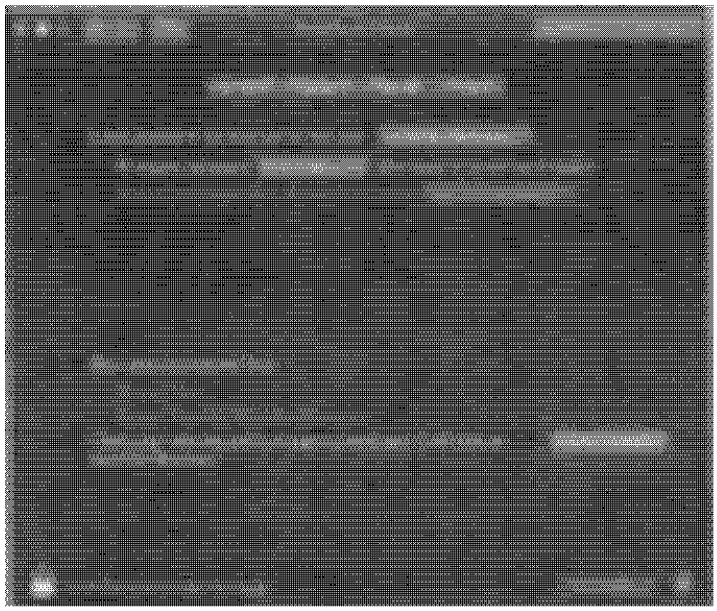
Important:

The video resolution quality will be impacted by minimum hardware requirements

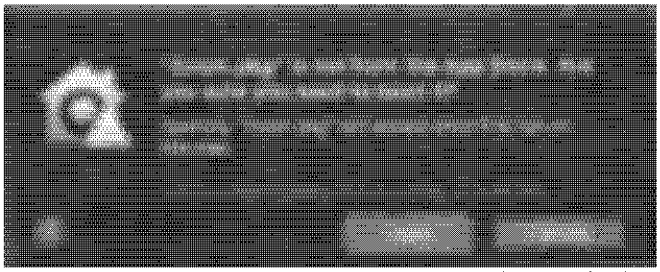
- Speakers or Headphones
- Webcam with **Microphone**
  - OR integrated camera with microphone)
- Network:
  - 100 MBit NIC or higher
    - High speed broadband Internet access, hardwired strongly encouraged
      - Minimum of 5 Mbps upstream and 5 Mbps downstream
      - Speed Test sites
        - http://openspeedtest.com/ OR http://www.speedtest.net/
  - Firewall Ports open
    - Inbound TCP: 80, 443, 7070, 5060, 55000 - 60000
    - Inbound UDP: 55000 - 60000
    - Outbound TCP: ANY
    - Outbound TCP: ANY

Appendix B

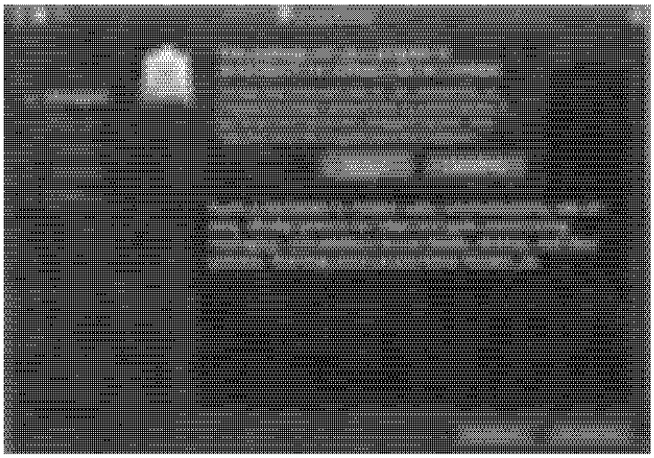
Your Mac settings are not likely to allow you to install the app because it's not from the App Store. To allow installing Zoom for Mac, go System Preferences > Security & Privacy. From there, click Open Anyway in the general section.



2. When a new pop-up shows up, click on *Open*.



3. Another pop-up will ask you to continue (this is the last pop-up).



Appendix C

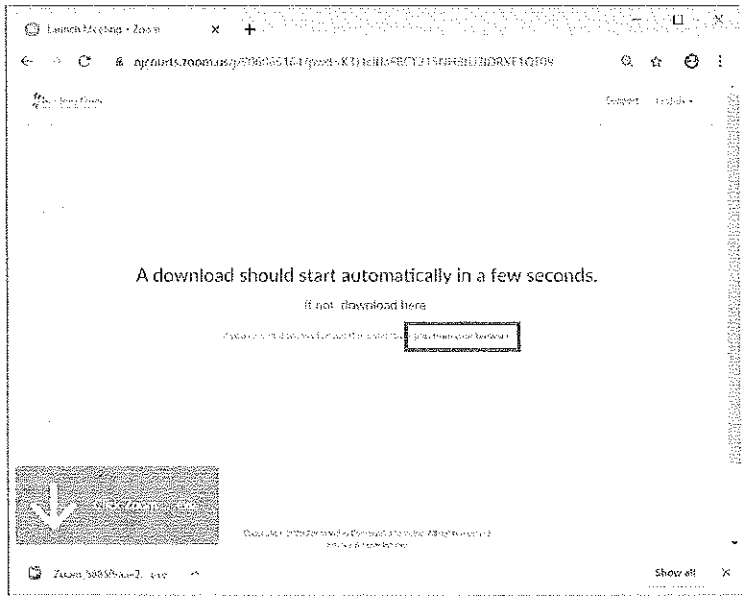
How to Join a Zoom Virtual Courtroom from a Browser on a PC

Open the link in the email received from the hearing panel chair or special ethics master in Chrome or Edge web browser.

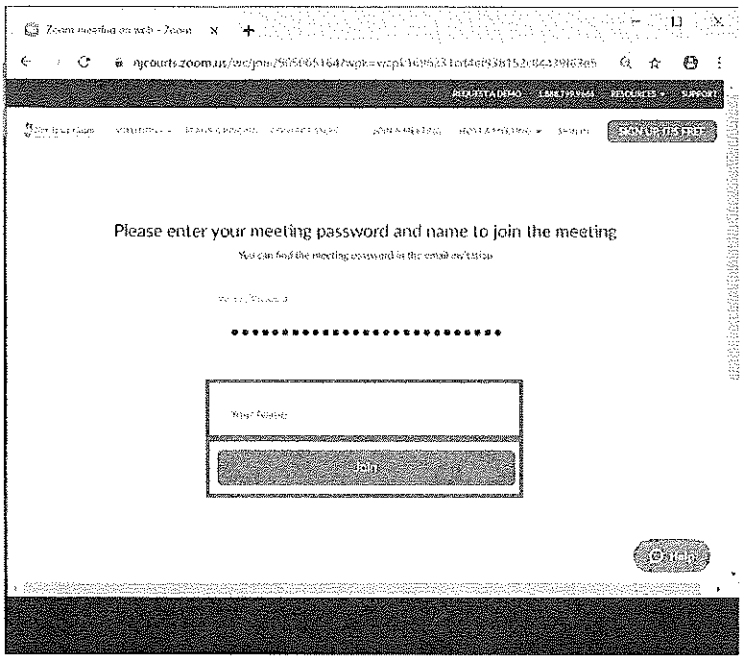
The **link** will provide you with the web address for the hearing, which you may copy and paste this into the browser manually.

The link will also provide the **Meeting ID** and **password** for the hearing.

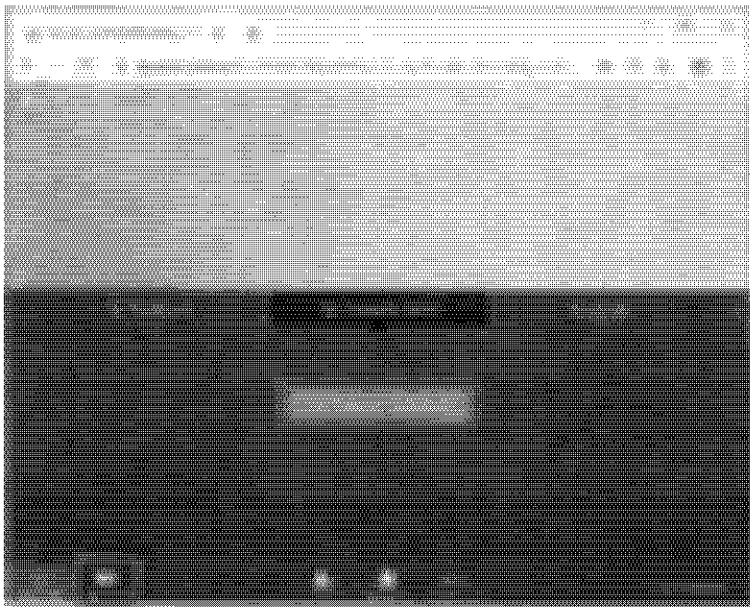
Ignore the download attempt to install the Zoom application.
Select the **Join from your browser** link



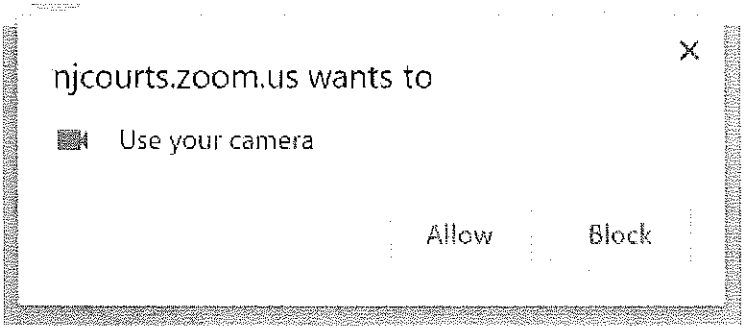
Enter your name then select the **Join** button



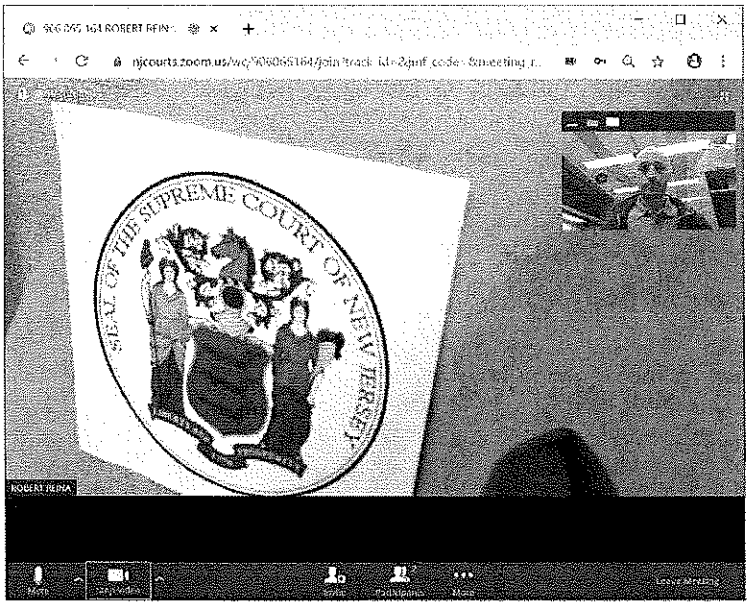
You will be placed in the virtual lobby
Select **Join Audio by Computer**
Select **Start Video**



When prompted, select **Allow** for camera access

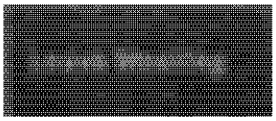


You have now successfully joined the meeting and will be visible in the top right window

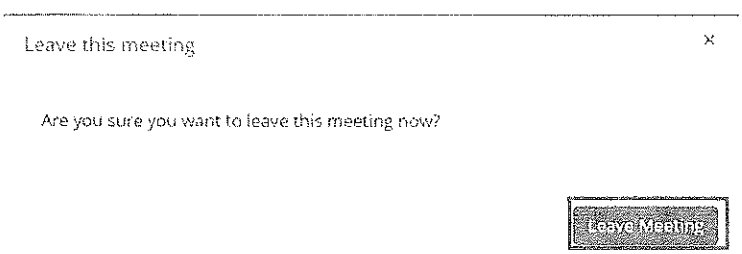


You can adjust microphone and camera settings if necessary (if multiple camera/mic devices are attached)

Select the Leave Meeting button to exit the hearing.



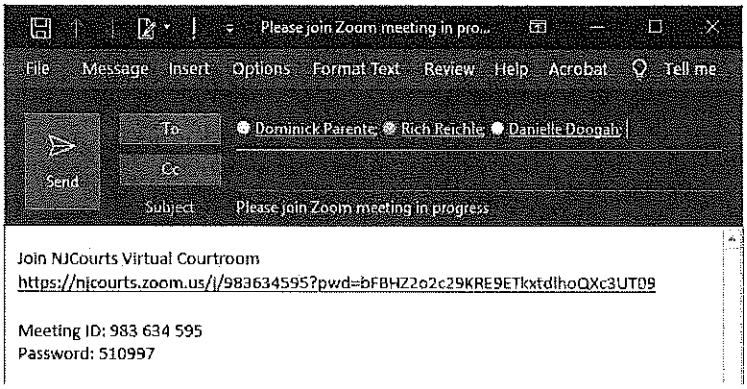
Verify by selecting the Leave Meeting button again to exit the hearing.



Join a Zoom Virtual Courtroom

Zoom Breakout Rooms (Appendix D)

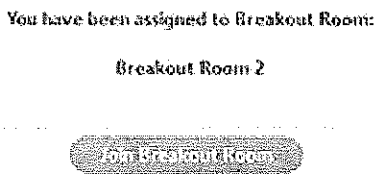
Join a Zoom meeting with participants required by selecting the invitation link



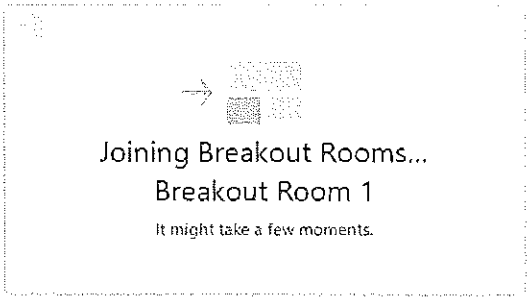
Breakout Room – In Progress screen allows you to **Join, leave, rejoin**

Joining a Breakout Room

Click Join "Breakout Room"



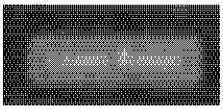
When Joining the breakout room, a prompt will display



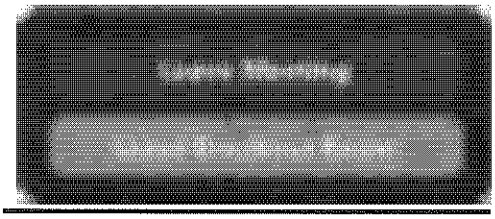
A message may appear from the Host

Leaving Breakout Room to return to Main Session

Once in the breakout room you can leave manually or via the Host closing the room



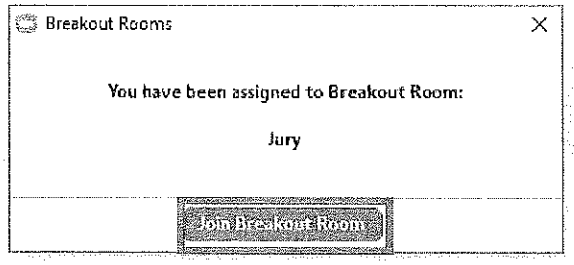
Select the Return to Main Screen button

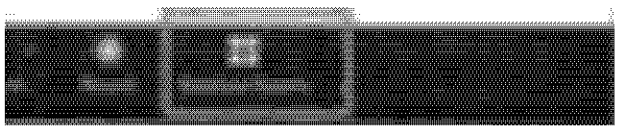


A prompt will verify you are returning to the main session

To Rejoin a Breakout Room

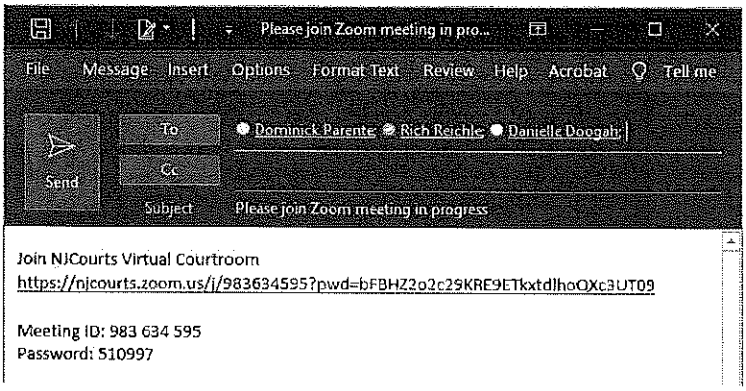
Click "Breakout Rooms" then "Join Breakout Room"



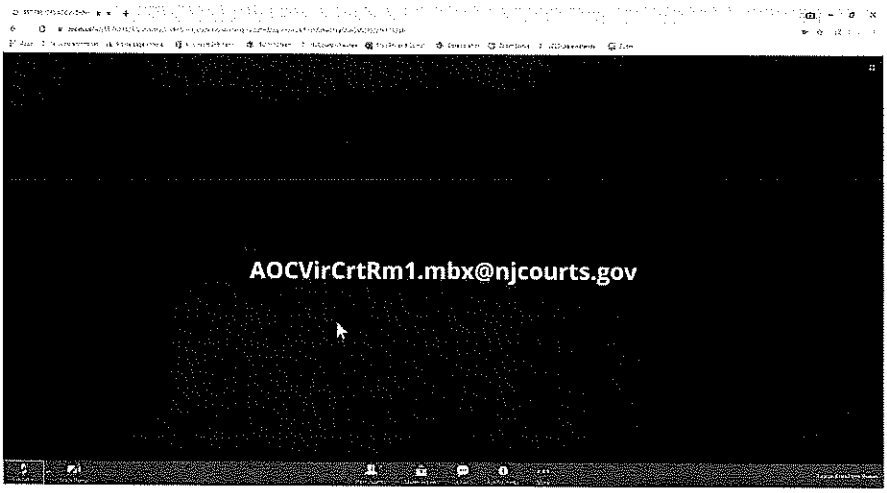


Join from a web browser

Join a Zoom meeting with participants required by selecting the invitation link



You will join through the web browser



APPENDIX D

OAE GUIDE FOR HEARINGS
and
TABLE OF CONTENTS FOR FORMS AND TEMPLATES

JULY 2020

Issues Related to Hearings and Hearing Panels in Attorney Disciplinary Cases

Isabel McGinty
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I. BASICS ABOUT DISCIPLINARY HEARINGS

a. The ***purpose*** of the attorney disciplinary system:[1]

> *In re Gallo, 117 N.J. 365, 373-74 (1989): The Supreme Court upheld as "settled principle that the primary reason for discipline . . . is 'to **preserve the confidence of the public** in the integrity and trustworthiness of lawyers in general.'" (quoting in re Wilson, 81 N.J. 451, 456 (1979)).*

b. In all of its functions and processes, representatives of the attorney disciplinary system must hold preservation of public confidence in that system as the highest goal.

c. Diligent adherence to the Court Rules is fundamental to the preservation of that public confidence.

d. A common sense recommendation: Read the Court Rules relating to attorney discipline (R. 1:20-1 to -23, including the "Glossary" at the start of Rule 1:20) fully and often to make sure that you are keeping the mandate and goals of the Court Rules in full view, in performing your role as the designated representative of the Supreme Court in the attorney disciplinary system.

e. Representatives of the attorney disciplinary system must keep in mind that the attorney disciplinary system in New Jersey has no aspect of plea bargaining, and no attorney disciplinary matter may be resolved by plea bargaining, according to the direction of the Supreme Court.

f. Any DEC[2] member preparing for a hearing, whether as a panel member or as Presenter, should be fully familiar with the sections of the *DEC Manual* (blue manual provided by the OAE to all DEC members) on Hearings (secs. 48-82; pp. 64-86). See generally Kevin Michels, New Jersey Attorney Ethics (Gann), sec. 42:3 ("Disciplinary Procedures"), sec. 42:5 ("Rules of Procedure"), and chap. 44 ("Quantum of Discipline").

g. FORMS AND TEMPLATES –The Forms and Templates are available through your DEC officers. They have the set on disk.

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[1] Primary sources are cited and quoted extensively in this handout, with the text appearing in text boxes. Please note that emphasis has been added in several of the text boxes, typically by the addition of bolding, italicization, underlining, and/or additional line breaks inserted into sections of Court Rules.

[2] Abbreviations used in this outline:
Disciplinary Review Board ("**Board**" or "**DRB**");
District Ethics Committee ("**DEC**");
Office of Attorney Ethics ("**OAE**").

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II. CONFIDENTIALITY OF THE PROCEEDINGS

a. The Confidentiality Rule is R. 1:20-9.

b. A Respondent may choose to waive or breach confidentiality. R. 1:20-9(a). But representatives of the disciplinary system should make every effort to observe and maintain the confidentiality specified by R. 1:20-9.

c. For matters in the hearing stage, "on the filing and service of a complaint, a disciplinary stipulation waiving the filing of a formal complaint,. . . or the approval of a motion for discipline by consent . . . , ***those documents***, as well as the documents and records ***filed*** subsequent thereto, shall be available for public inspection and copying." R. 1:20-9(d)(1).

d. For example, draft hearing reports are confidential documents, because they have not been "filed." Only documents that have been formally "filed" in the case (with the hearing panel chair, special ethics master, DEC Secretary, the OAE, or the DRB), or have otherwise been made public in accord with R. 1:20-9 (e.g., the hearing is a public proceeding), are public and non-confidential in attorney disciplinary cases. All other documents, records, and proceedings must be kept confidential, in accord with R. 1:20-9.

e. Prior to the COVID pandemic, it had been OAE policy, following from Judiciary procedures, that no confidential information about an attorney disciplinary proceeding may be transmitted electronically (e.g., by email, or as an attachment to an email) by disciplinary authorities. The Court has allowed use of email for certain categories of information about attorney disciplinary proceedings during the COVID-19 emergency. Please see the Court's COVID Orders.

f. The following categories of information must ***not*** be disclosed in a Complaint, an Answer, hearing exhibits, the hearing record, the hearing report, or in the attachments thereto, or in any other document that will be part of the public record of the ethics case (see R. 1:20-9(d)):[3]

    1. confidential personal identifiers (including Social Security number, driver's license number, bank or credit card account number, and other categories of identifiers), which are itemized under R. 1:38-7, and whose confidentiality is mandated by that same Rule;

---

[3] Some categories of information may be redacted simply (e.g., Social Security number, or bank account number). But other categories of information (such as child abuse or domestic violence records) cannot be referenced at all in a public document, unless, ***first***, a court has permitted the disclosure of the information. ***In addition***, all necessary actions must be taken to make sure that confidential information about the parties and the proceedings has been kept out of the pleading that will be available to the public in the ethics case. Whenever these issues arise, please call the OAE before proceeding.

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2. information about a fee arbitration proceeding, without prior clearance and approval of the information to be contained in the Complaint by the OAE, pursuant to R. 1:20A-4 and -5 (confidentiality of fee arbitration proceedings is separate from and in addition to the confidentiality of ethics proceedings otherwise required by R. 1:20-9), and/or R. 1:38-4(m);

3. information about victims of domestic violence or sexual offenses, or of domestic violence restraining order proceedings, or information whose confidentiality is mandated by N.J.S.A. 2C:25-33 to -34, and R. 1:38-3(b)(12) and (d)(10)-(12).
The names of such victims should never be included in an ethics complaint, and they should be redacted from a respondent's answer. And if the information set forth in the complaint is otherwise likely to embarrass or to cause emotional pain to a grievant, or to any third person (and to any child, in particular), consider whether it is essential that the grievant's name (or any other name, other than that of the respondent) be included in the pleading, or whether initials could be used instead.

4. information about any family part proceedings; or guardianship or adoption proceedings; or any child abuse investigation; or child protection or placement proceedings; or juvenile-family crisis or juvenile delinquency proceedings; or proceedings of the Division of Child Protection and Permanency; or court, probation or law enforcement records relating to a juvenile; or records of a paternity action; or child abuse records; for which the confidentiality of each category of records is mandated by N.J.S.A. 2A:4A-60; N.J.S.A. 2A:82-46; N.J.S.A. 9:6-8.10a(1); N.J.S.A. 9:17-47; R. 1:38-3(b) and (d); R. 5:12-1(a)(3) and (e); R. 5:12-3; R. 5:13-8; R. 5:17-4; and/or R. 5-19-2.
The names of children should not be included in a complaint or answer in an ethics case. If needed, the children could be identified by initials or by other method that would not allow their names to (continue to) pop up in internet searches years from now.

5. information about persons whose intimate or deeply personal information is included in the pleading, without notice to and opportunity to object allowed to that third person, where public confidence in the attorney disciplinary system may be undermined by the public dissemination of this information without notice to that person, in accord with the Supreme Court's specification of the goals of the disciplinary system, set forth in In re Greenberg, 155 N.J. 138, 151 (1998), and In re Wilson, 81 N.J. 451, 456 (1979) (preservation of public confidence as the priority of the attorney disciplinary system).
Again, if the information set forth in the complaint is likely to embarrass or to cause emotional pain to a grievant, or to any third person, consider whether it is essential that the grievant's name (or any other name, other than that of the respondent) be included in the pleading, or whether initials could be used instead.

6. expunged records, whose confidentiality is mandated by N.J.S.A. 2C:52-15 and R. 1:38-3.

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Even if the expungement never was completed, make sure that the name of the person who sought the expungement is not spelled out in the complaint or the answer.

III. THE "HEARING STAGE" OF AN ATTORNEY DISCIPLINARY CASE, GENERALLY

a. When the "Hearing Stage" commences:
On the issuance of a disciplinary Complaint, at the end of the "Investigation Stage."

b. Time Goals for completion of the "Hearing Stage": Six months.

> ***R. 1:20-8. Time Goals; Accountability; Priority***
>
> *(a) **Investigations**. The disciplinary system shall endeavor to complete all investigations of standard matters within six months, and of complex matters within nine months, the time period commencing on the date a written grievance is docketed and concluding on the date a formal complaint is filed, the grievance is dismissed or other authorized disposition is made.*
>
> *(b) **Formal Hearings**. The disciplinary system shall endeavor to complete formal hearings **within six months** from the expiration of the time for filing an answer to a complaint until a report is filed with the Director for transmittal to the Disciplinary Review Board.*

IV. TIMELINE FOR THE HEARING STAGE

a. "The disciplinary system shall endeavor to complete formal hearings within six months from the expiration of the time for filing an answer to a complaint until a report is filed with the Director for transmittal to the Disciplinary Review Board." R. 1:20-8(b).

b. Respondent's Verified Answer should be filed "[w]ithin twenty-one days after service of the complaint." R. 1:20-4(e).

c. The parties should provide discovery "within 20 days after receipt of a written request therefor." R. 1:20-5(a)(5).

d. A respondent's right to demand discovery commences at the point when the respondent has filed "a verified answer in compliance with R. 1:20-4(e)," but the discovery demand must be in writing. R. 1:20-5(a)(1)-(2).

e. The prehearing conference (which is recommended in every case, and required for complex cases) should be scheduled within 45 days of when the verified answer is due. R. 1:20-5(b)(1).

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f. The parties must be given at least 14 days' written notice of the date of the prehearing conference. R. 1:20-5(b)(1).

g. The parties must file their prehearing reports "[a]t least five business days before the date scheduled for the prehearing conference[.]" R. 1:20-5(b)(2).

h. The hearing panel chair should issue a Case Management Order "[w]ithin seven days following the prehearing conference." R. 1:20-5(b)(4).

i. The hearing should commence within 60 days after the date of the prehearing conference. R. 1:20-5(b)(5).

j. The presenter, respondent and any counsel of record must be given written notice of a hearing "[a]t least 25 days prior to the initial scheduled hearing date[.]" R. 1:20-6(c)(2)(A).

k. "Subsequent days of hearing may be scheduled orally or in writing." R. 1:20-6(c)(2)(A).

l. "The hearing shall be concluded within 45 days after its commencement[.]" R. 1:20-5(b)(5).

m. "[A] hearing report shall be filed with the Board and served on the parties within 60 days after the hearing's conclusion, except in extraordinary circumstances." R. 1:20-5(b)(5). The hearing report and the full hearing record need to be delivered to the OAE, so the OAE can transmit it electronically to the Board,[4] and provide the Board with the complete original record.

n. "There are no time limitations with respect to the initiation of any discipline or disability matter." R. 1:20-7(c).

o. "Reasonable extensions of time and adjournments may be granted for good cause. Such requests shall be made by ***writing***, stating with ***specificity*** the facts on which the request is based. Such requests shall either be granted or denied in writing; if granted they shall be only for a ***definite and reasonably short interval***." R. 1:20-7(k).

p. The priority of disciplinary matters "over administrative, civil and criminal cases" is set forth in R. 1:20-8(g).

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[4] In all cases, filing with the Disciplinary Review Board, pursuant to R. 1:20-6(c)(1) and 1:20-6(2)(E), requires the delivery to the OAE of the materials to be filed. The OAE then proceeds with the filing by transmitting the materials electronically to the Board, and delivering the originals thereafter to the Board. No hearing panel chair, special ethics master or DEC officer can file directly with the Board, unless Board Counsel makes a specific request for a different form of submittal.

q. The time goals set forth in the Court Rules "are not jurisdictional and shall not serve as a bar or defense to any disciplinary investigation or proceeding." R. 1:20-8(e).

V. THE PARTIES TO THE PROCEEDINGS, FOR ANY ATTORNEY DISCIPLINARY CASE IN THE HEARING STAGE, AND THE GRIEVANT AS A NON-PARTY

a. The Presenter:

1. The DEC member assigned as Presenter serves as the Prosecuting Attorney for the hearing, on behalf of the DEC. It is expected that DEC members serving as Presenters will prosecute the case in a manner that preserves public confidence in the attorney disciplinary system, and promotes public confidence in the integrity and fairness of the bar and the courts.

2. District XIV cases (docketed by the OAE) are prosecuted by OAE staff attorneys as presenters. These cases appear on the DEC Active Pending Hearings lists with docket numbers ending in the -0900E series, with an OAE staff attorney presenter already assigned to the case. These cases are assigned to the DECs for the hearing stage, only, after the investigation has been completed by an OAE staff attorney and a complaint issued at the direction of the OAE Director.

> ***R. 1:20-4. Formal Pleadings***
> *(g) Counsel.*
> *(1) Presenter. All disciplinary and disability proceedings shall be prosecuted by an attorney presenter designated by the Director or chair.*

3. The Presenter may prosecute a complaint which resulted from the grievance submitted by a grievant, but the Presenter does not represent the grievant. A DEC presenter prosecutes the case on behalf of the DEC.

4. Presenters should keep in mind the requirement of RPC 3.7, that "a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness[.]" A Presenter who anticipates being called as a witness in a disciplinary hearing needs to bring that to the attention of the DEC officers (who, in turn, would need to contact the OAE) as soon as the issue arises.

5. Presenters should be fully familiar with the investigation file, whether the Presenter conducted the investigation or was assigned the case anew in the hearing stage, after the complaint had been prepared by a different DEC attorney member. The Presenter should review the investigation report for completeness and accuracy, contact all witnesses, and otherwise take all necessary and proper steps for hearing preparation.

6. The Presenter should review the complaint immediately when the case is assigned, to make sure the complaint is accurate and complete, and that it meets the criteria of R. 1:20-4(b) – in particular, to make sure that the complaint "set[s] forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct, specifying the" correct sections of the RPCs "alleged to have been violated." If the complaint needs to be amended and re-served, the Presenter should expeditiously make that happen.

7. In most cases, the complaint cannot be constructively amended at the hearing to add RPC violations to conform to the proofs presented at the hearing. See In re Harry J. Levin, 193 N.J. 348 (2008). Presenters should anticipate this issue as soon as it arises, because some faults in a complaint cannot be corrected during the hearing, and would instead require the filing of an amended complaint prior to the hearing.

8. The Presenter should make sure that all relevant RPC sections are precisely and accurately charges, with sufficient evidence spelled out in the complaint, and then laid out on the record and admitted into evidence at that hearing, so as to establish the clear and convincing evidence sufficient to support the finding of violation of each of the RPCs charged in the complaint.

9. The immunity of representatives of the attorney disciplinary system from lawsuits arising out of the performance of their official duties is specified at R. 1:20-7(e).

10. Where a respondent seeks to file a grievance against a DEC investigator, the presenter, the hearing panel, or any disciplinary authority, the procedures are set forth in R. 1:20-7(j)(1) and (2). Should this issue be raised by the respondent at any time in the proceedings, that should not interfere with the timely and efficient processing of the pending case to the completion of the hearing.

b. The Respondent:

1. A respondent may proceed *pro se*, or with counsel.

2. Respondent's duty to cooperate in an ethics proceeding is specified in R. 1:20-3(g)(3) and in RPC 8.1(b). A respondent's duty to appear for a prehearing conference is set forth in R. 1:20-5(b)(1) ("Attendance at the conference is mandatory by all parties."). "Respondent's appearance at all hearings is mandatory." R. 1:20-6(c)(2)(D).

3. "[A] respondent's absence shall not delay the orderly processing of the case." R. 1:20-6(c)(2)(D).

4. The Court Rule specifies who may serve as counsel for a respondent, and sets the time line and the procedure for any application for appointment of counsel for a respondent. R. 1:20-4(g)(2).

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R. 1:20-4. Formal Pleadings

(g) (2) Respondent's Counsel; Assignment for Indigents. A respondent may be represented by counsel admitted to practice law in New Jersey or admitted pro hac vice by the Board, or may appear pro se. A respondent desiring representation but claiming inability to retain counsel by reason of indigency, shall promptly so notify the vice chair and special ethics master, if one is appointed, and shall, within 14 days after service of the complaint, make written application to the Assignment Judge of the vicinage in which respondent practices or formerly practiced, simultaneously serving the application on the vice chair and special ethics master, if one has been assigned, and on the presenter. [Additional text omitted.]

5. What if the respondent retains or secures appointed counsel, who then seeks to withdraw? The withdrawal would be allowed only if completed in accord with R. 1:20-6(e), if the pretrial conference has already occurred, or if the first trial date has been set.

R. 1:20-6. Hearings

. . .

(e) Withdrawal By Respondent's Counsel; When Permitted. After the date of the pretrial conference or fixing of the first trial date, respondent's counsel may withdraw without leave of the trier of fact only upon the filing of the respondent's written consent, a substitution of attorney executed by both the withdrawing respondent's attorney and the substituted respondent's attorney, a written waiver by all other parties of notice and the right to be heard, and a certification by both the withdrawing respondent's attorney and the substituted respondent's attorney (or respondent pro se) that the withdrawal and substitution will not cause or result in delay.

6. What if the respondent declines or otherwise fails to cooperate in a case in the hearing stage:

   a. The case should proceed without delay. R. 1:20-6(c)(2)(D) ("a respondent's absence should not delay the orderly processing of the case").

   b. But the presenter should make sure to confirm with the OAE that the respondent has been given proper notice of the hearing date at the office or home address listed in the OAE database, and in the Attorney Registration database, and that there is no additional contact information that should be used.

   c. Keep in mind that the OAE has access to the email addresses of most attorneys, and that the OAE will assist with attempting to reach respondents by email, if the OAE is given sufficient lead time.

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> ***R. 1:20-7. Additional Rules of Procedure.***
>
> . . . .
>
> *(l) Absent or Non-Responding Respondent. A respondent's absence, non-responsiveness or other failure to reply or to file any document or to attend any required conference or hearing shall not delay the orderly processing of a case, provided the respondent has been properly served.*

7. What if a respondent requests additional time at any stage of the proceedings: "Reasonable extensions of time and adjournments may be granted for good cause. Such requests shall be made by writing, stating with specificity the facts on which the request is based." R. 1:20-7(k).

8. The panel chair or special ethics master should require such applications to be submitted by letter or by motion, as soon as the scheduling issue arises, with full documentation supporting the request attached (e.g., to a certification in support of the motion). Such applications should then be made part of the record. (Please note the need to avoid applications by email or phone, unless presented with a true and dire emergency.)

> ***R. 1:20-7. Additional Rules of Procedure.***
>
> *(k) Extension of Time; Adjournments. Reasonable extensions of time and adjournments may be granted for good cause. Such requests shall be made by writing, stating with specificity the facts on which the request is based. Such requests shall be either granted or denied in writing; if granted they shall be only for a definite and reasonably short interval. The vice chair or special ethics master may grant extensions for the filing of an answer to a complaint. After the parties have been notified of the date of hearing, requests for adjournments shall be directed to the hearing panel chair or special ethics master. If such request is based on an attorney's scheduling conflict, the hearing panel chair or special ethics master should communicate with the appropriate assignment judge in order to accommodate the priority accorded disciplinary proceedings by R. 1:20-8(g).*

9. Medical issues relating to the respondent: If a medical or mental health issue should arise as to the respondent's ability to participate in the proceedings, please refer to the procedures spelled out in R. 1:20-12, "Incapacity and Disability." See also R. 1:20-7(k) (requests for adjournments must be in writing, documenting with specificity the reason for the request); R. 1:20-12(e) (deferral of disciplinary proceedings because of the inability of a respondent to defend against the charges or complaint because of mental or physical incapacity may occur only where the Supreme Court has issued such an order).

10. A respondent who is suspended or ineligible to practice should not be holding him- or herself out as eligible to practice law in New Jersey. See RPC 5.5(a)(1). Any

documents prepared in the course of the investigation or hearing should accurately state the status of the respondent at that time. A suspended or ineligible attorney should not be maintaining a law office, and another address will need to be used to contact a non-responsive respondent in such circumstances. This has particular significance whenever the issue arises as to what address for a respondent should be used for service, and whether a respondent has been properly served. The OAE should be consulted in all such circumstances before an alternate address is used for service.

11. Attorney home address information should be kept confidential, at the direction of the Supreme Court. Whenever an attorney's home address is used for service purposes, it should not be disclosed to any other recipients of the communication (e.g., redacted copies would be provided to those on the "cc" list). The home address of public members of the DECs (e.g., when they are serving as hearing panelists) should also be protected against public disclosure.

c. Issues relating to **the Grievant**, when a case is in the Hearing Stage:

1. The grievant is not a party to the proceedings in the hearing stage.

2. The grievant may also be represented by counsel, but that counsel is an observer, only, of the proceedings.

3. The grievant must be given notice of the hearing date, time, and location, since the grievant has the right to be present for the hearing. "The grievant, if any, [and] the grievant's attorney, if any . . . shall have the right to be present at all times during the hearing." R. 1:20-6(c)(2)(D).

4. The presenter and/or respondent (or respondent's counsel) may determine whether the grievant should or would be called as a witness during the hearing. Neither the presenter nor the respondent is required to call the grievant as a witness.

> ***R. 1:20-4. <u>Formal Pleadings</u>***
> *(g)(3) <u>Grievant's Counsel</u>. A grievant may be represented by a retained attorney. Such attorney shall be limited to consulting with the grievant and may not be designated as the presenter in the matter.*

D11

5. What if the grievant fails to cooperate with the Presenter:

> ***R. 1:20-7. Additional Rules of Procedure***
>
> *(d) Delay Caused by Grievant. Neither unwillingness nor neglect by the grievant to sign a grievance or prosecute a charge, nor settlement or compromise between the grievant and the respondent or restitution by the respondent, shall, in itself, justify abatement of the processing of any grievance.*

6. Should the grievant decline to cooperate after the complaint has been issued, the presenter would need to determine whether the grievant should be compelled to appear pursuant to subpoena. This subject is discussed in section 49 of the *DEC Manual* (p. 65). But the DEC officers should think long and hard before compelling a reluctant grievant to appear by subpoena, or seeking to enforce such a subpoena against a member of the public, since the preservation of the public's confidence in the disciplinary system is the fundamental reason for the attorney disciplinary system's very existence.

7. Immunity of grievants, witnesses and others arising out of their participation in an attorney disciplinary matter is addressed at R. 1:20-7(f); see R. 1:20-7(e) (immunity of disciplinary authorities).

VI. THE PLEADINGS IN AN ATTORNEY DISCIPLINARY CASE

a. **The Complaint:**

1. What it is:

> ***R. 1:20. Glossary of Attorney Discipline Terms***
> ***Complaint*** *- the written document formally charging the respondent with specific violations of unethical conduct. A complaint is issued after completion of an investigation if it meets the standard of R. 1:20-4(a).*

2. How a complaint comes to be issued by the DEC:

> ***R. 1:20-4. Formal Pleadings***
> *(a) Complaint Determination. Where the chair or Director, in his or her sole discretion, determines that there is a reasonable prospect of a finding of unethical conduct by clear and convincing evidence and where the matter is not diverted pursuant to R. 1:20-3(i)(2), a complaint shall issue.*

D12

3. What needs to be in the Complaint:

   a. ***NAME*** of case:
   For all DEC investigations:
   District ## Ethics Committee v. [attorney name], Respondent
   OR
   for OAE cases, only:
   Office of Attorney Ethics v. [attorney name], Respondent

   b. The Complaint:

      1. Must name the grievant, if any (initials may be used if circumstances warrant [e.g., underlying matter was a domestic violence case]);
      2. Must set forth respondent's name, year of attorney admission, "law office or other address" (suspended or ineligible attorney is not authorized to maintain a law office, so that address should not be set forth as a current, active address; respondent's home address must not be listed in any public document, nor should anyone else's home address);
      3. Must list the county of practice of the attorney, if the attorney is currently practicing law in NJ;
      4. The Complaint "***shall set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct, specifying the ethical rules alleged to have been violated***";
      5. Must be signed by one of the persons named in R. 1:20-4(b); and
      6. Must specify, above the caption, the name, address, and phone number of the presenter.

R. 1:20-4. Formal Pleadings

(b) Contents of Complaint. Every complaint shall be in writing, designated as such in the caption, and brought against the respondent in the name of either the District Ethics Committee or the Office of Attorney Ethics. The complaint shall be signed by the chair, secretary or any Ethics Committee member, the Director, or the Director's designee. The complaint shall state

the name of the grievant, if any, and
the name,
year of admission,
law office or other address, and
county of practice of the respondent, and

shall set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct, specifying the ethical rules alleged to have been violated.

It shall also state above the caption the name, address and phone number of the presenter assigned to handle the matter.

D13

4. Consolidation of charges allowed in the Complaint.

> ***R. 1:20-4. Formal Pleadings***
> *(c) Consolidation of Charges and Respondents. A complaint may include any number of charges against a respondent. A consolidated complaint may be filed against two or more respondents if they are members of the same law firm or if the allegations are based on the same general conduct or arise out of the same transaction or series of transactions.*

5. ***Service*** of the Complaint: Service issues are addressed in R. 1:20-4(d) and 1:20-7(h) (allowing that "[s]ervice on a respondent may also be made by serving respondent's counsel, if any, by regular mail or by facsimile transmission").

6. Complaint to be sent to the ***law firm or public agency***:
Please refer to R. 1:20-9(k) for direction as to those cases in which a copy of the Complaint should also be sent to the law firm or public agency employing the respondent.

> ***R. 1:20-4. Formal Pleadings***
> *(d) Filing and Service. The original complaint shall be filed with the secretary of the Ethics Committee or the designated special ethics master to whom the case is assigned. If the matter will be determined by an Ethics Committee, service of the complaint shall be made by the secretary; otherwise service shall be made by the Director. A copy of the complaint shall be served on the respondent and respondent's attorney, if known, in accordance with R. 1:20-7(h), together with written notice advising the respondent of the requirements of R. 1:20-4(e) and (f), the name and address of the secretary or the Director as appropriate, as well as the address and telephone number of the vice chair of the Ethics Committee or special ethics master to whom all questions and requests for extension of time to file answers shall be directed. In appropriate circumstances, the secretary or the Director shall forward a copy of every complaint to the respondent's law firm or public agency employer in accordance with R. 1:20-9(k).*

7. Where a respondent already has more than one disciplinary matter pending in either the investigation or hearing stage, the DEC Secretary should confirm whether counsel represents the respondent in all of the matters, or only in some. This issue is particularly important with regard to proper service.

D14

b. **The Verified Answer**:

1. Due date for the filing of the Answer: 21 days after service of the complaint.

> ***R. 1:20-4. Formal Pleadings***
> ***(e) Answer.*** *Within twenty-one days after service of the complaint, the respondent shall file with and serve on the secretary the original and one copy of a written, verified answer designated as such in the caption. The respondent shall also file a copy with the presenter, the vice chair or special ethics master and, in cases prosecuted by the Director, two copies with that office.*

2. Procedure to be followed by a respondent who seeks an extension of time to file an answer: R. 1:20-4(e).

> ***R. 1:20-4. Formal Pleadings***
> ***(e) Answer.*** . . .
> *For good cause shown, the vice chair or the special ethics master, if one has been appointed, may, on written application made within twenty-one days after service of the complaint, extend the time to answer. The Director shall be notified of any extension granted in cases prosecuted by that office. The secretary shall forward one copy of all answers to the Director.*

3. The Verified Answer must contain the Verification specified in the Court Rule.

> ***R. 1:20-4. Formal Pleadings***
> *(e) Answer.* . . . ***The verification shall be made in the following form:***
>
> *"Verification of Answer*
> *I, (insert respondent's name), am the respondent in the within disciplinary action and hereby certify as follows:*
> *(1) I have read every paragraph of the foregoing Answer to the Complaint and verify that the statements therein are true and based on my personal knowledge.*
> *(2) I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."*
>
> ***An answer that has not been verified within ten days after the respondent is given notice of the defect shall be deemed a failure to answer as defined within these Rules.***

D15

4. What must be set forth in the Answer:

> ***R. 1:20-4. Formal Pleadings***
>
> *(e) Answer. . . .* ***The respondent's answer shall set forth***
>
> ***(1) a full, candid, and complete disclosure of all facts reasonably within the scope of the formal complaint;***
>
> ***(2) all affirmative defenses, including any claim of mental or physical disability and whether it is alleged to be causally related to the offenses charged;***
>
> ***(3) any mitigating circumstances;***
>
> ***(4) a request for a hearing either on the charges or in mitigation, and***
>
> ***(5) any constitutional challenges to the proceedings.***

5. What if the respondent seeks to raise any constitutional questions:

> ***R. 1:20-4. Formal Pleadings***
>
> *(e) Answer. . . . All constitutional questions shall be held for consideration by the Supreme Court as part of its review of any final decision of the Board. Interlocutory relief may be sought only in accordance with R. 1:20-16(f)(1).* ***Failure to request a hearing shall be deemed a waiver thereof.*** *A respondent is required to file an answer even if the respondent does not wish to contest the complaint.*

6. What if the respondent doesn't file any answer at all:

> ***R. 1:20-4. Formal Pleadings***
>
> *(f) Failure to Answer.*
>
> *(1) Admission. The* ***failure of a respondent to file a verified answer*** *within the prescribed time shall be deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. No further proof hearing shall be required.*

7. What if the respondent submits an Answer, but it does not contain the proper Verification?

   a. The Presenter should check the Answer, as soon as it is served, to make sure that the respondent has included and signed the Verification in accord with the specifications of R. 1:20-4(e).

   b. Presenter, DEC Secretary or other DEC officer must notify the respondent of the defect, and allow 10 days for the correction, and then take formal action if the respondent does not file a Verified Answer that conforms with R. 1:20-4(e).

D16

> ***R. 1:20-4. Formal Pleadings***
>
> *(e) Answer. . . . An answer that has not been verified within ten days after the respondent is given notice of the defect shall be deemed a failure to answer as defined within these Rules.*

8. Procedure to be followed where respondent has failed entirely to file a Verified Answer: Certification of a Default:

> ***R. 1:20-4. Formal Pleadings***
>
> *(f) Failure to Answer.*
>
> . . .
>
> *(2) Certification to Disciplinary Review Board. If a respondent has been duly served with a complaint, but has failed to file a verified answer within the prescribed time, a certification detailing that failure may be filed with the Director by the secretary or special ethics master, or, in cases prosecuted by the Director, by ethics counsel. The Director may thereafter file that certification with the Board, which shall treat the matter as a default. A copy of the certification shall be mailed to the respondent.*

9. Procedure to be followed where a party seeks sanctions for an adverse party's non-compliance with the Court Rules (e.g., the answer filed was not a Verified Answer meeting the specifics of the Court Rule, and the respondent was notified of the deficiencies in writing and failed thereafter to make timely correction): R. 1:20-5(c). The aggrieved party should file a motion for sanctions, spelling out what is complained of, and what relief is sought.

> ***R. 1:20-5(c). Prehearing Procedures***
>
> *(c) Sanctions. The hearing panel chair or special ethics master shall make and enforce all Rules and orders necessary to compel compliance with this Rule and may suppress an answer, bar defenses, or bar the admissibility of any evidence offered that is in substantial violation of the case management order, discovery obligations, or any other order.*

VII. DISCOVERY

a. Discovery procedures are set forth in R. 1:20-5(a).

b. Discovery shall be available to the presenter, following from the presenter's written request to the respondent. R. 1:20-5(a)(1) and (2).

c. Discovery shall be available to the respondent on written request, "provided that a verified answer in compliance with R. 1:20-4(e) has been filed." R. 1:20-5(a)(1).

d. The parties have a continuing obligation to provide discovery, and to supplement it as other material becomes available. R. 1:20-5(a)(5).

e. "Initial discovery shall be made available within 20 days after receipt of a written request therefor." R. 1:20-5(a)(5).

f. The categories of records and materials subject to discovery are spelled out in R. 1:20-5(a)(2)(A) to (G), and they include "any final disciplinary investigative report." R. 1:20-5(a)(2)(G).

g. "Any materials relating to any matter deemed 'confidential' under R. 1:20-9, including dismissals and diversions, are not discoverable." R. 1:20-5(a)(3). That would include any material relating to any investigation in which the party seeking the discovery was not also the respondent, unless the materials are rendered non-confidential under R. 1:20-9.

h. The types of discovery allowed under the disciplinary Rules do not include all types of discovery allowed under the Rules Governing Civil Practice. Limitations on discovery are set forth in R. 1:20-5(a)(4) (e.g., depositions are allowed only in the specified, rare circumstances, and in the manner prescribed for criminal proceedings).

i. If a party fails to respond timely to a request or supplemental request for discovery, that "discoverable information . . . may, on application of the aggrieved party, be excluded from evidence at hearing." R. 1:20-5(a)(6).

j. The failure of a party to disclose the name or report of an expert "at least 20 days prior to the hearing date shall result in the exclusion of the witness, except on good cause shown." R. 1:20-5(a)(6).

k. It is expected that the hearing panel chair or special ethics master will require any party raising a discovery objection or seeking the exclusion of any evidence to do so by written motion or other formal written application, specifying the facts and circumstances underlying the application and the relief sought.

l. "All discovery applications shall be made on notice to the hearing panel chair or special ethics master, if one has been appointed." R. 1:20-5(a)(7).

m. The Court Rules say nothing about the right of any party to seek any relief or to enter anything in the record by email. Since the hearing panel chair or special ethics master is going to have to compile the record at the conclusion of the hearing, and turn that original record over to the OAE for transmittal to the DRB, the panel chair or special ethics master may want to make sure that no motions or other applications are submitted informally, and that, if email communications are allowed, the PDF of the correspondence or the motion is attached to the email, and that the pertinent documents comprising the record of the proceedings are printed out and retained by the panel chair or special master as part of the documentary record of the case.

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VIII. PREHEARING CONFERENCE

a. The prehearing conference is not public. R. 1:20-9(c)(2).

b. Conducted by the "hearing panel chair, sitting alone, or, if assigned, a special ethics master." R. 1:20-5(b)(1).

c. When:
"within 45 days after the time within which an answer to a complaint is due." R. 1:20-5(b)(1)

d. Notice required:
"At least 14 days written notice of the date of the conference shall be given." R. 1:20-5(b)(1).

e. "Attendance at the conference is mandatory by all parties. R. 1:20-5(b)(1).

f. The prehearing conference may be conducted by telephone. R. 1:20-5(b)(1).

g. "No transcript shall be made of the prehearing conference except in unusual circumstances." R. 1:20-5(b)(1). For the recording of a prehearing conference, the OAE would have to be notified and CourtSmart arrangements would need to be in place (through Jan Vinegar; Janice.Vinegar@NJCourts.gov).

h. It is recommended that the hearing panel chair or special ethics master conduct a prehearing conference in every case, and that additional such conferences be conducted as issues arise that warrant the attention or intervention of the presider.

i. "At the prehearing conference the hearing panel chair or special ethics master ***shall*** schedule dates for the hearing of the case within 60 days after the date of the conference, except in extraordinary circumstances, which hearing dates shall be promptly reported to the vice chair and [OAE] Director." R. 1:20-5(b)(5).

j. No hearing date can be set until the arrangements for CourtSmart recording have been confirmed by Jan Vinegar at the OAE. See below at p. 27.

k. The panel chair or special ethics master should require the presenter and respondent to file a Prehearing Report, in accord with the specifications of R. 1:20-5(b)(2), in every case.

D19

R. 1:20-5(b). Prehearing Procedures

. . . .

(2) Prehearing Report. At least five business days before the date scheduled for the prehearing conference, both the presenter and the respondent shall file a report with the hearing panel chair or special ethics master, and with the adversary,

disclosing the name, address and telephone numbers of each person expected to be called at hearing,

including any person who will testify as to the character or reputation of the respondent, and

all experts.

With respect to an expert witness, the report shall state

the person's name,

address,

qualifications, and

the subject matter on which the expert is expected to testify.

A copy of the expert's report, if any, or, if no written 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, shall be attached.

Every respondent shall also include

his or her own office and home address (including a street address) and telephone number where the attorney can be reached at all times.

The respondent shall have a continuing duty to promptly advise the hearing panel chair, special ethics master, presenter, secretary of any district committee and the Director of any changes in any of the items required above.

l. Additionally, R. 1:20-5(c)(3) spells out the "Objectives" to be addressed and resolved at the Prehearing Conference.

D20

R. 1:20-5(b). Prehearing Procedures

. . . .

(3) Objectives. At the prehearing conference, the hearing panel chair or special ethics master shall address the following matters:

(A) the formulation and simplification of issues;

(B) admissions and stipulations of the parties with respect to allegations, defenses and any aggravation or mitigation;

(C) the factual and legal contentions of the parties;

(D) the identification and limitation of witnesses, including character and expert witnesses;

(E) deadlines for the completion of discovery, including the timely exchange of expert reports;

(F) the hearing date and its estimated length;

(G) issuance of any subpoenas necessary to presentation of the case;

(H) premarking of all exhibits into evidence to which the parties consent;

(I) the priority of disciplinary proceedings under R. 1:20-8 and any known trial commitments by the presenter, respondent, and respondent's counsel that could conflict with the scheduling of the matter. Counsel shall be under a continuing duty to promptly notify the hearing panel chair or the special ethics master of any such trial dates assigned as soon as known; and

(J) any other matters which may aid in the disposition of the case.

m. The hearing panel chair or special ethics master should issue a Case Management Order within one week of the prehearing conference, in accord with R. 1:20-5(b)(3).

R. 1:20-5(b). Prehearing Procedures

. . . .

(4) Case Management Order. Within seven days following the prehearing conference, the hearing panel chair or special ethics master shall issue a case management order, designated as such in the caption, memorializing any agreements by the parties and any determinations made respecting any matters considered at the conference. The case management order, which constitutes part of the record, shall be served on the presenter or ethics counsel and the respondent and filed with the vice chair and the Director.

D21

IX. THE HEARING PANEL (AND HEARING PANEL CHAIR); OR SPECIAL ETHICS MASTER

a. A hearing panel consists of two attorney members and one public member of a DEC. The DEC Chair determines the composition of the hearing panels annually. The DEC Vice Chair "administer[s] and advise[s]" the hearing panels. R. 1:20-6(a)(1). The DEC Vice Chair selects the hearing panel "after the time prescribed for the filing of an answer[.]" R. 1:20-6(a)(1).

b. To make sure that the panel members and presenter do not engage in any *ex parte* conversations about cases in the hearing stage, and to preserve the confidence of the public members at DEC meetings in the integrity of every stage of attorney disciplinary proceedings, ***the DEC Chair and Vice Chair should make sure that cases in the hearing stage are not the subject of any discussion at all during monthly DEC meetings, and that such discussions with either the presenter or the hearing panel are conducted privately.*** This may occur before or after the DEC meeting, or on another day, but such discussions – even as to procedural issues – should not occur outside the presence of the respondent or respondent's counsel, if the topic is the pending hearing and the persons present include the presenter and any members of the hearing panel.

c. A quorum of the hearing panel "shall consist of two attorney members and one public member. The hearing panel shall act only with the concurrence of two." R. 1:20-6(a)(2).

d. R. 1:20-6(a)(2)(A)-(C) sets forth the procedures "[w]hen by reason of absence, disability or disqualification the number of members of the hearing panel able to act is fewer than a quorum[.]"

e. The powers and duties of the hearing panel chair are specified in R. 1:20-6(a)(4). The powers and duties of the hearing panel are specified in R. 1:20-6(a)(3). Note that the Rule does not specify that only the hearing panel chair may write the panel report, or the majority report. The Rule envisions that the panel chair (or any other panelist) may be a lone dissenter, in which case the panel chair would not author the majority report.

D22

R. 1:20-6. Hearings.

(a) Hearing panels

. . . .

(3) Powers and Duties. Hearing panels shall have the following powers and duties:

(A) to conduct hearings on formal charges of unethical conduct and petitions for reinstatement where requested by the Board or the Court;

(B) to submit to the Board written findings or fact, conclusions of law and recommendations, together with the record of the hearing; and

(C) to determine issues of unethical conduct by majority vote, provided a quorum is present.

(4) Powers and Duties of Hearing Panel Chair. Each hearing panel chair shall have the following powers and duties:

(A) to conduct prehearing conferences in accordance with R. 1:20-5(b);

(B) to entertain prehearing motions;

(C) to preside at all hearings; and

(D) to perform such other functions as provided for by these rules or assigned by the Director with the approval of the Supreme Court.

Unless relieved by the Supreme Court, a member serving as a trier of fact where testimony has begun at the time the member's term expires shall continue in such matter until its conclusion and the filing of a report.

f. The hearing panel report should be circulated to the members of the hearing panel for their review and input, before the final report is provided to the DEC Vice Chair.

g. R. 1:20-6(b) addresses special ethics masters, who have "the full power and authority of a hearing panel." R. 1:20-6(b).

h. Issues and procedures relating to conflict or disqualification of the trier of fact are addressed in R. 1:20-6(e).

D23

X. PREHEARING MOTIONS; MOTION TO DISMISS

a. Any motion to strike an answer or for sanctions should be in writing, in the form of a motion.

b. R. 1:6-2 is the Court Rule dealing with motions. "An application to the court for an order shall be by motion . . . . A motion, other than one made during a trial or hearing, shall be by notice of motion in writing unless the court permits it to be made orally." R. 1:6-2(a).

c. At the conclusion of attorney disciplinary proceedings, the record will be transmitted to the DRB if there is any finding by the hearing panel of attorney misconduct in violation of attorney disciplinary rules, as supported by clear and convincing evidence. The record needs to contain any prehearing motions, or motions made during the hearing. The DRB will review the record and make a separate recommendation of discipline. The DRB will need the complete record of any rulings issued by the panel chair or special master on any applications of the parties, either before, during or after the hearing.

d. **Motion to Dismiss**:

R. 1:20-5(d) specifies the procedure for such a motion, and details the content of the motion to dismiss. Bear in mind that every complaint can only have been issued on the determination of the DEC Chair that clear and convincing evidence supported the issuance of the complaint in the form that it appears. See R. 1:20-4(a). Rule 1:20-5(d)(3), in turn, allows the dismissal of any part of the complaint on motion of the DEC only on the presenter's ***certification*** of the specific deficiency of the complaint, as issued.

> ***R. 1:20-5(d) Motion to Dismiss.***
>
> *(d) Motion to Dismiss.* ***No motion to dismiss a complaint shall be entertained except:***
>
> *(1) a prehearing motion addressed either to the legal sufficiency of a complaint to state a cause of action as a matter of law or to jurisdiction;*
>
> *(2) a motion to dismiss at the conclusion of the presenter's case in chief; and*
>
> *(3) a* ***motion by the presenter*** *to dismiss the complaint, in whole or in part, when*
>
> *(A) an essential witness becomes unavailable or*
>
> *(B) as a result of newly discovered or newly disclosed evidence, one or more counts of the complaint cannot be proven by clear and convincing evidence.*
>
> ***Such motion shall be supported by the presenter's certification of the facts*** *supporting the motion and any relevant exhibits, and shall be decided by the trier of fact.*

e. R. 1:20-3(h), and R. 1:20-15(e)(1)(ii) and (e)(2), specify the procedures to be followed as to the notice to be given to the parties and the Director, including of right of appeal, where the chair concludes that there is no reasonable prospect of proving unethical conduct by clear and convincing evidence after the investigation has been completed.

XI. THE HEARING

a. The hearing panel chair or special ethics master should make the threshold determination in every case as to whether the standard of R. 1:20-6(c)(1) has been met, so as to authorize the hearing to proceed.

> ***R. 1:20-6 (c)*** ***Hearings Involving Unethical Conduct; When Required.***
>
> *(1) When Required. A hearing shall be held* ***only***
>
> *if the pleadings raise genuine disputes of material fact,*
>
> *if the respondent's answer requests an opportunity to be heard in mitigation, or*
>
> *if the presenter requests to be heard in aggravation.*
>
> ***In all other cases*** *the pleadings, together with a statement of procedural history, shall be filed by the trier of fact directly*[5] *with the [Disciplinary Review] Board for its consideration in determining the appropriate sanction to be imposed.*

b. The hearing panel chair or special ethics master should confirm that the respondent and any grievant have been given proper notice of the hearing by the presenter. Since the respondent has the obligation to be present, and the grievant has "the right to be present at all times during the hearing," R. 1:20-6(c)(2)(D), no hearing should commence if either the respondent or the grievant has not been given proper notice of the hearing. See R. 1:20-5(b)(2) (a further reason for holding a prehearing conference in every case and requiring the submission of a prehearing report: to ensure the respondent remains under specific notice of the continuing duty to provide accurate and current contact information, including mailing address and phone number).

c. All disciplinary hearings are open to the public, unless a protective order has been issued. R. 1:20-6(c)(2)(F).

d. "Each trier of fact shall be obligated to inform every court reporter, witness and party of any protective order that has been issued and the effect thereof." R. 1:20-6(c)(2)(A). If a protective order has been issued, the hearing panel chair or special ethics master must also make sure that the motion or application that resulted in the issuance of such a protective order (including any briefs or other responsive submissions) has been made

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[5] See footnote 4 on page 6.

part of the hearing record and that it is delivered with the hearing record to the OAE on the conclusion of the proceedings.

e. If a member of the public asks to record or to photograph the proceedings, please call the OAE so that these arrangements may be made with courthouse staff.

f. "All witnesses shall be duly sworn." R. 1:20-6(c)(2).

g. "If special circumstances dictate, the trier of fact may accept testimony of a witness by telephone and/or video conference." R. 1:20-6(c)(2)(A). Please make sure that Jan Vinegar at the OAE is alerted of this prior to the start of the hearing, so that arrangements will be in place to ensure the recording of the telephone or video testimony as part of the CourtSmart record.

h. Issues relating to whether a witness may be granted **immunity** from criminal prosecution must be addressed in accord with R. 1:20-7(g). Such an application would be made by the OAE Director, with the consent of the Attorney General, on formal application to the Supreme Court or the Assignment Judge. They would not be determined by a special ethics master or a hearing panel chair, so be sure to call the OAE as soon as the issue is raised by a party at a disciplinary hearing.

i. **Subpoenas**:

1. R. 1:20-7(i) addresses subpoenas in disciplinary matters.

2. A panel chair or special ethics master, acting pursuant to R. 1:20-7(i)(5), "may, on motion made promptly, quash or modify a subpoena if the subject testimony or documentation is patently irrelevant or if compliance would be unreasonable or oppressive."

3. The Advisory Committee on Professional Ethics (ACPE) issued Opinion 729 on October 15, 2015, directing that lawyers who issue subpoenas pursuant to R. 1:9-6 should not include any threat of sanctions for noncompliance when sending a subpoena *duces tecum* by mail. The ACPE opinion notes that "sanctions may only be imposed when the subpoena is served personally, and not by mail." The opinion is limited to subpoenas issued in civil actions pursuant to R. 1:9. The opinion is available online at http://njlaw.rutgers.edu/collections/ethics/acpe/acp729_1.html.

4. In ethics matters, R. 1:20-7(i)((3) expressly allows subpoenas to be served by certified mail on an attorney who is a witness or a party, and R. 1:20-7(i)(4) provides as follows under the heading of "Enforcement; Contempt": "Subpoenas issued under this rule may be enforced pursuant to R. 1:9-6." Be alerted, though, that there is a disconnect in the Rules, since R. 1:9-6 addresses subpoenas issued pursuant to statute by a public officer or agency, not those issued by a Supreme Court committee.

5. The ACPE Opinion included the following notice: "Going forward, lawyers who intentionally include such language in mailed subpoenas, threatening the recipient

with sanctions for noncompliance, may be violating *Rule of Professional Conduct* 8.4(c) (conduct involving misrepresentation)." Please make sure that any subpoena issued in a disciplinary matter uses the template currently approved by the OAE.

j. **CourtSmart recording**:

1. Hearings are scheduled in all attorney disciplinary cases by OAE staff. No hearing panel chair or special ethics master should contact a court or other venue, or arrange for transcription services, for an attorney disciplinary case.

2. Jan Vinegar at the OAE is the administrative assistant who oversees all arrangements for the scheduling and recording of attorney disciplinary hearings. Jan Vinegar may be contacted at 609 403-7800, ext. 34172, Janice.Vinegar@NJCourts.gov.

3. All attorney disciplinary hearings on CourtSmart or in courthouses must not start before 8:30 a.m., and they must conclude by 4:15 p.m. The proceedings involve personnel of the Judiciary. If a hearing goes over-schedule, that may intrude into issues (some with financial impact, such as overtime) that may be regulated by contract or Judiciary policies, over which neither the panelists nor the OAE has control. OAE staff assisting with CourtSmart have been instructed that they **must cease recording at 4:15 p.m. (i.e., the OAE staff member monitoring the recording must press the stop button and terminate the recording)**, and that they may not extend the recording time for any hearing without the **prior** written authorization of the Director. Please be alerted that we do not anticipate any circumstances in which the hearing would be permitted to extend past 4:25 p.m.

4. Since R. 1:20-6(c)(2)(A) provides for the recording of all attorney disciplinary hearings, the hearing cannot be conducted unless it is being recorded (i.e., no hearing can continue on the record after 4:15 p.m., once the OAE staff monitor has hit the "stop" button on CourtSmart recording).

5. The OAE must approve and oversee the arrangements for any hearings for which an official court reporter's services would be needed.

k. **Sequestration** is addressed in R. 1:20-6(c)(2)(D).

l. **Interpreters**: Jan Vinegar of the OAE oversees the arrangements for any interpreters needed for disciplinary hearings. For Ms. Vinegar's contact information, see above.

m. The hearing panel chair or special ethics master should **not** be involved in any discussions between the parties as to whether the matter should or could be resolved by motion for discipline by consent or disciplinary stipulation, nor should such discussions between the parties delay the scheduling or the start of the hearing.

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XII. NATURE OF ATTORNEY DISCIPLINARY PROCEEDINGS

a. Attorney disciplinary "proceedings are neither civil nor criminal in nature." R. 1:20-7(a).

b. Since this is not a criminal proceeding, the proceeding should not involve the determination of a respondent's "guilt" or "innocence," since those are concepts rooted in criminal law.

c. Participants in the proceedings should avoid describing the respondent as "guilty" or "innocent" of any unethical conduct, so that the terminology specific to criminal proceedings may be avoided in this non-criminal setting.

d. The issue in an attorney disciplinary proceeding is whether clear and convincing evidence supports the finding of a violation of any Rule of Professional Conduct or any other disciplinary rule or law by the respondent. The ultimate issue is whether the respondent will be found to have violated any disciplinary rule by clear and convincing evidence, or whether the evidence is insufficient to meet that standard, with the result that no disciplinary violation should be found.

e. Hearing panel chairs or special ethics masters might consider doing a word search of their draft hearing reports to make sure that the words "guilt/guilty" or "innocence/innocent" do not appear in connection with a description of the attorney misconduct with which the respondent has been charged in the complaint. But see Matter of Perez, 104 N.J. 316, 324 (1986) (a respondent "may be found ***guilty*** of a disciplinary offense only by clear and convincing evidence").

XIII. PROOF AND EVIDENCE ISSUES

a. Standard of Proof

1. "Formal charges of unethical conduct . . . shall be established by clear and convincing evidence." R. 1:20-6(c)(2)(C).

2. Model Civil Jury Charge 1.19, defining "Clear and Convincing Evidence":
   "Clear and convincing evidence is evidence that produces in your minds a firm belief or conviction that the allegations sought to be proved by the evidence are true. It is evidence so clear, direct, weighty in terms of quality, and convincing as to cause you to come to a clear conviction of the truth of the precise facts in issue.
   "The clear and convincing standard of proof requires that the result shall not be reached by a mere balancing of doubts or probabilities, but rather by clear evidence that causes you to be convinced that the allegations sought to be proved are true."

3. "The clear and convincing standard is required 'when the threatened loss resulting from civil proceedings is comparable to the consequences of a criminal proceeding in the sense that it takes away liberty or permanently deprives individuals of interests

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that are clearly fundamental or significant to personal welfare.'" Burke, 206 N.J. at 400 (quoting In re Polk License Revocation, 90 N.J. 560, 563 (1982)). Because a Respondent's license to practice law is at stake, Respondent "may be found guilty of a disciplinary offense only by clear and convincing evidence." See Matter of Perez, 104 N.J. 316, 324 (1986).

4. The clear and convincing standard "requires a showing greater than preponderance but less than beyond a reasonable doubt," and requires the trier of fact to "have 'a firm belief or conviction as to the truth of the allegations sought to be established.'" Abbott ex rel. Abbott v. Burke, 206 N.J. 332, 399 (2011) (quoting Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 169 (2006)).

b. Burden of Proof

1. The Presenter bears the burden of establishing "by clear and convincing evidence" that Respondent has committed the alleged ethical violations. R. 1:20-6(c)(2)(B)-(C); In re Sigman, 220 N.J. 141, 152-53 (2014) (quoting In re Pena, 164 N.J. 222, 224 (2000)).

2. "The burden of proof in proceedings seeking discipline or demonstrating aggravating factors relevant to unethical conduct charges is on the presenter." R. 1:20-6(c)(2)(C).

3. "The burden of going forward regarding defenses or demonstrating mitigating factors relevant to charges of unethical conduct shall be on the respondent." R. 1:20-6(c)(2)(C).

c. Application of the Rules of Evidence and the "Residuum Rule"

1. "The rules of evidence may be relaxed in all disciplinary proceedings, but the residuum evidence rule shall apply." R. 1:20-7(b).

2. The residuum rule provides that "[n]otwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." N.J.A.C. § 1:1-15.5(b). In other words, hearsay "may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony. But in the final analysis . . . there must be a residuum of legal and competent evidence in the record to support [the decision]." Weston v. State, 60 N.J. 36, 51 (1972); see also Steven L. Lefelt, Anthony Miragliotta & Patricia Prunty, N.J. Practice, Administrative Law and Practice § 5.33 (2d ed. 2015).

d. "Relaxation" of the Rules of Evidence

1. R. 1:20-7(b) specifies that the "rules of evidence may be relaxed."

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2. Please note the wording of the Rule: "The rules of evidence ***may be relaxed***[.]" The Supreme Court did not state that the Rules of Evidence are suspended or that they have no application or relevance in attorney disciplinary proceedings.

3. If there is to be a relaxation of the Rules of Evidence, the hearing panel chair or special ethics master should at least have in mind which Rules of Evidence may otherwise apply in the circumstances presented, and have the party seeking the relaxation of that evidence rule address why the specific rule should be relaxed in the circumstances presented.

4. The presenter should show up at the hearing with the same preparation to be accorded a private paying client: The presenter should bring to the hearing the Rules of Evidence and be prepared to address any evidentiary issues presented.

5. Presenters should anticipate evidentiary issues before the hearing, and be prepared to address why (if at all) the presenter asks for the relaxation of any Rule of Evidence in the circumstances presented, and why such relaxation serves the interests of justice.

6. The presenter should be similarly prepared to respond when the respondent (or respondent's counsel) seeks the relaxation or suspension of any Rule of Evidence in the proceeding.

7. The hearing panel chair or special master should be similarly prepared to address evidentiary issues at a disciplinary hearing, to ensure the confidence of the public in the integrity of the proceedings will be preserved. The panel chair should show up at the hearing with a copy of the Rules of Evidence as a basic resource. This is, after all, a formal, public hearing conducted under the oversight of the Supreme Court. See generally R. 1:20-2(a)-(c) (Supreme Court oversight and establishment of all DECs); R. 1:20-6(b)(2)(F) ("Public Hearings. . . . [A]ll hearings shall be open to the public"); R. 1:20-8(b) ("Formal Hearings . . . formal hearings").

8. The following Rules of Evidence (for starters) may be expected to arise with some frequency in attorney disciplinary proceedings:

   a. N.J.R.E. 611(c) – leading questions allowed for questioning of adverse party (e.g., for presenter's questioning of respondent, as when the presenter calls the respondent as a witness in the DEC's case);

   b. N.J.R.E. 803(b) – admissibility of a statement against interest of a party-opponent (e.g., respondent);

   c. N.J.R.E. 803(b)(2)-(4) – admissibility of a statement against interest of respondent's counsel;

   d. N.J.R.E. 607 – credibility and neutralization;

   e. N.J.R.E. 806(c)(6) – admissibility of business records;

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f. N.J.R.E. 703 – expert testimony.

XIV. THE HEARING REPORT

a. "The trier of fact shall submit to the Board[6] written findings of fact and conclusions of law on each issue presented, together with the record of the hearing, and shall take one of the . . . actions" set forth in the Rule. R. 1:20-6(c)(2)(E).

b. A hearing report issued by a three-member hearing panel must be reviewed and approved by all members of the panel, or the report should note the dissent. Any dissenting panel member must be given the opportunity to state separately the reasons for disagreement. See R. 1:20-6(a)(2) ("The hearing panel shall act only with the concurrence of two.").

c. The DEC Vice Chair should review the panel report to make sure that it comports with the requirements of R. 1:20-6(c)(2)(E) (quoted above in XIV.a). If the hearing panel report does not conform with the requirements of the Rule, the DEC Vice Chair should consult with the hearing panel chair to make sure that appropriate steps are taken so that the hearing panel report may be finalized, and then provided, along with the complete record of the proceedings, to the OAE for transmittal to the DRB. R. 1:20-6(c)(2)(E). The panel report should then be served on the presenter, the respondent, the grievant, the DEC Vice Chair, and the Secretary. Ibid. It is expected that the DEC Secretary will oversee all issues relating to such service and the delivery of all parts of the hearing record to the OAE.

d. The hearing panel should be alerted that ***the DRB will not accept a hearing report that lacks compliance with R. 1:20-6(c)(2)(E).***

e. The hearing report should address each violation charged in the complaint. If a specific RPC is not charged in the complaint, the hearing report should not determine that the respondent has violated that RPC, with discipline to be recommended for that (additional) violation. The complaint should not be constructively amended at the hearing to conform to the proofs presented at the hearing. See In re Harry J. Levin, 193 N.J. 348 (2008). Presenters should anticipate this issue as soon as it arises, because some faults in a complaint cannot be corrected during the hearing, and would instead require the filing of an amended complaint prior to the hearing.

f. A hearing panel may dictate a draft hearing report, or an outline of that report, on CourtSmart, on the conclusion of the hearing. That transcript could be ordered separately for the further review of the panel in the preparation of the hearing report. That is intended as an accommodation to assist the panel in the preparation of a hearing report that comports in full with the requirement of R. 1:20-6(c)(2)(E), that the report shall set forth the "written findings of fact and conclusions of law on each issue presented." It is

[6] See footnote 4 on page 6.

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anticipated that it would be the ***rarest*** of cases (if such a case even exists) where the hearing panel would fully and thoroughly dictate a version of the hearing report, immediately after the completion of the hearing, that could simply be transcribed and issued. How, after all, would citations to the record be accurately included, and how would the panel take proper care in the analysis of each legal issue presented, if the report were so summarily prepared and issued?

g. The hearing panel may request oral argument from the parties to address the facts presented and the conclusions of law to be derived from the evidence admitted at the hearing, or from the stipulations. Or the panel may request that the parties submit written summations or other briefs on the conclusion of the hearing.

h. The hearing panel has the opportunity to have the parties conduct the legal research and to submit to the panel their proposed findings of fact and conclusions of law, along with any disciplinary recommendation. The panel may request the simultaneous submission of briefs by the parties, or allow the presenter (who has the burden of proof) to submit after receipt of respondent's brief.

i. For a model of what should be contained in a hearing report, please read any DRB decision (available on the DRB website. See the next section on how to access such a decision online.).

j. Bear in mind that the DRB will review any dismissal decision that is appealed, and the DRB will automatically review any finding of unethical conduct resulting in a recommendation of discipline. See R. 1:20-6(c)(2)(E). The hearing panel can issue a recommendation of discipline, only; the hearing panel cannot actually impose discipline. Ibid. Whatever the hearing panel recommends will be reviewed by the DRB, "de novo on the record on notice to all parties." R. 1:20-15(f)(1). "The Board shall render a formal decision including findings of fact and conclusions of law as to each issue presented, and shall make a specific determination as to the appropriate disciplinary sanction[.]" R. 1:20-15(f)(3). "In all matters other than those in which disbarment has been recommended, the Board's decision shall become final on the entry of an appropriate Order by the Clerk of the Supreme Court." R. 1:20-16(b).

k. Any disciplinary recommendations must follow from precedent. The hearing panel or the special ethics master is making a recommendation of discipline, and that recommendation will necessarily be reviewed by the DRB, before the DRB submits the recommendation of discipline (or notice of the admonition) to the Supreme Court. In every case, a hearing panel must rely on legal research to determine the appropriateness of any disciplinary recommendation, and the panel report should cite and discuss such precedents.

l. If the hearing panel or special ethics master has first made a finding of unethical conduct, the hearing panel or special master should then request from the OAE information as to whether the respondent has any prior disciplinary history. R. 1:20-7(n). The OAE will then issue a letter to the panel chair or special master, with a copy to the parties, addressing the issue of any prior disciplinary history and giving notice to the parties of

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their opportunity to "submit written argument on the issue of the effect to be given thereto" within five days. Ibid.

> ***R. 1:20-7. Additional Rules of Procedure.***
>
> . . . .
>
> *(n) Prior Discipline or Disability. Information concerning prior final discipline or disability of the respondent shall not be a matter for consideration by the trier of fact until a finding of unethical conduct has first been made, unless such information is probative of issues pending before the trier of fact. On a finding of unethical conduct the trier of fact shall request the Office of Attorney Ethics to disclose to it and to the presenter and to the respondent a summary of any orders, letters or opinions imposing temporary or final discipline or disability on the respondent. Within five days of receipt of the submission of any prior discipline or disability, either the presenter or ethics counsel or respondent may submit written argument on the issue of the effect to be given thereto.*

m. Levels of Discipline: See R. 1:20-15A(a) (Categories of Discipline); see also R. 1:20-9(d)(5) ("There shall be no private discipline").

n. Any costs of disciplinary proceedings are recommended by the DRB and set by "final order of discipline" issued by the Supreme Court. See generally R. 1:20-17. Presenters, DEC members or officers, panel chairs, or special masters are ***not*** involved in that process.

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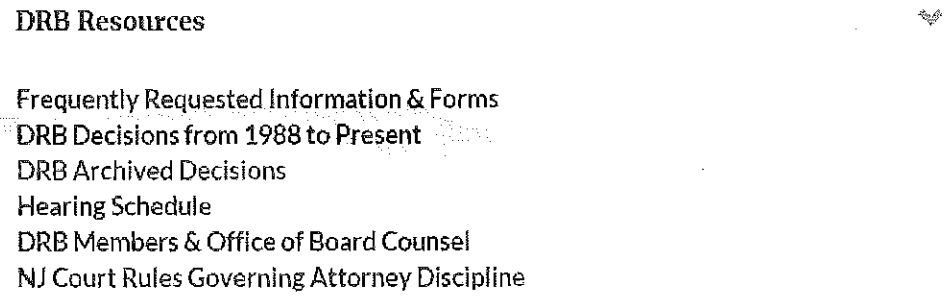
XV. RESEARCH IN ATTORNEY DISCIPLINARY CASES

a. Basic Instructions: How to find a case on the Disciplinary Review Board website.

Follow these steps:

1. Do a Google search of "NJ DRB," and click on the site for the New Jersey Disciplinary Review Board. It will come up at the top of the search results: https://www.njcourts.gov/attorneys/drb.html.

2. On the site, you will find a list on the right under "DRB Resources." Click on "DRB Decisions from 1988 to Present."



3. That will bring up a list of "Recent Disciplinary Cases." Click on any of them and you will be brought to the links for the DRB decisions and the Supreme Court disciplinary Orders.

DRB - Disciplinary Review Board of the Supreme Court of New Jersey

RECENT DISCIPLINARY CASES

ABBREVIATIONS:

MOS = MONTH(S)	YR = YEAR(S)
SUSP = SUSPENSION(S)	LIC = LICENSE

DISCIPLINE CASES IN THE LAST 3 MONTHS

Docket #	Case Type	Respondent	Final Action	Court Order Filed Date
17-424	PRESENTMENT	TABOR, JASON M	DISBAR	09/18/2018
17-295	M/RECIP DIS	NIHAMIN, FELIX	1 YR. SUSP.	09/11/2018
18-053	PRESENTMENT	TYLER, KIMBERLY S	6 MOS. SUSP.	09/07/2018
17-319	M/FINAL DIS	ROTHMAN, ROBERT E	3 YR. SUSP.	09/06/2018
17-307	DEFAULT R 1:20-4(F)(1)	OSBORNE, MICHAEL	CENSURE	09/06/2018
17-375	ADMONIT/PRESNT	FREEMAN, JARRED S	3 MOS. SUSP.	09/06/2018

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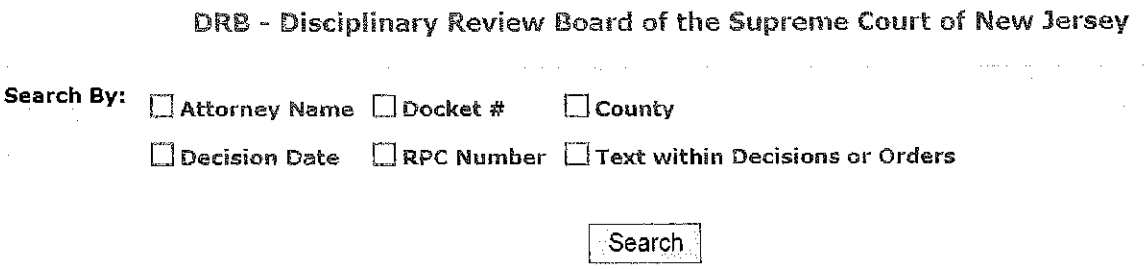
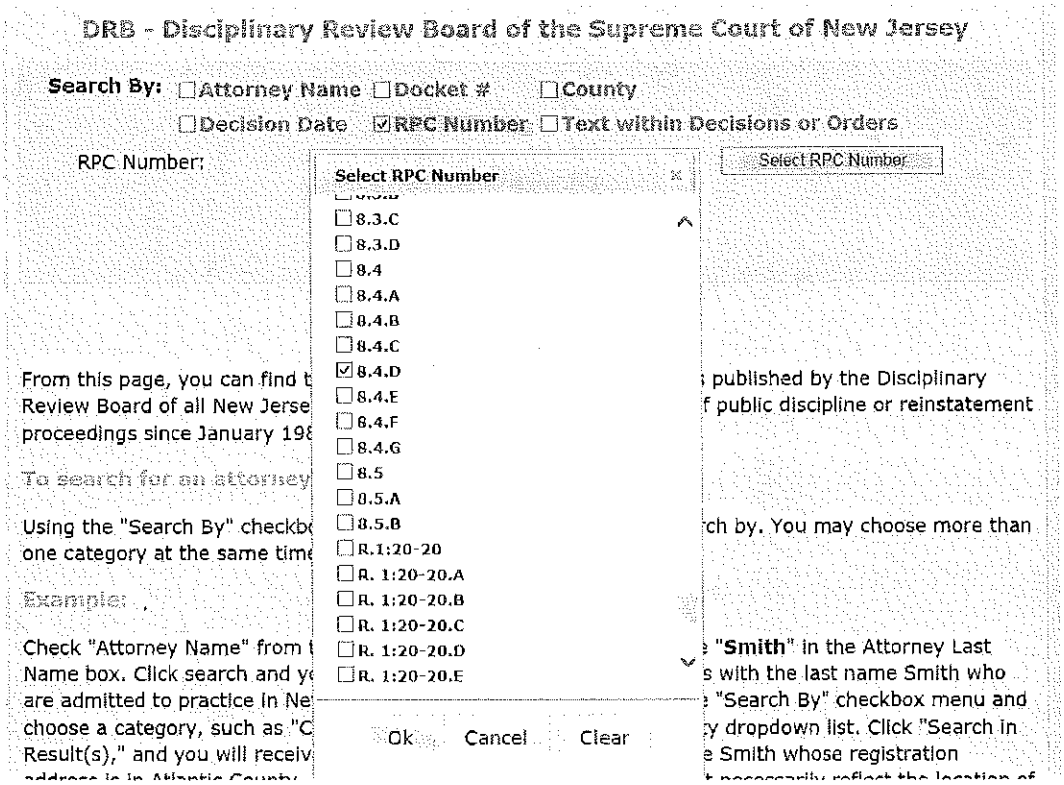
4. On that same web page (http://drblookupportal.judiciary.state.nj.us/RecentDisciplinedCases.aspx), you may click on the link on the left side of the page, under "DRB Lookup," for "Search By…" That will bring you to a webpage where you will see the following options:



5. If you are investigating a case involving a violation of RPC 8.4(d) (conduct prejudicial to the administration of justice), for example, you could select "RPC Number" and select "8.4.D" from the dropdown menu:



6. That search, as of September 29, 2018, will bring up 852 results, which you may then sort to show the most recent cases. If you choose to sort by "Date Descending," you will find the links for In the Matter of Farrah A. Irving, a case prosecuted by the District IIA Ethics Committee, which proceeded by Motion for Discipline by Consent. The respondent received a reprimand for violation of RPC 1.5(c) (failure to provide a contingent fee agreement, stating the method by which the fee is to be determined), RPC 3.3(a) (lack of candor to a tribunal), RPC 8.4(c) (conduct involving

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dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). The DRB decision letter and the Supreme Court disciplinary Order are accessible by clicking on the links available on that web page.

DRB - Disciplinary Review Board of the Supreme Court of New Jersey

Search Criteria:
RPC Code:'8.4.D'

Search By: ☐ Attorney Name ☐ Docket # ☐ County
☐ Decision Date ☑ RPC Number ☐ Text within Decisions or Orders

RPC Number: 8.4.D — Select RPC Number

Search in Result(s) — New Search

Showing result(s) **1 - 10 of 852** — Sort By: Date Descending

IRVING, FARRAH A - LETTER DECISION
Docket No: 18-076
Attorney: IRVING, FARRAH A
Type: DRB LETTER DECISION
Decision Date: 05/23/2018

IRVING, FARRAH A - SC ORDER (REPRIMAND)
Docket No: 18-076
Attorney: IRVING, FARRAH A
Type: SUPREME COURTS ORDERS/OPINIONS
SC Order Date: 06/11/2018

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FORMS, TEMPLATES, AND BASIC RESOURCES FOR DEC MEMBERS ASSIGNED TO CASES IN THE HEARING STAGE[1]

(July 2020)

Table of Contents

Section F. HEARINGS STAGE: PROCEDURES FROM THE ISSUANCE OF THE COMPLAINT, THROUGH THE PREHEARING CONFERENCE

1. The Complaint

	Form Number[2]
Letter from DEC Chair to DEC Secretary, memorializing that Chair has reviewed and approved Complaint, and authorizing DEC Secretary to proceed with having the Complaint served on Respondent	F1a
Complaint Service Letter	F1b
Complaint (Template) Sample Complaints may be found in DEC Training Packets 4, 6, 7, and 10. They are listed in the Tables of Contents for those Training Packets.	F1c
Complaint Checklist To be completed by the DEC Chair and scanned into the OAE database, before the Complaint is served on the Respondent.	F1d
Notice Letter from DEC Secretary to Respondent's Employer of Issuance of the Complaint R. 1:20-9(k) requires this notice, along with the Complaint, to be sent to the law firm or public agency employing the Respondent.	F1e
Letter from DEC Secretary to Grievant, enclosing Complaint and	

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[1] This index is a publication of the Office of Attorney Ethics (OAE), to be made available to current members of the District Ethics Committees (DECs) who have been assigned to an ethics case in the hearing stage, and to Hearing Panel Chairs or Special Ethics Masters. ***The OAE has not authorized the use of this index for any other recipient.***

[2] DEC members who seek the forms listed in this index should request them by form number from the officers of their DEC. All DEC officers have been provided with the complete set of all forms on a disk which they received at the DEC Officers Meeting on September 24, 2019. Some of the forms are in the process of being adapted for remote hearings, and for circumstances relating to the COVID-19 pandemic. Please contact Isabel McGinty at the OAE (Isabel.mcginty@njcourts.gov) to request the updated version of any form.

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Complaint Service Letter F1f

2. The Verified Answer

Verified Answer – The Basics, Following from Court Rule F2a

Verified Answer Checklist F2b
To be completed by the DEC Vice Chair and scanned into the OAE database at the time that the Answer is received (time is of the essence).

Notice Letter to Respondent of Deficiencies in Form of Answer previously submitted, and giving notice of intent to file motion to strike F2c

Improper Verification of Answer: Notice Letter to Respondent of Deficiencies in Form of Answer previously submitted, and giving notice of intent to petition Panel Chair to Strike Answer; R. 1:20- 4(e) F2d

FIVE-DAY LETTER [Follow-up letter] to Respondent, Informing Respondent of Time Limit for Filing Verified Answer and Penalty for Failure to Answer F2e

Letter from DEC Investigator (or Presenter) to Grievant, providing copy of respondent's Verified Answer F2f

3. Discovery

Cover letter for Discovery Provided to Respondent by Presenter F3a

Notice Letter from Presenter to Respondent Providing Witness List F3b

4. Prehearing Conference

Sample Prehearing Report, to Be Submitted by the Presenter to the Hearing Panel Chair, Pursuant to R. 1:20-5(b)(2) F4a

Sample Case Management Order [ORDER TEMPLATE] to Be Issued by the Hearing Panel Chair Within 7 Days Following the Prehearing Conference, R. 1:20-5(b)(4) F4b

5. Prehearing Motions

Motion to Dismiss: General Information F5a

Sample Notice of Motion (for Presenter to Adapt to Fit the Circumstances) F5b

Sample Certification of the Presenter in Support of Motion to Dismiss all or part of the Complaint F5c
This Certification is required by R. 1:20-5(d), where the Presenter or the DEC seeks the dismissal of all or part of a Complaint which had been issued on the DEC Chair's determination that clear and

convincing evidence supported the issuance of the Complaint
as to all charges contained therein.

Sample Order Imposing Sanctions F5d
The text of this Order was used by a Panel Chair in an earlier case.
It is provided here in sanitized form for purposes of illustration.

6. ***Certification of the Record on Default; and Notice Issues Relating to Service on Non-Responsive Respondent (Including Publication)***

Certification of the Record by the DEC Secretary: Default F6a

Address Information Request to Postmaster from DEC Secretary F6b

Notice of Publication – Service of Complaint F6c
Form to be sent by DEC Secretary to have published the notice to the
respondent that a Complaint has been filed against the respondent.

Notice of Publication – Hearing F6d
Form to be sent by DEC Secretary to have published the
respondent's notice of the hearing.

Section G. HEARINGS STAGE: DISPOSITIONS ON CONSENT, WHERE RESPONDENT DOES NOT DISPUTE THE FACTUAL ALLEGATIONS AND THE RPCs ALREADY DETERMINED BY THE DEC

1. ***Motion for Discipline by Consent***

Notice of Motion for Discipline by Consent (Template), to be signed
by the DEC Investigator G1a

Stipulation of Discipline by Consent (Template), to be signed by Respondent,
Respondent's counsel, the DEC Investigator, and the DEC Chair G1b

Respondent's Affidavit in Support of the Motion for Discipline by
Consent (Template); to be signed by the Respondent and Notarized G1c

Chair's Checklist for Motions for Discipline by Consent or
Disciplinary Stipulations G1d
To be completed by the DEC Chair and scanned into the OAE database,
when the paperwork has been signed in the district, with the originals
sent to the OAE for transmittal to the DRB.

Letter from DEC Secretary to Grievant, giving notice that Motion for
Discipline by Consent has been submitted to OAE for transmittal to

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Disciplinary Review Board G1e
Do not include a copy of the motion, since the DRB may not docket the motion in its present form and it may go through several cycles of revisions, at DRB direction.

Letter from DEC Secretary to Grievant, giving notice that Motion for Discipline by Consent has been accepted for docketing by Disciplinary Review Board G1f
Now include a copy of the motion, with notice to Grievant that the motion must remain CONFIDENTIAL.

2. ***Disciplinary Stipulation***

Template for Disciplinary Stipulation, to be signed by Respondent, Respondent's counsel, the DEC Investigator, and the DEC Chair G2a
See G1d – The **Checklist** for Disciplinary Stipulations. This should be completed by the DEC Chair at the time the Disciplinary Stipulation is sent to the OAE.

Letter from DEC Secretary to Grievant, giving notice that Disciplinary Stipulation has been submitted to OAE for transmittal to Disciplinary Review Board G2b
Do not include a copy of the stipulation, since the DRB may not docket the stipulation in its present form and it may go through several cycles of revisions, at DRB direction.

Letter from DEC Secretary to Grievant, giving notice that Disciplinary Stipulation been accepted for docketing by Disciplinary Review Board G2c
Now include a copy of the stipulations, with notice to Grievant that the stipulation must remain CONFIDENTIAL.

3. ***Direct Filing with the DRB:***

EXPLANATORY NOTE:
A procedure to be used in the following circumstances:

Rule 1:20-3(c) Hearings Involving Unethical Conduct; When Required.
(1) When Required. A hearing shall be held only if the pleadings raise genuine disputes of material fact, if the respondent's answer requests an opportunity to be heard in mitigation, or if the presenter requests to be heard in aggravation. ***In all other cases the pleadings, together with a statement of procedural history, shall be filed by the trier of fact directly with the Board for its consideration in determining the appropriate sanction to be imposed.***
[emphasis added]

Cover letter from OAE to DRB Chief Counsel, where trier of fact seeks to submit record directly to the DRB for determination of sanction G3a

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Section H. HEARINGS STAGE: FROM THE PREHEARING CONFERENCE THROUGH THE HEARING ITSELF

1. *Scheduling the Hearing*

Hearing Panel Appointment Letter (includes details of procedures and rules, and gives notice of hearing panel members) H1a
To be sent by District Secretary to Panel Chair, with copy to Parties, Panel Members, and OAE.

Email from OAE CourtSmart Coordinator to Hearing Panel Chair (only), with information about CourtSmart recording procedures H1b

"CourtSmart Courtroom Protocol" H1c
Illustrated directions for the Panel Chair for use of CourtSmart.

Notice of Formal Hearing H1d
Letter from Hearing Panel Chair to respondent (or respondent's counsel). To be issued after completion of the Prehearing Conference.

Letter from DEC Investigator (or Presenter) to Grievant, giving Grievant notice of hearing H1e

2. *Subpoenas*

Subpoena Ad Testificandum (witness presence, only) H2a

Subpoena Duces Tecum (witness presence with records) H2b

Subpoena Service Letter. From DEC Secretary to County Sheriff H2c
To be used only for subpoenas requested by the Presenter or the DEC. Not to be used for Respondent's subpoenas. N.J.S.A. 22A:4-9.

3. *Hearing*

Hearing Panel Chair Preliminary Remarks (CourtSmart Proceeding) H3a
The Hearing Panel Chair should read this text into the record at the start of every hearing.

Hearing Panel Chair Closing Remarks H3b
The Hearing Panel Chair should read this text into the record at the close of every hearing.

"Hearing Panel Checklist for Completeness and Accuracy of the Hearing Record" H3c
This Checklist should be read aloud and completed by the Hearing Panel Chair on the record at the end of the hearing. The Panel Chair should sign the verification at the end, and date the Checklist, and

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then include it in the record of the proceedings.

"Hearing Panel Checklist," to be completed by Hearing Panel Chair before Hearing Record can be submitted to the OAE after the hearing. H3d
The Hearing Panel Chair should fill out this Checklist at the time that the hearing panel report is issued. It is the cover document for the full hearing record, and must be submitted to the OAE. ***The Hearing Panel Chair should submit <u>both</u> H3c and H3d as part of the hearing record, to be sent to the OAE.***

General Information About the Hearing H3e

4. ***<u>Summation Brief</u>***

Cover Page, and summary of contents H4a
Presenters should consider whether to request the opportunity to submit a written summation, to consist of a statement of the proposed findings of fact and conclusions of law, along with any proposed recommendation of discipline, to the Hearing Panel.

Section I. HEARINGS STAGE: THE HEARING PANEL REPORT

1. ***<u>Respondent's Disciplinary History</u>***

Cover letter from OAE to Hearing Panel Chair, with Copies to Parties, Disclosing Disciplinary History Information, Following Hearing; R. 1:20-7(n) I1a

Cover letter from OAE to Hearing Panel Chair, with Copies to Parties, Confirming that Respondent Has No Disciplinary History, Following Hearing; R. 1:20-7(n) I1b

2. ***<u>The Hearing Panel Report</u>***

General Overview I2a

Sample Hearing Panel Reports I2b

Sample Template for Hearing Panel Report, with Recommendation of Discipline I2c

Sample Template for Hearing Panel Report, with Recommendation of Dismissal I2d

Cover letter from Hearing Panel Chair to DEC Vice Chair, enclosing Hearing Panel Report, the record of the proceedings, and the two Hearing Panel Checklists (H3c and H3d) I2e

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Cover letter from DEC Vice Chair, confirming the Vice Chair has reviewed the Hearing Panel Report, record, and the Checklist submitted by the Hearing Panel Chair, and that the record of the proceedings should be submitted to the OAE, with the Hearing Panel Report issued to the parties I2f

NOTICE OF ISSUANCE OF HEARING PANEL REPORT (Finding of violation, with discipline recommended):
Letter from DEC Secretary to the parties and to the Grievant, informing them that the Hearing Panel Report has been issued I2g
NOTE: If the Hearing Panel has determined that the complaint should be dismissed, then the DEC Secretary would issue Form I3a.

3. *Secretary's Dismissal Letter After Hearing*

Letter from DEC Secretary to Grievant, informing Grievant of dismissal following hearing, and giving notice of right of appeal **(SECRETARY'S DISMISSAL LETTER TEMPLATE)** I3a
Form E2b (Notice of Appeal Form) should be included with the dismissal letter.

Section J. DISCIPLINARY REVIEW BOARD

1. *Disciplinary Review Board*

[General information about the Disciplinary Review Board is available in R. 1:20-15, and in the DEC Manual (2012, and later abridged editions) at section 83, on pages 86-87.] ..... [no form]
The Notice of Appeal to the DRB is Form **E2b.**

2. *Disciplinary Review Board Information*

Disciplinary Review Board Tips for Investigations, Pleadings, Hearings and Hearing Panel Reports and for Oral Argument before the DRB J2a
This document is also available as DEC Training Packet 8.

3. *Disciplinary Review Board Website*

Step-by-Step Introduction to the Website of the Disciplinary Review Board (in under 3 pages) J3a

4. *Disciplinary Review Board Correspondence*

Letter from the DEC to the DRB, following a request for information from the DRB J4a

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Section L. RELEVANT LAWS AND TRAINING MATERIALS FOR THE DECs

1. *COURT RULES AND RPCs*

"Discipline, Fee Arbitration, and Other Related Rules" ***(The Yellow Manual)*** L1a
OAE publication containing the RPCs and the Court Rules affecting the attorney disciplinary system, ethics cases, fee arbitrations, and attorney recordkeeping rules. The current version of this manual is available on the "Training and Education" tab, on the homepage of the OAE Website.

R. 1:12-1. Disqualification of Judges (Court Rule) L1b

R. 5:3-5. Attorney Fees and Retainer Agreements in Civil Family Actions (Court Rule) L1c

Outline of the RPCs L1d

2. *OAE MANUAL FOR THE DECs, AND TRAINING PACKETS*

"New Jersey District Ethics Committee Manual 2012" (2019 abridged edition) ***(The Blue Manual)*** L2a
This is the OAE publication distributed annually by the OAE to the DEC members at DEC Orientation. The current version of this manual is available on the "Training and Education" tab, on the homepage of the OAE Website.

"Summary and Index of the DEC Training Packets" (updated Oct. 19, 2018) L2c
Annotated index of the contents of the DEC Training Packets
This Index is available on the "Training and Education" tab, on the homepage of the OAE Website.

3. *e-FILING INFORMATION*

"Step-by-Step Guide to Using the OAE e-Filing Website" L3a
Training Guide for e-Filing (Fall 2019 update)

"e-Filing Tips and General Information to Get You Started" L3b

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APPENDIX E

WITNESS INSTRUCTIONS FOR REMOTE DISCIPLINARY PROCEEDINGS

JULY 2020

Witness Instructions for Remote Disciplinary Proceedings

Following from the COVID-19 emergency and the need to implement social distancing practices, the Supreme Court of New Jersey has authorized the use of virtual technology (Zoom, Teams, or phone) for attorney disciplinary proceedings. All such proceedings are presently being conducted remotely.

A remote hearing is a court proceeding and therefore an extension of the courtroom. Appropriate professional conduct, attire, and camera background are always required. The Special Master or Hearing Panel Chair, who presides at the hearing, has the same authority over the proceeding and the participants as if they were physically present in the courtroom. Participants are expected to behave with the same levels of courtesy and professionalism as at an in-person hearing.

Basics – Before the Hearing Date

- Make sure that you will have provided your email and cell phone contact information to the party who seeks to call you as a witness at the proceeding. You will need to have supplied the contact information to ensure that you can be reached at the appropriate time.
- Make sure that you also have the email and cell phone contact information of the party who seeks to call you as a witness, so that you will be able immediately to contact that person in the event of any technical or other complications, or if you have questions.
- Before the hearing date, please make sure that you will have discussed with the party who seeks your testimony any technical issues or concerns about how you will be able to testify remotely.
- If you need an interpreter or any accommodation in order to be able to testify, please make sure you will have informed the party who seeks your testimony of the particular request before the hearing date.

Basics – On the Hearing Date

- You may be scheduled for a specific time or time window. The party who seeks your testimony will reach out to you when it is your time to testify. Please have your phone, mobile device, or computer ready for your allotted time.
- The presider at the hearing will speak to you on the record at the time that your testimony is to begin. Please keep in mind that you are appearing remotely in a court proceeding, and that your testimony will be recorded as part of the formal record of the proceedings.

Mechanical and Technical Points

- Position the camera at or slightly above eye level.
- Do not hand-hold mobile devices and do not lay phones or tablets flat on a desk or tabletop.
- If you are using a mobile device or phone, please ensure that you are able to plug in.
- Disable the phone or mobile devices ring- and vibration-tones.

Decorum

- Be mindful of your behavior and comport yourself as if you are in a Court of law.
- Make sure, at the time of your testimony, that you are not outdoors, in a vehicle, or in a public place.
- Please make sure you are in a quiet private room with sufficient lighting at the time of your testimony, and that there are no background noises or distractions. Choose a solid, neutral background
- Keep in mind that your testimony will be audio-recorded, through the Judiciary's recording system, and your voice will need to carry over the internet or phone system that you use when you testify.

Appendix F

SELECTED COURT RULES, INCLUDING ON ATTORNEY DISCIPLINE AND FEE ARBITRATION

RULES OF PROFESSIONAL CONDUCT

SELECTED COURT RULES, INCLUDING ON ATTORNEY DISCIPLINE AND FEE ARBITRATION

RULES OF PROFESSIONAL CONDUCT

Revised as of May 9, 2019

PUBLISHED BY THE
OFFICE OF
ATTORNEY ETHICS

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GLOSSARY OF ATTORNEY DISCIPLINE TERMS

Agreement in Lieu of Discipline - the vehicle used to accomplish diversion of "minor" unethical conduct matters where an attorney admits "minor" unethical conduct has been committed and that attorney qualifies for diversionary treatment. See R. 1:20-3(i)(2)(B).

Board or Disciplinary Review Board - the intermediate appellate tribunal in disciplinary matters.

Complaint - the written document formally charging the respondent with specific violations of unethical conduct. A complaint is issued after completion of an investigation if it meets the standard of R. 1:20-4(a).

Consent Matter - the appellate process before the Disciplinary Review Board and the Supreme Court by which the extent of discipline to be imposed as the result of discipline by consent is reviewed, without oral argument. See R. 1:20-15(g) and R. 1:20-16(e).

Director - the Director of the Office of Attorney Ethics, who administers the Office of Attorney Ethics, Ethics Committees, Fee Committees, the Random Audit Program, the Annual Attorney Registration Statement, and the Trust Overdraft Notification Program.

Disciplinary Oversight Committee - the Disciplinary Oversight Committee reviews the annual disciplinary system budget and makes recommendations to the Supreme Court concerning the disciplinary system.

Discipline by Consent - a procedure whereby a respondent may agree with an investigator, presenter or ethics counsel to admit facts constituting unethical conduct and recommend specific discipline or a range of specific discipline, subject to review by the Disciplinary Review Board. See R. 1:20-10(b).

Diversion - a non-disciplinary treatment by consent for attorneys who admit they have committed "minor" unethical conduct and who otherwise qualify for diversionary treatment. Diversion is accomplished through an "Agreement In Lieu of Discipline." See R. 1:20-3(i)(2)(A) and (B).

Ethics Committee(s) - one or more district ethics committees throughout the state that screen, investigate, prosecute, and hear disciplinary and disability-inactive matters.

Ethics Counsel - an attorney of the Office of Attorney Ethics. See R. 1:20-2(a).

Fee Committee(s) - one or more district fee arbitration committees throughout the state that screen, hear, and decide disputes by clients over legal fees.

Grievance - any allegation of unethical conduct made against an attorney. A grievance, if docketed, is assigned for investigation by the Director or by an Ethics Committee.

Minor Unethical Conduct - minor types of unethical conduct which, if proved, would not warrant discipline greater than an admonition. Minor unethical conduct matters are eligible for diversionary treatment. R. 1:20-3(i)(2).

Presenter - the attorney who is appointed to prosecute a complaint. R. 1:20-4(g)(1).

Respondent - the attorney who is the subject of disciplinary charges.

Trier of Fact - refers to an ethics committee hearing panel or single member adjudicator or special ethics master.

Unethical Conduct - all ethics violations that would subject an attorney to discipline are referred to as unethical conduct. R. 1:20-3(i)(1).

RULE 1:20. DISCIPLINE OF MEMBERS OF THE BAR

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

(a) Generally. Every attorney and business entity authorized to practice law in the State of New Jersey, including those attorneys specially authorized for a limited purpose or in connection with a particular proceeding, shall be subject to the disciplinary jurisdiction of the Supreme Court as set forth in the Constitution of 1947, Article 6, Section 2, Paragraph 3. Attorneys who have resigned without prejudice

pursuant to Rule 1:20-22 shall also be subject to such jurisdiction in respect of conduct undertaken prior to the acceptance of the resignation by the Court.

To assist in the administration of its disciplinary function, the Supreme Court shall establish, in accordance with these Rules, district ethics committees (hereinafter referred to as the Ethics Committees or the Ethics Committee), district fee arbitration committees (hereinafter referred to as the Fee Committee or the Fee Committees), a Disciplinary Review Board (hereinafter referred to as the Board or Disciplinary Review Board), a Disciplinary Oversight Committee (hereinafter referred to as the Oversight Committee), and an Office of Attorney Ethics and a Director thereof (hereinafter referred to as the Director).

(b) Annual Fee. Every attorney admitted to practice law in the State of New Jersey, including all persons holding a plenary license, those admitted pro hac vice in accordance with Rule 1:21-2, those holding a limited license as in-house counsel under Rule 1:27-2, those registered as multijurisdictional practitioners under RPC 5.5(b), those certified as Foreign Legal Consultants under Rule 1:21-9, and those permitted to practice under Rule 1:21-3(c) shall pay annually to the Oversight Committee a sum that shall be determined each year by the Supreme Court. All sums so paid shall be used for the attorney-discipline and fee-arbitration systems. This assessment shall be collected administratively in the same manner as and subject to the same exemptions provided under Rule 1:28-2, except that plenary-licensed attorneys who are in their second calendar year of admission shall pay a partial fee, as determined by the Supreme Court. The names of all persons failing to comply with the provisions of this Rule shall be reported to the Supreme Court for inclusion on its Ineligible to Practice Law List.

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

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

(d) Remedies for Failure to Pay or File. Any person who fails to complete and file the annual registration statement required by paragraph (c) on or before February 1 of each year or such other date as the Court may determine, or to make payment as required by paragraph (b) within 30 days after the due date each year shall be declared to be ineligible to practice law and shall be included on the Ineligible To Practice Law List of the Supreme Court. A person who makes payment after February 1 of the billing year, or such other due date as the Court may establish, but before being placed on the Ineligible List, shall be subject to a late fee of $40. These late fees shall be shared equally between the Oversight Committee and the Fund. Such person shall be reinstated automatically to the practice of law without further order of the Court on filing with the Fund the completed annual registration statement for the current year together with the annual payment, the late fee, any arrears due from prior years, and full compliance with the Rule 1:28-2 requirements of the Fund. Pursuant to Rule 1:28-2(c), failure to complete and file the annual registration statement for seven consecutive years shall result in the administrative revocation of the attorney's license to practice in this State.

1:20-2. Office of Attorney Ethics

(a) Appointment. The Supreme Court shall appoint a Director of the Office of Attorney Ethics and such assistant and deputy ethics counsel and staff as it may from time to time determine are necessary to perform properly the functions prescribed by these rules. Neither the Director, ethics counsel nor staff shall be permitted to otherwise engage in the practice of law nor to be otherwise employed except as may be provided by the Code of Conduct for Judiciary employees, these rules and R. 1:17.

(b) Authority. The Director shall have the discretion and the authority to:

(1) exercise exclusive jurisdiction over the investigation and prosecution of the following:

(A) any case in which the Director determines the matter involves serious or complex issues that must be immediately addressed or one that requires emergent action;

(B) all cases in which an attorney is a defendant in any criminal proceedings;

(C) any case in which the Ethics Committee requests intervention;

(D) any case in which an Ethics Committee has not resolved a matter within one year of the filing of a grievance;

(E) any case in which the Board or the Supreme Court determines the matter should be assigned to the Director;

(F) any case involving multijurisdictional practice or practice as in-house counsel.

(2) investigate any information coming to the Director's attention, whether by grievance or otherwise, which, in the Director's judgment, may be grounds for discipline or transfer to disability-inactive status;

(3) dispose of, by investigation or dismissal, all matters involving alleged unethical conduct, by transfer to disability-inactive status, by agreement in lieu of discipline in minor unethical conduct cases, or by the prosecution of formal charges before a duly constituted hearing panel or special ethics master, all in accordance with these Rules;

(4) prosecute ethics proceedings before the Disciplinary Review Board;

(5) prosecute all ethics proceedings before the Supreme Court, unless the Court or the Director requests the assistance of Board Counsel to do so;

(6) seek from the Supreme Court judicial review of any final determination of the Board within the time and in the manner prescribed by the Rules of the Court;

(7) transfer any matter pending before an Ethics Committee or Fee Committee to another district;

(8) maintain records of all ethics and fee arbitration matters;

(9) administer the programs of the Fee Committees in accordance with R. 1:20A-1 et seq., of the Ethics Committees in accordance with R. 1:20-3 et seq., and to render to both of them appropriate legal and administrative advice;

(10) administer the Random Audit Compliance Program in accordance with R. 1:21-6(c);

(11) prepare annually, jointly with Counsel for the Disciplinary Review Board, a proposed budget for the attorney disciplinary system of the state;

(12) hire and discharge secretaries of Ethics Committees and Fee Committees and recommend and pay their compensation;

(13) recommend to the Supreme Court the appointment and replacement of members of Ethics Committees and Fee Committees;

(14) recommend the creation of new Ethics Committees and Fee Committees and the reorganization and termination of existing Ethics Committees and Fee Committees ;

(15) recommend to the Supreme Court rules and guidelines governing the procedures to be followed in all ethics and fee arbitration proceedings in this state;

(16) hire and discharge all staff of the Office of Attorney Ethics consistent with personnel policies of the judiciary and subject to the approval of the Chief Justice, and to recommend the hiring of all ethics counsel to the Supreme Court;

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(17) select attorneys and non-attorneys from among former Ethics and Fee Committee members to act as hearing panel members; and

(18) approve additional volunteer attorneys who are not members of an Ethics Committee to act as investigators or presenters.

In all actions the Director shall exercise all of the investigative and prosecutorial authority of an Ethics Committee in addition to any authority invested in the Director under these rules.

(c) Advisory Opinions Prohibited. The Office of Attorney Ethics shall not render advisory opinions of any kind, either orally or in writing.

(d) Exemption From Costs. As an agency of the Supreme Court, the Office of Attorney Ethics and any lawfully appointed designee shall be exempt from the payment of any Court costs required by rule of law of the State of New Jersey including, but not limited to, the filing or docketing of any document, deposit for costs or service of process.

1:20-3. District Ethics Committees; Investigations

(a) Disciplinary Districts. The Supreme Court shall establish, and may from time to time alter, disciplinary districts consisting of defined geographical areas and shall appoint in each such district a District Ethics Committee which shall consist of such number of members, not fewer than eight, as the Court may determine, at least four of whom shall be attorneys of this state, at least two of whom shall not be attorneys, all of whom shall either reside or work in the district or county in which the district is located.

(b) Appointments. Members of Ethics Committees shall be appointed by, and shall serve at the pleasure of the Supreme Court for a term of four years, except that members who are subsequently designated to serve as officers pursuant to paragraph (c) shall serve for an additional two years from the date of such designation or until the end of their initial appointment term, whichever is longer. With the approval of the Supreme Court, a member or officer who has served a full term may be reappointed to one successive term. A member serving in connection with an investigation pending at the time the member's term expires may continue to serve in such matter until its conclusion. In order that, as nearly as possible, the terms of one-quarter of the members shall expire each year, the Supreme Court may, when establishing a new Ethics Committee, appoint members for terms of less than four years and members so appointed shall be eligible for reappointment to a full successive term.

(c) Officers; Organization. The Supreme Court shall biennially designate a member of each Ethics Committee to serve at its pleasure as chair and another member to serve as vice-chair. Whenever the chair is absent or unable to act or disqualified from acting due to a conflict, the vice-chair shall perform the duties of the chair. The chair shall be responsible for administering the Ethics Committee. Under the chair's direction, the vice-chair, or another Ethics Committee member designated by the chair, shall be

responsible for administering all matters where a complaint has been filed.

Each Ethics Committee shall hold an organization meeting in September of each year and shall meet thereafter at least monthly except that, with the approval of the Director, an Ethics Committee may meet less frequently. The Ethics Committee shall also meet at the call of the Supreme Court, the chair, the Board or the Director.

The Director shall, after consultation with the chair, appoint a secretary who shall not be a member of the Ethics Committee but who shall be a member of the bar maintaining an office within the district or county in which the district is located. The secretary shall continue to serve at the pleasure of the Director and shall be paid an amount annually set by the Supreme Court to reimburse the secretary for costs and expenses. The secretary shall keep full and complete records of all Ethics Committee proceedings, shall maintain files with respect to all inquiries and grievances received and investigations undertaken, shall transmit copies of all documents filed immediately on receipt thereof to the Director and shall promptly notify the latter of each final disposition. Reports with respect to the work of the Ethics Committee shall be filed by the secretary with the Director as instructed by the Director.

(d) Office. Each Ethics Committee shall receive grievances at the office of its secretary and at such additional places as shall be designated by the Director.

(e) Screening; Docketing. The secretary shall evaluate inquiries and grievances in accordance with this rule and shall docket, decline, or dismiss the matters within 45 days of their receipt. The secretary shall not conduct an investigation of a grievance.

(1) The secretary shall evaluate all information received by inquiry, grievance or from other sources alleging attorney unethical conduct or incapacity by an attorney maintaining an office in that district. If the attorney is subject to the jurisdiction of the Court and the grievance alleges facts which, if true, would constitute unethical conduct as defined by the Rules of Professional Conduct, case law or other authority, or incapacity, the matter shall be docketed and investigated.

(2) The secretary shall decline jurisdiction if:

(A) the attorney is not subject to the jurisdiction of the Supreme Court of New Jersey, in which case the matter shall be declined and referred to the appropriate entity in any jurisdiction in which the attorney is admitted;

(B) the matter involves an inquiry or grievance regarding advertising or other related communications within the jurisdiction of the Committee on Attorney Advertising (R. 1:19A-2(a)), in which case the matter shall be sent to that committee unless the matter has been referred by the Advertising Committee in accordance with R. 1:19A-4(h);

(C) the facts stated in the inquiry or grievance involve circumstances which the Supreme Court has determined through the adoption of court rules or administrative guidelines will not be entertained, in which case the matter shall be declined.

(D) the grievance involves aspects of a substantial fee dispute and a charge of unethical conduct, unless so directed by the Director or unless the matter is referred by the Fee Committee in accordance with Rule 1:20A-4.

(3) The secretary, with concurrence by a designated public member, shall decline jurisdiction if the facts stated in the inquiry or grievance, if true, would not constitute unethical conduct or incapacity.

(4) If a grievance is not in writing and if the secretary concludes that the grievance must be declined under subsection (e)(2) or that the grievant alleges facts that, even if true, would not constitute unethical conduct or incapacity, the secretary shall so advise the grievant and that if the grievant wishes further consideration the secretary will provide a written attorney grievance form for completion. Unless declination is mandatory under subparagraph (e)(2), on receipt of a properly completed attorney grievance form the secretary will have the grievance reviewed by one or more public members of the Ethics Committee designated by the secretary. If a designated public member agrees with the secretary, the matter shall be declined. Otherwise, the matter shall be docketed and assigned for investigation.

(5) If a matter is declined, the secretary shall furnish a concise written statement to the grievant of the reasons therefor and shall enclose a copy of the court rule or written guideline for declination approved by the Supreme Court.

(6) There shall be no appeal from a decision to decline a grievance made in accordance with this rule. An appeal may be taken from dismissal of a grievance after docketing in accordance with R. 1:20-3(h).

(f) Related Pending Litigation. If a grievance alleges facts that, if true, would constitute unethical conduct and if those facts are substantially similar to the material allegations of pending civil or criminal litigation, the grievance shall be docketed and investigated if, in the opinion of the secretary or Director, the facts alleged clearly demonstrate provable ethical violations or if the facts alleged present a substantial threat of imminent harm to the public. All other grievances involving such related pending civil and criminal litigation may be declined and not docketed. If the matter has already been docketed when the related pending litigation is discovered, the matter may be administratively dismissed, provided the matter is still in the investigative stage. The grievant shall be informed in writing of any decision, together with a brief statement of the reasons therefor and a copy of any Court Rule or written guideline supporting declination. Once a formal complaint has been filed, the matter shall not be dismissed nor held in abeyance pending completion of the related litigation, unless so authorized by the Director. Whenever an attorney is a defendant in any criminal proceeding, the Director shall docket the matter and may, in the Director's discretion, investigate and prosecute the disciplinary case.

(g) Investigation.

(1) Generally. Except in those districts in which the Director assigns investigators, the chair of the Ethics Committee shall assign an attorney member to each docketed case to conduct such investigation as may be necessary in order to

determine whether unethical conduct has occurred or whether the respondent is disabled or incapacitated from practicing law.

(2) Notice to Respondent. No disposition other than dismissal, declination or designation as untriable shall be taken without first notifying the respondent in writing of the substance of the matter and affording the respondent an opportunity to respond in writing. Notice to the respondent shall be given by mail addressed to the address listed either in the current edition of the New Jersey Lawyer's Diary and Manual or with the Lawyers' Fund for Client Protection.

(3) Duty to Cooperate. Every attorney shall cooperate in a disciplinary investigation and reply in writing within ten days of receipt of a request for information. Such reply may include the assertion of any available constitutional right, together with the specific factual and legal basis therefor. Attorneys shall also produce the original of any client or other relevant law office file for inspection and review, if requested, as well as all accounting records required to be maintained in accordance with R. 1:21-6. Where an attorney is unable to provide the requested information in writing within ten days, the attorney shall, within that time, inform the investigator in writing of the reason that the information cannot be so provided and give a date certain when it will be provided.

(4) Failure to Cooperate. If a respondent fails to cooperate either by not replying in writing to a request for information or by not producing the attorney's client and/or business file or accounting records for inspection and review, the Office of Attorney Ethics may file and serve a motion for temporary suspension with the Supreme Court, together with proof of service. The failure of a respondent to file a response in opposition to the motion may result in the entry of an order of temporary suspension without oral argument until further order of the Court. An attorney temporarily suspended under this rule may apply to the Court for reinstatement on proof of compliance with subsection (3) of this paragraph on notice to the Office of Attorney Ethics.

(5) Notice to Grievant. The substance of respondent's written response shall be communicated to the grievant, who shall be afforded an opportunity to respond in writing within 14 days of receipt of the communication.

(6) Investigative Subpoena. During the investigation of any matter, a subpoena may be issued in accordance with R. 1:20-7(i) in the name of the Supreme Court of New Jersey.

(h) Dismissal and Appeal; Administrative Dismissal. The investigator shall report in writing to the chair, providing a copy to the secretary. The report shall set forth the facts, together with a recommendation for action. If the chair concludes that there is no reasonable prospect of proving unethical conduct or incapacity by clear and convincing evidence, the matter shall be dismissed. Written notice of the facts and reasons for dismissal shall be provided to the respondent, the Director, and the grievant, who shall be advised of the right of appeal to the Board within 21 days as provided by Rule 1:20-15(e)(2).

The Director may authorize that a grievance be declined or administratively dismissed where either the attorney has been disciplined and the Director determines

that the processing of additional matters against the respondent would not likely result in the imposition of substantially different discipline, or the attorney, although not yet disciplined, is already the subject of disciplinary proceedings and the nature or time periods covered by the additional grievances are similar to other unethical conduct already being pursued, so that the results would be likely to be merely cumulative. If so approved, the secretary shall give notice of declination or administrative dismissal to any grievant, together with an explanation of the reasons supporting the action.

(i) Determination of Unethical Conduct.

(1) Generally. If the chair determines that there is a reasonable prospect of a finding of unethical conduct by clear or convincing evidence, a further determination shall be made as to whether such conduct is either unethical conduct or minor unethical conduct.

(2) Minor Unethical Conduct.

(A) Defined. Minor unethical conduct is conduct, which, if proved, would not warrant a sanction greater than a public admonition. Unethical conduct shall not be considered minor if any of the following considerations apply: (i) the unethical conduct involves the knowing misappropriation of funds; (ii) the unethical conduct resulted in or is likely to result in substantial prejudice to a client or other person and restitution has not been made; (iii) the respondent has been disciplined in the previous five years; (iv) the unethical conduct involves dishonesty, fraud or deceit; (v) or the unethical conduct constitutes a crime as defined by the New Jersey Code of Criminal Justice (N.J.S.A. 2C:1-1, et seq.). Classification of unethical conduct as minor unethical conduct shall be in the sole discretion of the Director.

(B) Agreements in Lieu of Discipline.

(i) If, as a result of investigation, the chair concludes that minor unethical conduct has occurred, the chair may request that the Director, or his designee, divert the matter and approve an agreement in lieu of discipline. Such request shall be accompanied by any initial grievance, the respondent's response, an investigative report, the written agreement signed by the respondent, and a letter to any grievant enclosing a copy of the agreement. The letter shall give ten days notice to the grievant that the Director is being asked to approve the disposition and that any comments must be sent to the Director within that time. Diversion shall not be available subsequent to the filing of a complaint.

(ii) There shall be no appeal from the Director's decision.

(iii) An agreement in lieu of discipline may contain an agreement to meet, within a specified period (usually no more than six months), stated conditions addressed, to the extent practicable, to the remediation of the cause of the unethical conduct. Such conditions may include, but are not limited to, reimbursement of fees or costs, completion of legal work, participation in alcohol or drug rehabilitation program, psychological counseling or satisfactory completion of a course of study and such other programs as are developed. If approved, the Director shall monitor the terms of agreement. If the respondent fulfills the terms, the matter shall be dismissed.

(C) Other Process. If an attorney declines to agree to divert a matter to administrative disposition under subparagraph (B), or if the Director determines, as a matter of exclusive discretion, that the attorney does not qualify for diversion or has failed to comply with the terms of the diversion agreement, the matter shall proceed in accordance with subparagraph (i)(3)(A) of these rules.

(3) Unethical Conduct.

(A) Defined. All ethical violations of the Rules of Professional Conduct, case law, or other authority not determined in accordance with these rules to be minor unethical conduct shall be processed as unethical conduct.

(B) Process. Unethical conduct may be prosecuted by the filing of a complaint under R. 1:20-4 or through Discipline by Consent under R. 1:20-10.

(j) Incapacity. If the Director or the chair conclude that there is a reasonable prospect of proving incapacity by clear and convincing evidence, the matter shall proceed as provided under R. 1:20-12.

1:20-4. Formal Pleadings

(a) Complaint Determination. Where the chair or Director, in his or her sole discretion, determines that there is a reasonable prospect of a finding of unethical conduct by clear and convincing evidence and where the matter is not diverted pursuant to R. 1:20-3(j)(2), a complaint shall issue.

(b) Contents of Complaint. Every complaint shall be in writing, designated as such in the caption, and brought against the respondent in the name of either the District Ethics Committee or the Office of Attorney Ethics. The complaint shall be signed by the chair, secretary or any Ethics Committee member, the Director, or the Director's designee. The complaint shall state the name of the grievant, if any, and the name, year of admission, law office or other address, and county of practice of the respondent, and shall set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct, specifying the ethical rules alleged to have been violated. It shall also state above the caption the name, address and phone number of the presenter assigned to handle the matter.

(c) Consolidation of Charges and Respondents. A complaint may include any number of charges against a respondent. A consolidated complaint may be filed against two or more respondents if they are members of the same law firm or if the allegations are based on the same general conduct or arise out of the same transaction or series of transactions.

(d) Filing and Service. The original complaint shall be filed with the secretary of the Ethics Committee or the designated special ethics master to whom the case is assigned. If the matter will be determined by an Ethics Committee, service of the

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complaint shall be made by the secretary; otherwise service shall be made by the Director. A copy of the complaint shall be served on the respondent and respondent's attorney, if known, in accordance with R. 1:20-7(h), together with written notice advising the respondent of the requirements of R. 1:20-4(e) and (f), the name and address of the secretary or the Director as appropriate, as well as the address and telephone number of the vice chair of the Ethics Committee or special ethics master to whom all questions and requests for extension of time to file answers shall be directed. In appropriate circumstances, the secretary or the Director shall forward a copy of every complaint to the respondent's law firm or public agency employer in accordance with R. 1:20-9(k).

(e) Answer. Within twenty-one days after service of the complaint, the respondent shall file with and serve on the secretary the original and one copy of a written, verified answer designated as such in the caption. The respondent shall also file a copy with the presenter, the vice chair or special ethics master and, in cases prosecuted by the Director, two copies with that office. The verification shall be made in the following form:

"Verification of Answer

I, (insert respondent's name), am the respondent in the within disciplinary action and hereby certify as follows:

(1) I have read every paragraph of the foregoing Answer to the Complaint and verify that the statements therein are true and based on my personal knowledge.

(2) I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

An answer that has not been verified within ten days after the respondent is given notice of the defect shall be deemed a failure to answer as defined within these Rules.

For good cause shown, the vice chair or the special ethics master, if one has been appointed, may, on written application made within twenty-one days after service of the complaint, extend the time to answer. The Director shall be notified of any extension granted in cases prosecuted by that office. The secretary shall forward one copy of all answers to the Director. The respondent's answer shall set forth (1) a full, candid, and complete disclosure of all facts reasonably within the scope of the formal complaint; (2) all affirmative defenses, including any claim of mental or physical disability and whether it is alleged to be causally related to the offenses charged; (3) any mitigating circumstances; (4) a request for a hearing either on the charges or in mitigation, and (5) any constitutional challenges to the proceedings. All constitutional questions shall be held for consideration by the Supreme Court as part of its review of any final decision of the Board. Interlocutory relief may be sought only in accordance with R. 1:20-16(f)(1). Failure to request a hearing shall be deemed a waiver thereof. A respondent is required to file an answer even if the respondent does not wish to contest the complaint.

(f) Failure to Answer.

(1) Admission. The failure of a respondent to file a verified answer within the

prescribed time shall be deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. No further proof hearing shall be required.

(2) Certification to Disciplinary Review Board. If a respondent has been duly served with a complaint, but has failed to file a verified answer within the prescribed time, a certification detailing that failure may be filed with the Director by the secretary or special ethics master, or, in cases prosecuted by the Director, by ethics counsel. The Director may thereafter file that certification with the Board, which shall treat the matter as a default. A copy of the certification shall be mailed to the respondent.

(g) Counsel.

(1) Presenter. All disciplinary and disability proceedings shall be prosecuted by an attorney presenter designated by the Director or chair.

(2) Respondent's Counsel; Assignment for Indigents. A respondent may be represented by counsel admitted to practice law in New Jersey or admitted pro hac vice by the Board, or may appear pro se. A respondent desiring representation but claiming inability to retain counsel by reason of indigency, shall promptly so notify the vice chair and special ethics master, if one is appointed, and shall, within 14 days after service of the complaint, make written application to the Assignment Judge of the vicinage in which respondent practices or formerly practiced, simultaneously serving the application on the vice chair and special ethics master, if one has been assigned, and on the presenter. The application shall be supported by a certification complying with R. 1:4-4(b), which shall contain a current statement of all assets and liabilities, any bankruptcy petition and orders, and copies of the respondent's state and federal income and business tax returns for the prior three-year period. For good cause shown, the Assignment Judge shall assign an attorney to represent the respondent without compensation, so notifying the respondent, the secretary, the vice chair and special ethics master, if one has been assigned, and the Office of Attorney Ethics of any decision.

(3) Grievant's Counsel. A grievant may be represented by a retained attorney. Such attorney shall be limited to consulting with the grievant and may not be designated as the presenter in the matter.

1:20-5. Prehearing Procedures

(a) Discovery.

(1) Generally. Discovery shall be available to the presenter. Discovery shall also be available to the respondent, provided that a verified answer in compliance with R. 1:20-4(e) has been filed. All such requests shall be in writing.

(2) Scope. On written request the following information, if relevant to the investigation, prosecution, or defense of a matter, and if within the possession, custody or control of the presenter, the respondent or counsel, is subject to discovery and shall be made available for inspection and copying as set forth in this rule:

(A) a writing as defined by N.J.R.E. 801(e) or any other tangible object, including those obtained from or belonging to the respondent;

(B) written statements, if any, including any memoranda reporting or summarizing oral statements, made by any witness, including the respondent;

(C) results or reports of mental or physical examinations and of scientific tests or experiments made in connection with the matter;

(D) names, addresses and telephone numbers of all persons known to have relevant knowledge or information about the matter, including a designation by the presenter and respondent as to which of those persons will be called as witnesses;

(E) police reports and any investigation reports;

(F) name and address of each person expected to be called as an expert witness, the expert's qualifications, the subject matter on which the expert will testify, a copy of all written reports submitted by the expert or, if none, a statement of the facts and opinions to which the expert will testify and a summary of the grounds for each opinion; and

(G) any final disciplinary investigative report.

(3) 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 that party's attorney or agents in connection with the investigation, prosecution or defense of the matter. Nor does it require discovery of statements, signed or unsigned, made by respondent to respondent's attorney or that attorney's agents. Any materials relating to any matter deemed "confidential" under R. 1:20-9, including dismissals and diversions, are not discoverable. This rule does not authorize discovery of any internal manuals or materials prepared by the Office of Attorney Ethics or the Disciplinary Review Board.

(4) Type of Discovery Not Permitted. Neither written interrogatories, nor requests for admissions, nor oral depositions shall be permitted in any matter, except that depositions to preserve the testimony of a witness likely to be unavailable for hearing due to death, incapacity or otherwise, may be taken in accordance with the procedure (modified as appropriate to disciplinary proceedings) set forth in R. 3:13-2.

(5) Timeliness of Discovery; Continuing Duty. Initial discovery shall be made available within 20 days after receipt of a written request therefor. A party's obligation to provide discovery is a continuing one. If, subsequent to compliance with a request for discovery, a party discovers additional names or statements of witnesses or other information reasonably encompassed by the initial request for discovery, the original discovery response shall be promptly supplemented accordingly.

(6) Failure to Make Discovery. Any discoverable information that is not timely furnished either by original or supplemental response to a discovery request may, on application of the aggrieved party, be excluded from evidence at hearing. The failure of

the presenter or respondent to disclose the name and provide the report or summary of any expert who will be called to testify at least 20 days prior to the hearing date shall result in the exclusion of the witness, except on good cause shown.

(7) Discovery Applications. All discovery applications shall be made on notice to the hearing panel chair or special ethics master, if one has been appointed. An interlocutory appeal may be sought only pursuant to R. 1:20-16(f)(1).

(b) Prehearing Conference.

(1) Attendance. A prehearing conference may be held in standard unethical conduct cases in the discretion of the trier of fact if requested by the presenter, the respondent, or the trier of fact. A prehearing conference shall be held in all complex cases alleging unethical conduct at the request of the presenter, the respondent, or the trier of fact. The prehearing conference shall be held by the hearing panel chair, sitting alone or, if assigned, a special ethics master, within 45 days after the time within which an answer to a complaint is due. At least 14 days written notice of the date of the conference shall be given. Attendance at the conference is mandatory by all parties. A prehearing conference may be held by telephone call where appropriate. No transcript shall be made of the prehearing conference, except in unusual circumstances.

(2) Prehearing Report. At least five business days before the date scheduled for the prehearing conference, both the presenter and the respondent shall file a report with the hearing panel chair or special ethics master, and with the adversary, disclosing the name, address and telephone numbers of each person expected to be called at hearing, including any person who will testify as to the character or reputation of the respondent, and all experts. With respect to an expert witness, the report shall state the person's name, address, qualifications, and the subject matter on which the expert is expected to testify. A copy of the expert's report, if any, or, if no written 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, shall be attached. Every respondent shall also include his or her own office and home address (including a street address) and telephone number where the attorney can be reached at all times. The respondent shall have a continuing duty to promptly advise the hearing panel chair, special ethics master, presenter, secretary of any district committee and the Director of any changes in any of the items required above.

(3) Objectives. At the prehearing conference, the hearing panel chair or special ethics master shall address the following matters:

(A) the formulation and simplification of issues;

(B) admissions and stipulations of the parties with respect to allegations, defenses and any aggravation or mitigation;

(C) the factual and legal contentions of the parties;

(D) the identification and limitation of witnesses, including character and expert witnesses;

(E) deadlines for the completion of discovery, including the timely exchange of expert reports;

(F) the hearing date and its estimated length;

(G) issuance of any subpoenas necessary to presentation of the case;

(H) premarking of all exhibits into evidence to which the parties consent;

(I) the priority of disciplinary proceedings under R. 1:20-8 and any known trial commitments by the presenter, respondent, and respondent's counsel that could conflict with the scheduling of the matter. Counsel shall be under a continuing duty to promptly notify the hearing panel chair or the special ethics master of any such trial dates assigned as soon as known; and

(J) any other matters which may aid in the disposition of the case.

(4) Case Management Order. Within seven days following the prehearing conference, the hearing panel chair or special ethics master shall issue a case management order, designated as such in the caption, memorializing any agreements by the parties and any determinations made respecting any matters considered at the conference. The case management order, which constitutes part of the record, shall be served on the presenter or ethics counsel and the respondent and filed with the vice chair and the Director.

(5) Setting Hearing Date and Conclusion. At the prehearing conference the hearing panel chair or special ethics master shall schedule dates for the hearing of the case within 60 days after the date of the conference, except in extraordinary circumstances, which hearing dates shall be promptly reported to the vice chair and Director. The hearing shall be concluded within 45 days after its commencement and a hearing report shall be filed with the Board and served on the parties within 60 days after the hearing's conclusion, except in extraordinary circumstances.

(c) Sanctions. The hearing panel chair or special ethics master shall make and enforce all Rules and orders necessary to compel compliance with this Rule and may suppress an answer, bar defenses, or bar the admissibility of any evidence offered that is in substantial violation of the case management order, discovery obligations, or any other order.

(d) Motion to Dismiss. No motion to dismiss a complaint shall be entertained except:

(1) a prehearing motion addressed either to the legal sufficiency of a complaint to state a cause of action as a matter of law or to jurisdiction;

(2) a motion to dismiss at the conclusion of the presenter's case in chief; and

(3) a motion by the presenter to dismiss the complaint, in whole or in part, when

(A) an essential witness becomes unavailable or

(B) as a result of newly discovered or newly disclosed evidence, one or more counts of the complaint cannot be proven by clear and convincing evidence. Such motion shall be supported by the presenter's certification of the facts supporting the motion and any relevant exhibits, and shall be decided by the trier of fact.

1:20-6. Hearings

(a) Hearing Panels.

(1) Hearing Panel Designations; Oversight. The chair shall annually determine the composition of hearing panels which shall be administered and advised by the vice chair. Each hearing panel shall consist of only three members, one of whom shall be a public member. The chair shall designate an attorney member as the chair of each panel. An additional attorney member and an additional public member may be designated as alternates to remain available but not to sit and hear the matter unless one of the attorney members or the public member is unable to do so. An attorney member involved in the investigation of a matter shall not serve as a hearing panel member on that matter.

The vice chair shall designate a hearing panel to hear the matter after the time prescribed for the filing of an answer and shall notify the presenter and respondent of the designation.

(2) Quorum. A quorum shall consist of two attorney members and one public member. The hearing panel shall act only with the concurrence of two. When by reason of absence, disability or disqualification the number of members of the hearing panel able to act is fewer than a quorum, the following procedures will apply:

(A) if the hearing has not commenced, the attorney alternate or another attorney member shall be substituted for the absent attorney or the public member alternate or another public member shall be substituted for the absent public member;

(B) if the hearing has commenced but all evidence has not been received, the vice chair shall designate the attorney alternate or another attorney member or the public member alternate or another public member to permit the orderly conclusion of the proceedings, provided that the member so designated shall have the opportunity to review the entire record including the transcript of the proceedings to date;

(C) if all the evidence has been received, the matter may be determined by the remaining two hearing panel members, provided their decision is unanimous. In the event of disagreement, the vice chair shall designate the attorney alternate or another attorney member or the public member alternate or another public member who, on review of the entire record including the transcript of the proceedings, shall be eligible to vote thereon.

(3) Powers and Duties. Hearing panels shall have the following powers and duties:

(A) to conduct hearings on formal charges of unethical conduct and petitions for reinstatement where requested by the Board or the Court;

(B) to submit to the Board written findings or fact, conclusions of law and recommendations, together with the record of the hearing; and

(C) to determine issues of unethical conduct by majority vote, provided a quorum is present.

(4) Powers and Duties of Hearing Panel Chair. Each hearing panel chair shall have the following powers and duties:

(A) to conduct prehearing conferences in accordance with R. 1:20-5(b);

(B) to entertain prehearing motions;

(C) to preside at all hearings; and

(D) to perform such other functions as provided for by these rules or assigned by the Director with the approval of the Supreme Court.

Unless relieved by the Supreme Court, a member serving as a trier of fact where testimony has begun at the time the member's term expires shall continue in such matter until its conclusion and the filing of a report.

(b) Special Ethics Masters.

(1) Qualifications. A retired or recalled judge of this state, a former member of the Disciplinary Review Board, a former member of the Disciplinary Oversight Committee, a former officer of a district ethics committee, or a former chair of a hearing panel may be appointed, with his or her consent, to serve as a special ethics master.

(2) Appointment; Compensation. Special ethics masters shall be appointed by, and shall serve at the pleasure of, the Supreme Court under the administration of the Director of the Office of Attorney Ethics. Attorneys shall be paid the per diem rate in effect for single arbitrators under R. 4:21A-2(d)(1). The full per diem rate shall be paid for each day of a prehearing conference or hearing, or part thereof, and for each day or part thereof for opinion preparation. The number of days or part thereof that are paid for opinion preparation in a particular matter may not exceed the total number of days that are paid in that matter for prehearing conference and hearing. A reasonable additional amount may be paid for actual typing expenses. Retired judges may serve pro bono or with compensation or, if they are on recall, shall be paid at the rate in effect for judges on recall service.

(3) Designation; Oversight. When, in the judgment of the Director, a hearing may reasonably be expected to take three days or more, or where the case should be heard continuously from day to day until conclusion, or when the Director believes it is in the interest of justice to do so, the Director may request designation of a special ethics

master to try the case. An Ethics Committee chair may request the Director to appoint a special ethics master. The Director shall determine the appropriateness of such an appointment pursuant to the above criteria and other relevant considerations. The Director shall render appropriate administrative and legal services to special ethics masters.

(4) Powers and Authority. A special ethics master shall have the full power and authority of a hearing panel.

(c) Hearings Involving Unethical Conduct; When Required.

(1) When Required. A hearing shall be held only if the pleadings raise genuine disputes of material fact, if the respondent's answer requests an opportunity to be heard in mitigation, or if the presenter requests to be heard in aggravation. In all other cases the pleadings, together with a statement of procedural history, shall be filed by the trier of fact directly with the Board for its consideration in determining the appropriate sanction to be imposed.

(2) Notice and Conduct of Hearings.

(A) Generally. At least 25 days prior to the initial scheduled hearing date, a written notice of hearing shall be served on the presenter, the respondent, and any counsel of record, stating the date, time and place of hearing. Subsequent days of hearing may be scheduled orally or in writing. Prior to the hearing the respondent will be advised of the right to be represented by counsel, to cross-examine witnesses and to present evidence. Arrangements for the hearing, including location of hearing, recording, interpreters and transcripts, shall be made by the Ethics Committee or special ethics master, if one has been appointed. A complete stenographic record of the hearing shall be made by an official court reporter or by a court reporter designated by the Director. Each trier of fact shall be obligated to inform every court reporter, witness and party of any protective order that has been issued and the effect thereof. All witnesses shall be duly sworn. If special circumstances dictate, the trier of fact may accept testimony of a witness by telephone and/or video conference.

(B) Standard of Proof. Formal charges of unethical conduct, medical defenses, and reinstatement proceedings shall be established by clear and convincing evidence.

(C) Burden of Proof; Burden of Going Forward. The burden of proof in proceedings seeking discipline or demonstrating aggravating factors relevant to unethical conduct charges is on the presenter. The burden of going forward regarding defenses or demonstrating mitigating factors relevant to charges of unethical conduct shall be on the respondent. The burden of proof in proceedings seeking reinstatement shall be on the petitioner.

(D) Respondent's Presence and Testimony; Presence and Sequestration of Witnesses. Respondent's appearance at all hearings is mandatory. In accordance with R. 1:20-7(j), however, a respondent's absence shall not delay the orderly processing of the case. The grievant, if any, the grievant's attorney, if any, and respondent's attorney, if any, and administrative staff assisting in the prosecution of the matter shall have the right to be present at all times during the hearing. Any other witnesses may be sequestered during their testimony on reasonable terms on timely application and a

showing of good cause.

(E) Findings and Report. The trier of fact shall submit to the Board written findings of fact and conclusions of law on each issue presented, together with the record of the hearing, and shall take one of the following actions:

(i) Dismissal. If the trier of fact finds that there has been no unethical conduct, the secretary or special ethics master shall send to the presenter, the respondent, the grievant, if any, the Director and the vice chair, a letter of dismissal in a form approved by the Director, together with a copy of the hearing panel's report. The original report and record shall be filed with the Director. The hearing panel or special ethics master shall not order any transcript without the prior approval of the Director or the Board. Appeals may be taken in accordance with R. 1:20-15(e)(2).

(ii) Admonition Recommendation. If the hearing panel or special ethics master finds that there has been unethical conduct for which an admonition constitutes adequate discipline, the panel chair or special ethics master shall submit the original hearing panel report stating the specific discipline recommended and the record of all proceedings before it to the Director for transmittal to the Board. The hearing panel or special ethics master shall not order any transcript without the prior approval of either the Director or the Board. A copy of the hearing panel's report shall be served on the presenter, the respondent, the grievant, if any, the vice chair and secretary. The Board shall proceed pursuant to R. 1:20-15(f).

(iii) Reprimand, Censure, Suspension or Disbarment Recommendations. If the hearing panel or special ethics master finds that there has been unethical conduct that requires the imposition of a reprimand, censure, suspension or disbarment, the panel chair or special ethics master shall submit the original hearing panel report stating the specific nature of the discipline recommended and the record of all proceedings, including the original transcript, to the Director for transmittal to the Board. A copy of the hearing panel's report shall be served on the presenter, the respondent, the grievant, if any, the vice chair and secretary. The Board shall proceed pursuant to R. 1:20-15(f).

(F) Public Hearings. Unless a protective order has been issued in accordance with R. 1:20-9(h), all hearings shall be open to the public in accordance with R. 1:20-9(c).

(d) Abstention and Request For Disqualification. A trier of fact shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain under R. 1:12-1. It shall not be cause for disqualification that the trier of fact has heard or decided other cases involving the same respondent. Requests to disqualify a trier of fact shall, where possible, be made in advance of any prehearing conference; otherwise, it shall be made in advance of the initial day of hearing. The request shall be decided initially by the trier of fact, whose decision may be superseded by the vice chair or, in the event of a conflict, the chair, or, in matters handled by the Office of Attorney Ethics, by the Director.

(e) Withdrawal By Respondent's Counsel; When Permitted. After the date of the pretrial conference or fixing of the first trial date, respondent's counsel may withdraw without leave of the trier of fact only upon the filing of the respondent's written consent, a substitution of attorney executed by both the withdrawing respondent's

attorney and the substituted respondent's attorney, a written waiver by all other parties of notice and the right to be heard, and a certification by both the withdrawing respondent's attorney and the substituted respondent's attorney (or respondent pro se) that the withdrawal and substitution will not cause or result in delay.

1:20-7. Additional Rules of Procedure

(a) Nature of Proceedings. Discipline and disability proceedings are neither civil nor criminal in nature.

(b) Evidence Rules Relaxed. The rules of evidence may be relaxed in all disciplinary proceedings, but the residuum evidence rule shall apply.

(c) Time Limitations. There are no time limitations with respect to the initiation of any discipline or disability matter.

(d) Delay Caused by Grievant. Neither unwillingness nor neglect by the grievant to sign a grievance or prosecute a charge, nor settlement or compromise between the grievant and the respondent or restitution by the respondent, shall, in itself, justify abatement of the processing of any grievance.

(e) Immunity of Disciplinary and Fee Authorities. Members of the Office of Attorney Ethics, the Disciplinary Review Board, Disciplinary Oversight Committee, Ethics Committees, Fee Committees, their secretaries, special ethics masters and their lawfully appointed designees and staff, shall be absolutely immune from suit, whether legal or equitable in nature, based on their respective conduct in performing their official duties. The Supreme Court shall request the Attorney General to represent disciplinary authorities in all civil or criminal litigation in state or federal courts.

(f) Immunity of Grievants, Witnesses and Others. Grievants in ethics matters, clients in fee arbitration cases and witnesses and potential witnesses in both ethics and fee matters shall be absolutely immune from suit, whether legal or equitable in nature, for all communications, including testimony, only to the Office of Attorney Ethics, the Disciplinary Review Board, Disciplinary Oversight Committee, Ethics Committees, Fee Committees, their secretaries, special ethics masters and their lawfully appointed designees and staff.

(g) Immunity from Criminal Prosecution. With the consent of the Attorney General, the Director, in a discipline or disability proceeding, may apply to the Supreme Court, or to an Assignment Judge designated by it, for a grant of immunity to a witness from criminal prosecution in accordance with N.J.S.A. 2A:81-17.3.

(h) Service. Service on the respondent of any pleading, motion, or other document required by these rules to be served in a disciplinary or disability proceeding may be made by personal service, or by certified mail (return receipt requested) and regular mail, at the address listed in the New Jersey Lawyers' Diary and Manual or the address shown on the records of the Lawyers' Fund for Client Protection. Service on a respondent may also be made by serving respondent's counsel, if any, by regular mail

or by facsimile transmission.

(i) Subpoena Power.

(1) Oaths. In discipline and disability matters, members of a hearing panel, special ethics masters, court reporters or ethics counsel may administer oaths and affirmations.

(2) Investigative and Hearing Subpoenas. During the investigation or hearing of a matter, a subpoena may be issued in the name of the Supreme Court to compel the appearance of any person for questioning or testimony or to compel the production of books, records, documents or other items designated therein. A showing of relevance or materiality may be required before the issuance of any subpoena. The subpoena shall issue in a form approved by the Supreme Court. Investigative and hearing subpoenas may be signed by any Ethics Committee member, the presenter, ethics counsel or by the Board or its legal staff. Hearing subpoenas may also be issued by a hearing panel member, special ethics master or by the Board or its staff.

(3) Service; Fees. Subpoenas shall be served within the State of New Jersey by any person 18 or more years of age by delivering a copy thereof to the person named, except that subpoenas may be served on an attorney who is a witness or a party, by certified mail, return receipt requested. No attendance fee need be paid. Service on a respondent may also be made by serving respondent's counsel, if any, by regular mail.

(4) Enforcement; Contempt. Subpoenas issued under this rule may be enforced pursuant to R. 1:9-6.

(5) Standards; Quashing Subpoena; Appeals.

(A) Generally. The Board chair, during the investigation stage of a matter, or the hearing panel chair or special ethics master, after the filing of a complaint, may, on motion made promptly, quash or modify a subpoena if the subject testimony or documentation is patently irrelevant or if compliance would be unreasonable or oppressive.

(B) Interlocutory Appeals. The determination on a challenge to a subpoena shall not be subject to interlocutory appeal, but any objection thereto will be preserved for review on appeal, if any, or on an authorized review under R. 1:20-15 and 16.

(6) Subpoena Pursuant to Law of Another Jurisdiction. Whenever a subpoena is sought in this state by a foreign disciplinary authority pursuant to the law of that jurisdiction for use in a discipline or disability proceeding, and where the foreign disciplinary counsel certifies that the issuance of the subpoena has been duly approved under the law of the other jurisdiction, the Disciplinary Review Board, on petition for good cause, on notice to the Director, may issue a subpoena as provided in this rule to compel the attendance of witnesses and production of documents in this state.

(j) Grievances Against Disciplinary Agency Members.

(1) Grievances Alleging Improper Processing. Any grievance against Ethics

Committee or Fee Committee members and secretaries, members of the Office of Attorney Ethics, hearing panels, special ethics masters or the Board, their lawfully appointed designees and staff, arising out of their processing of an ethics grievance or fee arbitration request shall be filed with and considered exclusively by the Board in connection with any appeal or other authorized review of a matter in the normal course under R. 1:20-15(e). After review, the Board shall make any appropriate direction regarding the grievance. Nothing herein shall preclude introduction of the facts which underlie the grievance in evidence in any ethics proceeding if relevant.

(2) Other Grievances. Except as provided in section (1), if a grievance is filed against the Director, Office of Attorney Ethics, ethics counsel or staff, or a member of the Board or Board Counsel or staff, the matter shall be transmitted to the Clerk of the Supreme Court, who shall make any appropriate direction for processing the matter.

(k) Extension of Time; Adjournments. Reasonable extensions of time and adjournments may be granted for good cause. Such requests shall be made by writing, stating with specificity the facts on which the request is based. Such requests shall be either granted or denied in writing; if granted they shall be only for a definite and reasonably short interval. The vice chair or special ethics master may grant extensions for the filing of an answer to a complaint. After the parties have been notified of the date of hearing, requests for adjournments shall be directed to the hearing panel chair or special ethics master. If such request is based on an attorney's scheduling conflict, the hearing panel chair or special ethics master should communicate with the appropriate assignment judge in order to accommodate the priority accorded disciplinary proceedings by R. 1:20-8(g).

(l) Absent or Non-Responding Respondent. A respondent's absence, non-responsiveness or other failure to reply or to file any document or to attend any required conference or hearing shall not delay the orderly processing of a case, provided the respondent has been properly served.

(m) Transcripts. Where in a pending matter a respondent is found guilty of unethical conduct warranting reprimand, censure, suspension or disbarment, the trier of fact shall order the original transcript and shall file it, together with its report and the record of the matter, with the Board. If no finding of unethical conduct is made, the trier of fact may order the transcript only with prior permission of the Director or the Board. Where a matter is pending, a respondent may, at personal expense, order a transcript of the hearing, provided that the respondent also directs the reporter to furnish a copy of the transcript to the trier of fact. Where a matter is concluded the respondent may, at personal expense, order a transcript of the hearing. Except where a protective order has been issued pursuant to R. 1:20-9(h), any other person may order all or any part of a transcript at the individual's prepaid expense. Either the Board or the Director shall have the right to order a transcript wherever necessary.

(n) Prior Discipline or Disability. Information concerning prior final discipline or disability of the respondent shall not be a matter for consideration by the trier of fact until a finding of unethical conduct has first been made, unless such information is probative of issues pending before the trier of fact. On a finding of unethical conduct the trier of fact shall request the Office of Attorney Ethics to disclose to it and to the presenter and to the respondent a summary of any orders, letters or opinions imposing

temporary or final discipline or disability on the respondent. Within five days of receipt of the submission of any prior discipline or disability, either the presenter or ethics counsel or respondent may submit written argument on the issue of the effect to be given thereto.

1:20-8. Time Goals; Accountability; Priority

(a) Investigations. The disciplinary system shall endeavor to complete all investigations of standard matters within six months, and of complex matters within nine months, the time period commencing on the date a written grievance is docketed and concluding on the date a formal complaint is filed, the grievance is dismissed or other authorized disposition is made.

(b) Formal Hearings. The disciplinary system shall endeavor to complete formal hearings within six months from the expiration of the time for filing an answer to a complaint until a report is filed with the Director for transmittal to the Disciplinary Review Board.

(c) Appellate Review. The disciplinary system shall endeavor to complete all recommendations for discipline filed with the Disciplinary Review Board within six months from the date of docketing by the Office of Board Counsel until the issuance of the Board's decision. All ethics and fee arbitration appeals should be completed and a decision issued within three months of docketing the appeal by the Board.

(d) Supreme Court Review. The disciplinary system shall endeavor to complete matters (except emergent actions) filed with the Supreme Court within six months from the date of docketing by the Office of the Clerk of the Court until issuance of the Court's order or opinion.

(e) Effect of Goals. The time periods herein prescribed are not jurisdictional and shall not serve as a bar or defense to any disciplinary investigation or proceeding.

(f) Accountability. Analysis of compliance by the disciplinary system of the time periods herein prescribed shall be made annually and at such intervals as the Disciplinary Oversight Committee may direct, and an analysis published showing how the respective caseloads compare with these goals.

(g) Priority of Disciplinary Matters. Generally, disciplinary matters shall take precedence over administrative, civil and criminal cases. All courts and tribunals shall make reasonable accommodations for the attendance of counsel, witnesses, and other participants. Every participant in a disciplinary proceeding shall be obligated to give reasonable advance notice of potential litigation conflicts to the assignment judge or to the particular judge or officer in charge of the litigation. The same advance notice also shall be given to the presenter, respondent, counsel, and the panel chair or special ethics master in the disciplinary matter.

1:20-9. Confidentiality; Access to and Dissemination of Disciplinary Information

(a) Confidentiality by the Director. Prior to the filing and service of a complaint, a disciplinary stipulation waiving the filing of a formal complaint, a motion for final or reciprocal discipline, or the approval of a motion for discipline by consent, the disciplinary matter and all written records gathered and made pursuant to these rules shall be kept confidential by the Director, except that the pendency, subject matter, and status of a grievance may be disclosed by the Director if:

(1) the respondent has waived or breached confidentiality; or

(2) the proceeding is based on allegations of reciprocal discipline, a pending criminal charge, or a guilty plea or conviction of a crime, either before or after sentencing; or

(3) there is a need to notify another person or organization, including the Lawyers' Fund for Client Protection, in order to protect the public, the administration of justice, or the legal profession; or

(4) the Supreme Court has granted an emergent disciplinary application for relief; or

(5) the matter has become common knowledge to the public.

(b) Disclosure by Grievant. For grievances pending on, or filed after, October 19, 2005, the grievant may make public statements regarding the disciplinary process, the filing and content of the grievance, and the result, if any, of the grievance. If the grievant makes a public statement, respondent may reply publicly to any matter revealed by the grievant.

(c) Public Proceedings. All proceedings shall be public except:

(1) as otherwise provided by paragraph (a); or

(2) prehearing conferences; or

(3) deliberations of the trier of fact, Board or Supreme Court; or

(4) information subject to a protective order; or

(5) proceedings alleging disability in accordance with paragraph (f).

(d) Public Records.

(1) Subject to paragraphs (a) and (c), on the filing and service of a complaint, a disciplinary stipulation waiving the filing of a formal complaint, a motion for final or reciprocal discipline or the approval of a motion for discipline by consent (except for documents submitted in connection with confidential prehearing conferences), those

documents, as well as the documents and records filed subsequent thereto, shall be available for public inspection and copying. Inspection and copying shall be available by appointment at the office of the body where the matter is then pending. Transcripts shall be available to the public in accordance with R. 1:20-7(m) at their pre-paid expense. Where, in the opinion of the district secretary or the Director, the documentation to be copied is voluminous, a commercial photocopy service may be used for reproduction at the prepaid expense of the person requesting them.

(2) In the event an attorney has been temporarily suspended for disciplinary reasons, the motion papers, any response and any orders issued by the Board or the Court shall be available to the public by their respective offices. Unless the Court otherwise orders, all other records regarding emergent applications, including but not limited to those for temporary suspension (either for disciplinary reasons, failure to pay disciplinary costs, failure to pay fee arbitration determinations or settlements or otherwise), license restrictions, conditions of practice, transfer to temporary disability-inactive status, shall be confidential, except for orders issued by the Supreme Court.

(3) There shall be no private discipline. Private reprimands issued prior to the effective date of this rule shall remain confidential.

((4) Ethics Committees, Office of Attorney Ethics or the Board may charge for copies of records in accordance with R: 1:38-9.

(5) The District Ethics Committee Manual and The District Fee Arbitration Manual are also public documents, copies of which shall be available from the Office of Attorney Ethics, the Disciplinary Review Board and the secretaries of the respective Ethics Committees and Fee Committees.

(e) Referral to Admissions/Disciplinary Agencies. Whenever an attorney-at-law of this state is also admitted, or has applied for admission, to another jurisdiction, the Director may refer information concerning a pending or completed investigation or proceeding regarding that attorney to such admission or disciplinary agency. Such transmittal by the Director shall be made on notice to the attorney and, if the information submitted is confidential, shall be accompanied by a directive that the information submitted remain confidential and be used solely for admissions or disciplinary purposes in that jurisdiction.

In those cases in which an admission or disciplinary agency in another jurisdiction initiates a request for information, that agency shall certify that its request for information is made in furtherance of an ongoing investigation or proceeding involving that attorney.

(f) Disclosure of Evidence of Criminal Conduct; All Other Disclosure Including Subpoenas.

(1) Subsequent to the filing of a complaint, a disciplinary stipulation waiving the filing of a formal complaint, a motion for final or reciprocal discipline, or the approval of a motion for discipline by consent, the Director may refer any matter to law enforcement authorities without prior notice to respondent if criminal conduct may be involved. Prior to the filing and service of a complaint, the Director may refer a matter

to law enforcement authorities if criminal conduct may be involved and the respondent has been temporarily suspended. In both cases, a copy of the letter of referral shall be sent to the respondent and any known counsel. Where criminal conduct may be involved but where the respondent has not been temporarily suspended or served with a complaint, the Director shall, prior to such referral, give ten days written notice to the respondent and any known counsel of the intention to make a referral. The respondent may, within said period, apply to the Board for a protective order based on good cause shown.

(2) Upon the request of a law enforcement agency seeking information in the possession of the Office of Attorney Ethics to assist the law enforcement agency with an ongoing criminal investigation, the Director of the Office of Attorney Ethics shall not release such information without the prior authorization of the Supreme Court. If requested by the law enforcement agency, the Supreme Court may, in its discretion, authorize the release of the information without notice to respondent or any other person.

(3) In all other cases, including cases where civil or criminal subpoenas have been issued to disciplinary personnel, the Board may authorize the referral of any confidential documentary information to the appropriate authority only for good cause shown. When a requesting authority shall seek such information, it shall issue its subpoena, which shall be transmitted to the Board or shall file a motion seeking disclosure with the Board, on ten days' notice to the respondent and any known counsel, and the Director, both of whom shall be given an opportunity to be heard.

(g) Proceedings Alleging Disability. Proceedings for transfer to or from disability-inactive status are confidential. All orders transferring an attorney to or from disability-inactive status are public.

(h) Protective Orders. In exceptional cases, protective orders may be sought to prohibit the disclosure of specific information to protect the interests of a grievant, witness, third party or respondent. The presenter or respondent shall make any application for a protective order. On application or on its own motion, and for good cause shown, the Supreme Court, the Board, or the trier of fact may issue the protective order. A copy of any protective order entered shall be sent promptly to the Director, the secretary of any appropriate Ethics Committee, all parties, Board Counsel and the Clerk of the Supreme Court. The trier of fact or the Board may also direct that implementation of the protective order include a requirement that any hearing on the matter be conducted in such a manner as to preserve the confidentiality of the information that is the subject of the order.

(i) Duty to Maintain Confidentiality. All disciplinary system officials, employees and all participants in a proceeding under these rules shall maintain the confidentiality provided by this rule, including compliance with any protective order.

(j) Records Retention, Expungement and Reporting. The Clerk of the Supreme Court shall maintain permanently all disciplinary and disability files processed by the Supreme Court for decision including, but not limited to, all files resulting in the imposition of final or temporary discipline or the transfer to disability-inactive status, and all applications for reinstatement or restoration. Chief Counsel to the Disciplinary

Review Board shall permanently maintain all ethics files previously resulting in private reprimands and admonitions issued by the Board, and shall maintain files of all ethics and fee arbitration appeals processed to the Board for a period of three years after the matter is terminated or for one year after the date of death of the attorney, whichever is earlier. All Ethics Committees shall maintain files for one year after the date a matter is terminated or after the attorney's death. All files maintained by the Office of Attorney Ethics and all other files maintained by the Disciplinary Review Board may be destroyed after five years following the date the matter is terminated or after one year following the date of the attorney's death. However, Chief Counsel to the Disciplinary Review Board and the Director of the Office of Attorney Ethics shall permanently maintain a summary of all docketed matters processed by each office containing the name of the respondent and any grievant or client, a brief summary of the nature and disposition of the matter and the date the case was opened and closed by their respective offices.

Except with respect to any application by an attorney for appointment to or employment by a judicial branch of government or a law enforcement or corrections agency, the matter shall, after the time herein specified for destruction of the file, be deemed expunged and any agency response to an inquiry requiring a reference to such matter shall state that there is no record of the filing of cases that are over five years old where the matter is dismissed or terminated other than by discipline or transfer to disability-inactive status. Except with respect to inquiries by the judicial branch of government, or a law enforcement or corrections agency, the respondent may answer any inquiry requiring a reference to a destroyed file by stating that the grievance was dismissed and thereafter expunged pursuant to court rule.

(k) Law Firm/Public Agency Notice of Public Action. Unless the respondent is the sole proprietor of a law firm, an Ethics Committee or the Office of Attorney Ethics shall send promptly to the law firm of which the respondent is known to be a member or by which the respondent is known to be employed, or the public agency by which the respondent is known to be employed, a copy of every complaint filed and served by that entity, disciplinary stipulation waiving the filing of a formal complaint, motion for final or reciprocal discipline or approved motion for discipline by consent.

(l) Notice to National Lawyer Regulatory Data Bank. The Clerk of the Supreme Court shall transmit promptly notice of all discipline, whether temporary or final, imposed on an attorney, transfers to or from disability-inactive status, and reinstatements to the National Lawyer Regulatory Data Bank maintained by the American Bar Association.

(m) Public Notice of Discipline Imposed. The Clerk of the Supreme Court shall cause promptly notices of all discipline, whether temporary or final, imposed against an attorney, transfers to or from disability-inactive status and reinstatements to be published in the official newspaper designated by the Supreme Court.

(n) Notice to the Courts. The Clerk of the Supreme Court shall promptly transmit a copy of all orders of discipline, whether temporary or final, transfers to or from disability-inactive status and reinstatements to all Assignment Judges, to the Presiding Judge for Administration of the Appellate Division, the Presiding Judge of the Tax Court of New Jersey, and to the Clerk of the United States District Court for the District of New Jersey. If a respondent has been suspended, disbarred or the subject of

an equivalent sanction or transferred to disability-inactive status and fails to or is unable to comply with the requirement of R. 1:20-20, the Office of Attorney Ethics or the County Bar Association may, where necessary, request the Assignment Judge of the county in which the respondent practiced law to designate a practicing attorney member of the bar of that county to take such action pursuant to R. 1:20-19 as may be necessary to protect the interests of the respondent and the respondent's clients.

(o) Notice to Disciplinary Agencies. The Office of Attorney Ethics shall promptly transmit notice of final discipline and transfers to disability-inactive status to the disciplinary enforcement agency of every other jurisdiction in which the respondent is known to have been admitted.

(p) Annual Reports. The Office of Attorney Ethics and the Board shall each annually publish reports to the Supreme Court concerning their respective activities.

1:20-10. Discipline by Consent

(a) Disbarment By Consent.

(1) General Procedure. An attorney against whom a grievance has been filed may submit a consent to disbarment as a member of the bar to the Supreme Court through the Director, who shall transmit the consent in due form together with a report and recommendation. If accepted, the disbarment by consent shall be equivalent to disbarment, and the order accepting it shall be published as in cases of disbarments.

(2) Affidavit of Consent. Consents to disbarment shall be by affidavit in the form approved by the Supreme Court in which the respondent asserts:

(A) the respondent has consulted with an attorney; and

(B) the respondent's consent is freely and voluntarily given; the respondent has not been subjected to coercion or duress; the respondent is fully aware of the implications of submitting the consent; and

(C) the respondent is not under any disability, mental or physical, nor under the influence of any medication, intoxicants or other substances that would impair the respondent's ability to knowingly and voluntarily execute the disbarment by consent; and

(D) the respondent is aware that there is presently pending an investigation or proceeding involving allegations of unethical conduct, which allegations are set forth in the consent form; and

(E) an acknowledgement that the material facts so alleged are true; and

(F) an acknowledgement that the allegations of unethical conduct could not be successfully defended against; and

(G) the understanding that the disbarment by consent, if accepted by the

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Supreme Court, is tantamount to disbarment and constitutes an absolute bar to reinstatement to the practice of law; and

(H) the understanding that disciplinary costs will be assessed by the Supreme Court in accordance with R.1:20-17.

The affidavit of consent to disbarment shall not be received by the Director unless accompanied by a letter from the respondent's attorney certifying that an attorney has consulted with respondent and that, in so far as the attorney is able to determine, respondent's consent is knowingly and voluntarily given and that respondent is not under any disability affecting respondent's capacity knowingly and voluntarily to consent to disbarment.

(3) Action by Supreme Court. The Supreme Court may either reject the tendered consent or accept it and enter an order of disbarment. Otherwise, the Court shall reject the consent. If rejected, the disciplinary proceeding shall resume as if no consent had been submitted, and the consent to disbarment shall not thereafter be admitted into evidence.

(b) Other Discipline By Consent.

(1) Timeliness and Form of Petition. At any time during the investigation or hearing of a disciplinary matter, but prior to the issuance of the hearing report, the respondent may agree with the investigator or presenter to submit an affidavit of discipline by consent in exchange for a specific recommendation for discipline. Following approval by the chair or Director, the matter shall be submitted to the Board as an agreed matter by way of a motion to impose discipline on consent in accordance with R.1:20-15(g). A copy of the motion shall be provided to the Director.

(2) Contents of Motion. The motion, which shall be filed by the investigator or presenter, shall certify the concurrence of the chair or the Director, and shall be supported by a signed stipulation setting forth in detail the admitted facts regarding the unethical conduct, the specific ethical rules violated, a specific recommendation for, or range of, discipline, together with a brief analysis of the legal precedent therefore. The stipulation shall attach the respondent's affidavit of consent in the form approved by the Supreme Court and containing the assertions set forth in paragraph (a)(2)(B),(C),(E) and (H).

(3) Action by Board. Pursuant to R. 1:20-15(g), the perfected motion shall be submitted to the Board. The Board may allow the motion and accept the discipline recommended. The Board shall either deny the motion in which case the disciplinary proceeding shall resume as if no motion had been made or the Board shall grant the motion. If accepted by the Board, it shall submit the record of the proceedings to the Clerk of the Supreme Court for entry of a consent order of discipline in accordance with R. 1:20-16(e). If the motion is denied, no admissions made therein shall be admitted into evidence.

1:20-11. Temporary Suspension

(a) Standard. An attorney may be subject to immediate temporary suspension by the Supreme court if it finds that by reason of a violation of the Rules of Professional Conduct, caselaw or other authority, or a disability as defined by R. 1:20-12, the attorney poses a substantial threat of serious harm to an attorney, a client or the public. An attorney may also be immediately temporarily suspended as otherwise authorized by these rules.

(b) Procedure. A temporary suspension proceeding shall be initiated by the Director which shall:

(1) transmit the evidence to the Court by motion for immediate temporary suspension with supporting affidavit, together with proof of service; and

(2) contemporaneously make a reasonable attempt to provide the respondent with notice, including telephone notice, of the transmittal of the motion to the Court.

(c) Order. On review of the evidence transmitted by the Director and of rebuttal evidence, if any, which the respondent has filed prior to the Court's ruling, the Court may enter an order immediately suspending the respondent pending final disposition of a disciplinary proceeding or may take such other action as it deems appropriate.

(d) Notice to Clients. A respondent suspended pursuant to paragraph (b) shall comply with the notice requirements in R.1:20-20.

(e) Motion for Reinstatement. On two days notice to the Director, a respondent suspended pursuant to paragraph (b) may move for reinstatement or modification of the order of suspension, and in that event the motion shall be heard and determined as expeditiously as the ends of justice require.

(f) Recommendation by Disciplinary Review Board. The Supreme Court may also order the temporary suspension of any attorney where so recommended by the Disciplinary Review Board in accordance with R.1:20-15(i) and (k).

1:20-11A. Suspension of License to Practice Law for Failure to Support Dependents

(a) Suspension and Reinstatement of License. Upon receipt of an order issued pursuant to R. 5:7-5(b), that calls for the suspension of a license to practice law in New Jersey, the Supreme Court shall enter an order suspending the attorney from the practice of law. The Supreme Court shall enter an order reinstating the license to practice law, without the need for the attorney to file a verified petition for reinstatement or publish a notice as required by R. 1:20-21, upon receipt of an order issued by the Chancery Division, Family Part calling for the reinstatement of the license.

(b) Release of Attorney Information to Probation Division. The Office of

Attorney Ethics and the New Jersey Lawyer's Fund for Client Protection shall, upon request, provide the Probation Division of the Superior Court with, if available, an attorney's social security number, home address and primary law office address when the basis for such a request is a license revocation proceeding in accordance with R. 5:7-5(b).

1:20-11B. Suspension of License to Practice Law for Failure to Repay Student Loans

(a) Certification: Contents. An entity seeking the suspension of an attorney's license to practice law pursuant to N.J.S.A. 2A:13-12 shall file with the Clerk of the Supreme Court and serve on the attorney a certification that (1) identifies the attorney, the attorney's last known home and law office addresses, and the date of the attorney's admission to the New Jersey bar; (2) states the amount currently owed by the attorney on the loan and attests that the loan is in default pursuant to state or federal law; and (3) certifies that the entity has complied with all of the regulations, approved by the Supreme Court, that govern the temporary suspension of attorney licenses for failure to repay student loans. Proof of service on the attorney at his or her last known home and office addresses, by regular and certified mail, return receipt requested, shall be filed with the entity's certification.

(b) Supreme Court Action. On receipt of the entity's certification pursuant to paragraph (a), the Court shall direct the Clerk to enter an Order temporarily suspending the license of the attorney until the further Order of the Court.

(c) Reinstatement. An attorney temporarily suspended from the practice of law pursuant to this Rule may seek reinstatement by filing a certification with the Supreme Court. The certification must confirm, in detail, that the attorney is meeting all current requirements for the repayment of his or her outstanding loans. The attorney must attach a copy of a repayment agreement to the certification, along with proof either that payments have begun in accordance with the agreement or that there is other evidence sufficient to demonstrate repayment. Proof of service on the entity by regular and certified mail, return receipt requested, shall be filed with the attorney's certification. If the attorney has continued to meet all other requirements for licensing during his or her suspension, the Court shall direct the Clerk to enter an Order reinstating the attorney to the practice of law.

(d) Release of Attorney Information to Lenders or Guarantors. At the request of an entity seeking the suspension of an attorney's license to practice law pursuant to this Rule, the Clerk of the Supreme Court shall provide the entity with an attorney's last known home address and law office address. The information that is provided may be used only in connection with an application pursuant to paragraph (a) of this Rule.

1:20-12. Incapacity and Disability

(a) Disability Inactive Status: Effect of Judicial Determination of Mental

Incapacity or on Involuntary Commitment. When an attorney who is admitted to practice in this state has been judicially declared mentally incapacitated or involuntarily committed to a mental hospital, the Supreme Court, on proof of the fact, shall enter an order transferring the attorney to disability inactive status, effective immediately and until further order of the Court. Such transfer shall stay any pending disciplinary proceedings. When an attorney who has been transferred to disability inactive status is thereafter, in proceedings duly taken, judicially declared to be competent, the Court may dispense with the need for further evidence that the disability has been removed and may direct reinstatement on such terms as are deemed proper and advisable. Any judge sitting in a court in this state who declares an attorney admitted to practice in this state mentally incapacitated, or who commits such attorney to a mental hospital, or who thereafter declares the attorney to be competent shall, on entry of the final order, promptly forward a copy to the Director.

(b) Request For Medical Examination. Whenever the Director presents evidence which reasonably brings into question the capacity of an attorney to practice law, whether by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, the Board shall direct that the attorney submit to such medical examination as may be appropriate to enable the Director to determine whether the attorney is so incapacitated. Such action shall be taken on an expedited basis. hereafter the Director may request the Board to recommend to the Supreme Court that the attorney be immediately transferred to Disability Inactive Status. If the Board concludes that the attorney lacks the capacity to practice law, it shall forthwith recommend to the Supreme Court that the attorney be transferred to disability inactive status until the further order of the Court. No pending disciplinary proceeding against the attorney shall be held in abeyance unless the Court shall additionally find that the respondent is incapable of assisting counsel in defense of any ethics proceedings.

(c) Assignment of Counsel; Notice of Proceedings. Either the Court or the Board may order the assignment of counsel for an attorney during any proceeding under this rule if it is in the interest of justice to do so. A copy of all applications and orders made pursuant to this rule shall be served on the attorney or counsel, any guardian, or the director of any institution to which the attorney has been committed.

(d) Proceedings to Determine Incapacity. Information relating to an attorney's physical or mental condition that adversely affects the capacity to practice law may be investigated and, where warranted, shall be the subject of a hearing to determine whether the attorney shall be transferred to disability inactive status. In conjunction with any such investigation the Director may also request the Board to direct the attorney to submit to an appropriate medical examination. All proceedings and any formal hearing shall be conducted in the same manner as disciplinary proceedings. The issue before the hearing panel or special ethics master, the Board and the Court shall be whether the attorney lacks the capacity to practice law. If on due consideration of the matter the Court concludes that the attorney lacks the capacity to practice law, it shall enter an order transferring the attorney to disability inactive status for an indefinite period and until the further order of the Court.

(e) Inability to Properly Defend. If, during the course of a disciplinary proceeding, the respondent is unable to assist counsel in defense of the matter due to mental or physical incapacity, the Court shall immediately transfer the respondent to

disability inactive status pending determination of the incapacity.

If the Court determines that the attorney is unable to defend against the charges or complaint because of mental or physical incapacity, the disciplinary proceeding shall be deferred and the respondent retained on "disability inactive" status until the Court subsequently considers a petition for restoration of the respondent to active status. On application of the Director, the Court may also make such order for the perpetuation of testimony in the disciplinary proceedings as may be appropriate. If the Court considering a petition for restoration determines to grant the petition, any deferred disciplinary proceedings shall be reactivated.

If the Court determines that the attorney is able to defend against the charges or complaint, the disciplinary proceeding shall resume.

(f) Transfer to Active Status on Termination of Disability. Any attorney transferred to disability inactive status under the provisions of this rule shall be ineligible to practice law and shall comply with R. 1:20-20 governing suspended attorneys. Such attorney may apply for transfer to active status on notice to the Director. No such attorney shall be eligible to practice law until transferred to active status by order of the Supreme Court. Such application may be granted by the Court or referred by the Court for hearing in accordance with paragraph (d) above.

(g) Burden of Proof. In a proceeding seeking an order of transfer to disability inactive status, the burden of proof by clear and convincing evidence shall rest with the petitioner. In a proceeding seeking an order revoking the disability inactive status, the burden of proof by clear and convincing evidence shall rest with the attorney.

(h) Waiver of Doctor-Patient Privilege. Either the filing of an application by an attorney for transfer to disability inactive status or the filing of an application by an attorney for transfer from disability inactive to active status shall be deemed to constitute a waiver of any doctor-patient privilege. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution or facility by whom or at which the attorney has been examined, evaluated or treated. The attorney shall furnish to the Director written consent to the release of such information and records as requested.

1:20-13. Attorneys Charged With or Convicted of Crimes

(a) Reporting Criminal Matters.

(1) Duty of Attorney Charged. An attorney who has been charged with an indictable offense in this state or with an equivalent offense in any other state, territory, commonwealth, or possession of the United States or in any federal court of the United States or the District of Columbia shall promptly inform the Director of the Office of Attorney Ethics in writing of the charge. The attorney shall thereafter promptly inform the Director of the disposition of the matter.

(2) Cooperation of Law Enforcement. The Director may request the principal law enforcement officer of every law enforcement agency having jurisdiction within the State of New Jersey (including municipal and county prosecutors, the Attorney General and the United States Attorney) to promptly notify the Director of the Office of Attorney Ethics of any criminal charge filed against a New Jersey attorney, including all disorderly, petty disorderly or any second or subsequent motor vehicle charges involving the use of drugs or alcohol and to provide relevant information.

(b) Automatic Temporary Suspension.

(1) Procedure. On the filing with the Supreme Court of the Director's certification that any attorney authorized to practice law in the State of New Jersey has been determined to be guilty (whether sentenced or not) in any court of the United States or the District of Columbia or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the Supreme Court shall enter an order immediately suspending that attorney from the practice of law until final disposition of a disciplinary proceeding to be commenced at the conclusion of the criminal proceeding whether the determination resulted from a plea of guilty, no contest, or nolo contendere, or from a verdict after trial or otherwise, and regardless of the pendency of any appeal. A copy of the order of suspension shall immediately be served on the attorney. On good cause shown, the Supreme Court may set aside the order when it appears in the interest of justice to do so. Nothing herein shall be construed to preclude the application for a temporary suspension otherwise allowable by court rule, of any attorney determined to be guilty of any other crime.

(2) Serious Crimes Defined. The term "serious crime" shall include any crime of the first or second degree as defined by the New Jersey Code of Criminal Justice (N.J.S.A.2C:1-1 et seq.); or any felony of the United States or the District of Columbia or of any state, territory, commonwealth or possession of the United States; or any other crime of this state or of the United States or the District of Columbia or of any state, territory, commonwealth or possession of the United States, a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft; or any attempt or a conspiracy or solicitation of another to commit a "serious crime;" or violations involving criminal drug offenses, excluding solely minor possessory offenses.

(3) Reinstatement. An attorney suspended under the provisions of paragraph (1) may apply to the Court, on notice to the Director, for reinstatement immediately on the filing of a certificate demonstrating that the underlying conviction of or plea to a serious crime has been reversed. An order of reinstatement will not terminate any disciplinary proceeding then pending against the attorney.

(c) Final Discipline.

(1) Conclusive Evidence. In any disciplinary proceeding instituted against an attorney based on criminal or quasi-criminal conduct, the conduct shall be deemed to be conclusively established by any of the following: a certified copy of a judgment of conviction, the transcript of a plea of guilty to a crime or disorderly persons offense,

whether the plea results either in a judgment of conviction or admission to a diversionary program, a plea of no contest, or nolo contendere, or the transcript of the plea.

(2) Procedure. At the conclusion of all criminal matters, including disorderly persons offenses, involving findings or admissions of guilt that are not the subject of a direct appeal, or at the conclusion of all direct appeals from all such matters, the Director may file directly with the Board and serve on the respondent or counsel, if any, a motion for final discipline based on a criminal conviction or admission of guilt specifying the sanction requested. Within 21 days after service of such motion the respondent shall file with the Board and serve on the Director a brief together with any other permissible filings. The Director may within 21 days thereafter file and serve any responding brief. If the respondent either fails to file a timely brief or timely files a brief which does not disagree with the sanction requested, no oral argument is required and the Board may decide the matter on the record. In all other cases the Board shall notify the parties of a date for oral argument. Following oral argument, the Board shall issue its decision and recommendation for final discipline to the Supreme Court.

The sole issue to be determined shall be the extent of final discipline to be imposed. The Board and Court may consider any relevant evidence in mitigation that is not inconsistent with the essential elements of the criminal matter for which the attorney was convicted or has admitted guilt as determined by the statute defining the criminal matter. No witnesses shall be allowed and no oral testimony shall be taken; however, both the Board and the Court may consider written materials otherwise allowed by this rule that are submitted to it. Either the Board or the Court, on the showing of good cause therefore or on its own motion, may remand a case to a trier of fact for a limited evidentiary hearing and report consistent with this subsection.

Nothing in this rule shall be construed to preclude the Office of Attorney Ethics from filing a complaint and proceeding by hearing where the Director determines that procedure to be appropriate.

1:20-14. Reciprocal Discipline and Disability Proceedings

(a) Reciprocal Attorney Discipline and Disability.

(1) Reporting Duty. An attorney admitted to practice in this state, including those attorneys specially authorized for a limited purpose or in connection with a particular proceeding, shall promptly inform the Director in writing on transfer to disability-inactive status or on imposition of discipline as an attorney or otherwise in connection with the practice of law in another jurisdiction, including any federal court of the United States or the District of Columbia, a state or federal administrative agency or other tribunal, a court of any state, territory, commonwealth or possession of the United States.

(2) Procedure. On the filing with the Board and service on the respondent by the Director of a motion for reciprocal discipline or disability attaching a certified or

exemplified copy of a judgment or order that demonstrates that an attorney admitted to practice in this state, including those attorneys specially authorized for a limited purpose or in connection with a particular proceeding, has been transferred to disability-inactive status or disciplined as an attorney or otherwise in connection with the practice of law by another court, agency or tribunal, the respondent shall have 21 days after service of that motion to file and serve any brief containing any claim predicated on the grounds set forth in subsection (4) hereof that the recommendation to the Supreme Court of the imposition of the identical action or discipline by the Board would be unwarranted, together with the reasons therefor. The attorney shall have the burden of establishing by clear and convincing evidence the grounds asserted. The Director shall prosecute these proceedings and may submit a reply brief within 21 days after the expiration of the attorney's time for filing.

(3) Stay of Foreign Proceedings. In the event the discipline or disability imposed in the other jurisdiction has been stayed there, proceedings under this rule shall be deferred until such stay expires unless good cause appears to the contrary.

(4) Board Decision. On the expiration of the time allowed for the Director's filing of a reply brief, the matter shall be set down before the Board. If the respondent either fails to file a timely brief or timely files a brief that does not contest the sanction requested by the Director, no oral argument is required and the Board may decide the matter on the record. The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

When the Board determines that any of said elements exists, it shall make such recommendation to the Court as it deems appropriate. The Director may argue that the law of this state or the facts of the case do or should warrant the imposition of greater discipline than that imposed in other jurisdictions, but in such event the Director shall bear the burden of establishing such contentions by clear and convincing evidence. In the event that the Board determines that the Director has met the burden in this regard, the Board shall recommend the imposition of such greater discipline as it deems appropriate.

(5) Conclusive Evidence. In all other respects, a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state, including those attorneys specially authorized for a limited purpose or in connection with a particular proceeding, has been transferred to "disability-inactive" status or is guilty of unethical conduct in another jurisdiction as an attorney or otherwise in connection with the practice of law, shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state.

(b) Reciprocal Judicial Discipline.

(1) Reporting Duty. Any attorney admitted to practice in this state shall promptly inform the Director in writing on being subjected to discipline as a judge in any other jurisdiction including any federal court of the United States or the District of Columbia, a state or federal administrative agency or other tribunal, a court of any state, territory, commonwealth or possession of the United States.

(2) Procedures For Foreign Judicial Determination. On the filing with the Board and service on the respondent by the Director of a motion for final discipline attaching a certified or exemplified copy of a judgment or order that demonstrates that an attorney admitted to practice in this state has been disciplined as a judge by another court, agency or tribunal, the matter shall proceed in accordance with subsections (a)(2) through (5).

(3) Procedure For New Jersey Judicial Determination. If a motion for final discipline is based on a final determination of unethical judicial conduct by the Supreme Court of New Jersey, that determination shall conclusively establish the facts on which it rests for purposes of an attorney disciplinary proceeding. In such case the Director may file directly with the Board and serve on the respondent or counsel, if any, a motion for reciprocal discipline. Within 21 days after service of such motion the respondent shall file with the Board and serve on the Director a brief together with any other permissible filings. The Director may within 21 days thereafter file and serve any responding brief. If the respondent either fails to file a timely brief or timely files a brief that does not disagree with the sanction requested, no oral argument is required and the Board may decide the matter on the record. In all other cases the Board shall notify the parties of a date for oral argument, following which the Board shall issue its decision and recommendation for final discipline to the Supreme Court.

The sole issue to be determined under this section shall be the extent of final discipline to be imposed. The Board and Court may consider any relevant evidence in mitigation that is not inconsistent with the findings of fact and determinations of the Supreme Court of New Jersey in the judicial proceeding. No witnesses shall be allowed and no oral testimony shall be taken; however, both the Board and the Court may consider written materials otherwise allowed by this rule that are submitted to it. Either the Board or the Court, on the showing of good cause therefore or on its own motion, may remand a case to a special ethics master for a limited evidentiary hearing and report consistent with this subsection.

(c) Attorney Discipline Based on New Jersey Judicial Discipline. Where a judge has been removed or disciplined pursuant to R. 2:14 or 2:15, respectively, those proceedings shall be conclusive of the conduct on which that discipline was based in

any subsequent disciplinary proceeding brought against the judge arising out of the same conduct. Attorney disciplinary proceedings may be taken in accordance with R. 1:20-14(b)(2).

(d) Alternative Procedure; Complaint. Nothing in this rule shall be construed to preclude the Director from filing a complaint pursuant to R. 1:20-4 where the Director determines that procedure to be appropriate.

1:20-15. Disciplinary Review Board

(a) Appointment; Officers. The Supreme Court shall appoint a Disciplinary Review Board consisting of nine members, at least five of whom shall be attorneys of this state and at least three of whom shall not be attorneys. Members shall be appointed for three-year terms and may be reappointed in the Supreme Court's discretion. The Supreme Court shall annually designate a chair and vice chair of the Board from among its members.

(b) Office of Counsel. The Supreme Court shall establish an Office of Disciplinary Review Board Counsel and shall, with the advice of the Board, appoint a counsel who shall be a member of the bar of the State of New Jersey. Neither counsel, assistant counsel nor staff shall be permitted to otherwise engage in the practice of law nor to be otherwise employed except as may be provided by these rules and R. 1:17. Counsel for the Board shall have the authority to:

(1) provide legal counsel and advice to the Board;

(2) represent the Board before the Supreme Court when so requested by the Court or the Director;

(3) serve as the secretariat for the Board;
(4) maintain permanent records of all matters considered by the Board;

(5) prepare annually, jointly with the Director, a proposed budget for the attorney disciplinary system of the state;

(6) recommend to the Board, for its adoption, subject to approval of the Supreme Court, regulations governing its own administrative procedures;

(7) hire and discharge all staff of the Office of Disciplinary Review Board Counsel consistent with personnel policies of the judiciary and subject to the approval of the Chief Justice, and recommend the hiring of assistant and deputy counsel subject to the advice of the Board chair and approval of the Supreme Court.

(8) perform such other duties as may be specifically assigned by the Disciplinary Review Board or the Supreme Court.

(c) Quorum; Dissenting Report. Five members of the Board shall constitute a

quorum and all determinations shall be made by a majority of a quorum, provided however that a determination that discipline be imposed or a recommendation for temporary suspension shall have the concurrence of at least five members of the Board who have considered the record and briefs, if any; and provided further that at least three of them were present at any oral argument. Any Board member not concurring in a majority decision may file a separate report.

(d) Regulations. The Board may, subject to the prior approval of the Supreme Court, promulgate rules governing proceedings before it.

(e) Review of Final Action.

(1) Ethics Actions Subject to Review. The Board shall review, upon the filing of an ethics appeal by the original grievant or the Director, the following actions taken by an Ethics Committee, a special ethics master or by the Committee on Attorney Advertising:

(i) a determination to dismiss after investigation on the basis that there is no unethical conduct.

(ii) a determination to dismiss made after hearing on the basis that there has been no unethical conduct.

(2) Perfection of Review. The original grievant or the Director may, within 21 days after receipt of notice of the action, file with the Board a notice of appeal in the form prescribed by the Board and shall serve a copy thereof by regular mail upon the respondent, and, where appropriate, the presenter and the secretary of the Ethics Committee, the Director or the Committee on Attorney Advertising. The notice of appeal shall have attached a complete copy of the investigation report. The secretary of the Ethics Committee or of the Committee on Attorney Advertising or the Director, as appropriate, shall provide the record of its proceedings to the Board within ten days after its request. Within 21 days after receipt of the notice of appeal the respondent, the Ethics Committee, the Director, or the Committee on Attorney Advertising, as appropriate, may file a response with the Board.

(3) Review; Disposition. The review by the Board shall be de novo on the record with or without oral argument as it shall in its discretion determine. It shall by written determination affirm, modify, or reverse the action appealed from and may remand the matter for such further proceedings as it may direct. Review by the Board of decisions by the Committee on Attorney Advertising shall be limited as set forth in Rule 1:19A-4(b) and (d).

(f) Recommendations for Discipline.

(1) Generally. All recommendations for discipline received by the Board, except for admonitions and those consent matters that are reviewable only as to the recommended sanction, shall be promptly heard de novo on the record on notice to all parties. Recommendations for discipline filed by the Committee on Attorney Advertising shall be reviewed in accordance with Rule 1:19A-4(f). The Board's review shall include any portion of the charges dismissed by the trier of fact.

(2) Procedure; Waiver of Hearing. The notice of Board hearing shall contain a briefing schedule for the parties. Within ten days after receipt of that notice, the respondent and the presenter shall enter an appearance with the Office of Disciplinary Review Board Counsel. At that time, respondent may agree in writing to proceed on the record and waive oral argument. The waiver shall specify whether or not respondent agrees with the conclusions and recommendation of the trier of fact. Neither the presenter nor assigned ethics counsel may elect to waive oral argument but if respondent has filed a complete waiver, the Board may elect to review the matter without argument.

(3) Disposition. The Board shall render a formal decision including findings of fact and conclusions of law as to each issue presented, and shall make a specific determination as to the appropriate disciplinary sanction, if any, to be imposed, except in those matters in which a reprimand has been recommended and the Board determines to impose an admonition. When the Board determines to impose an admonition rather than a reprimand, it shall promptly issue a letter in accordance with paragraph (4) of this Rule. The letter shall include a statement of reasons for the Board's conclusion that a lesser sanction is warranted. The Board's disposition shall require respondent to make reimbursement of disciplinary costs in accordance with R. 1:20-17. The Board's decision shall be promptly filed with the Clerk of the Supreme Court and served on the Director and the parties by regular mail.

(4) Admonitions. All post-hearing recommendations for admonitions received by the Board shall be considered promptly de novo on the record below on notice to all parties. Admonitions recommended by the Committee on Attorney Advertising shall be reviewed in accordance with Rule 1:19A-4(f). In its discretion the Board may direct that the transcript be produced, briefs be filed, or that oral argument be held. Except in minor unethical conduct matters the Board, in its discretion, may direct that a panel report recommending an admonition be treated as a recommendation for greater discipline. In that event, all proceedings shall be held in conformance with paragraph (1) above. The Board shall have the authority to impose an admonition together with a direction for reimbursement of costs. When the Board determines that an admonition should be imposed, including admonition by consent, it shall issue the letter of admonition. When the Board determines that no ethics violation has occurred, it shall dismiss the charges. The Board's determination, in letter form, shall be sent promptly to the respondent by certified mail. Copies shall be forwarded by regular mail to the Clerk of the Supreme Court, the Director, the Ethics Committee, the Committee on Attorney Advertising, if applicable, and the original grievant, if any. The Supreme Court may review admonitions in accordance with Rule 1:20-16(b).

(g) Consent Matters. On its review of a motion for imposition of discipline by consent pursuant to R. 1:20-10(b), the Board may either grant the motion and accept the recommendation, or deny the motion. If denied, the disciplinary proceeding shall resume as if no motion had been submitted and no such submission shall be evidentiary.

(h) Constitutional Challenges. Constitutional challenges to the proceedings raised before the trier of fact shall be preserved, without Board action, for Supreme Court consideration as a part of its review of the matter on the merits. Interlocutory

relief may be sought only in accordance with Rule 1:20-16(f)(1).

(i) Temporary Suspension. On receipt of evidence demonstrating that an attorney subject to the disciplinary jurisdiction of this state has committed a violation of the Rules of Professional Conduct, caselaw or other authority, or is under a disability as herein defined, and poses a substantial threat of serious harm to the public or, where necessary to protect the interests of an attorney, a client or the public, or where otherwise authorized by these rules, the Board may, on the motion of the Director, or on its own motion, recommend to the Supreme Court that an attorney be suspended temporarily from practice upon such terms and conditions as it deems appropriate.

(j) Imposition of Sanctions. In addition to any other authority granted by these Rules to impose or recommend the imposition of costs incurred in the prosecution of disciplinary proceedings, the Board may impose appropriate sanctions, including monetary sanctions as a form of discipline. The Board shall limit the imposition of such sanctions to those exceptional circumstances in which other forms of discipline are not appropriate to accomplish the purposes of attorney discipline.

(k) Enforcement of Fee Arbitration Committee Determination or Stipulation. When a matter involving a determination by a Fee Committee or a signed Stipulation of Settlement is referred to the Director because of the attorney's failure to comply within 30 days of receipt of the arbitration determination, or of the date set forth in the stipulation, the Board, upon motion of the Director and after affording the attorney an opportunity to be heard, may recommend to the Supreme Court that the attorney be temporarily suspended until compliance with the determination or stipulation.

(l) Fee Arbitration Appeals. The Board shall review an appeal from a determination of a fee arbitration committee in accordance with R. 1:20A-3(c).

(m) Exemption From Costs. As an agency of the Supreme Court, the Disciplinary Review Board and any lawfully appointed designee shall be exempt from the payment of any court costs required by rule of law of the State of New Jersey including, but not limited to, the filing or docketing of any document, deposit for costs or service of process.

(n) Committee on Disciplinary Decisions; Publication of Disciplinary Dispositions. The Chief Justice shall appoint a Committee on Disciplinary Decisions to review Disciplinary Review Board decisions to determine which should be published. Decisions of the Board shall be published only after entry of a dispositional Supreme Court Order and only if so directed by the Supreme Court or if approved for publication by the Committee on Disciplinary Decisions. Any person or entity may seek publication of a disciplinary decision by submitting to the Committee a written request explaining the basis for the request and identifying in what way the decision: (1) determines a new and important question of professional conduct, or (2) alters an established principle of professional conduct, or (3) establishes or changes a practice or procedure, or (4) is of continuing public or professional interest and importance, or (5) clarifies a principle or procedure.

1:20-15A. Final Disciplinary Determinations; Sanctions

(a) Categories of Discipline. The imposition of final discipline may include any of the following sanctions, all of which shall be public:

(1) Disbarment. An attorney who is disbarred shall have his or her name permanently stricken from the roll of attorneys.

(2) Indeterminate Suspension. Unless the Court's Order provides otherwise, an indeterminate suspension shall prohibit the attorney from seeking reinstatement for a minimum of five years.

(3) Term of Suspension. Absent special circumstances, a suspension for a term shall be for a period that is no less than three months and no more than three years.

(4) Censure.

(5) Reprimand.

(6) Admonition.

(b) Conditions. The Supreme Court's Order may provide for one or more of the following, either as a part of a sanction imposed pursuant to paragraph (a) or as a condition to reinstatement:

(1) Financial controls including, but not limited to, a designated co-signatory for all attorney trust and business account checks;

(2) Restrictions on the ability to practice including, but not limited to, the use of a supervising attorney approved by the Office of Attorney Ethics as a prerequisite to engaging in the private practice of law;

(3) Substance abuse control including, but not limited to, requiring abstinence, testing, and an identifiable commitment to appropriate support groups;

(4) Mental health treatment and counseling, together with a finding of fitness to practice by a mental health professional approved by the Office of Attorney Ethics;

(5) Taking and passing the New Jersey bar examination, as well as meeting all other qualifications for admission including, but not limited to, a certification of the attorney's good character by the Supreme Court after review by the Committee on Character; and

(6) Such other conditions as may be deemed appropriate in the light of the circumstances presented including, but not limited to, probation or a suspended suspension.

1:20-16. Action by the Supreme Court

(a) Review of Recommendations For Disbarment. The Supreme Court shall review all decisions of the Board that recommend disbarment. The review shall be on the basis of the decision, the transcript of the hearing before the Board, any briefs filed with the Board, and the record of the proceedings before the Ethics Committee, if any. The record shall be supplemented by the filing of briefs and by oral argument before the Supreme Court in accordance with R. 2:5, 2:6 and 2:11, insofar as applicable.

(b) Review of Other Final Disciplinary Determinations. In all matters other than those in which disbarment has been recommended, the Board's decision shall become final on the entry of an appropriate Order by the Clerk of the Supreme Court. Unless the Court otherwise Orders, entry of a final Order of discipline shall be stayed by the filing of a timely petition for review of the Board's decision by the respondent or the Office of Attorney Ethics or by the entry of an Order scheduling the matter for briefing and, where appropriate, oral argument on the Court's own motion.

The Court may, on its own motion, decide to review any determination of the Board where disbarment has not been recommended.

Either respondent or the Office of Attorney Ethics may seek review by filing a notice of petition for review within twenty days of filing of the Board's decision with the Court. The notice shall be accompanied by nine copies of a petition for review, which shall be a brief that meets the format requirements of Rule 2:12-7(a). The responding party shall serve and file a responding brief within ten days of the filing of the petition for review. A reply brief, if any, shall be served and filed within seven days thereafter.

If the Court grants the petition for review, the record before it shall consist of the briefs filed on the petition and the record developed below, consistent with paragraph (a) of this Rule.

The Court may, in its discretion, elect to determine any matter on the papers submitted to it, without oral argument.

Unless the Court otherwise directs, the entry of its disposition shall vacate any stay in effect.

(c) De Novo Review. Supreme Court review shall be de novo on the record.

(d) Non-Appealable Matters. The Board's decision shall be final and not subject to further review by the Court, whether by appeal by leave or in any other manner, in all matters considered by the Board pursuant to R. 1:20-15(e)(1)(i) and R. 1:20A-3(c).

(e) Consent Orders. Except for admonition by consent, on acceptance by the Disciplinary Review Board pursuant to R. 1:20-15(g) of a motion for imposition of discipline by consent, the record of the proceedings shall be filed with the Clerk of the Court for entry of an order of discipline in conformance therewith. The order shall be entered within 30 days after filing of the record.

(f) Constitutional Issues.

(1) Interlocutory Review. An aggrieved party may file with the Supreme Court a motion for leave to appeal to seek interlocutory review of a constitutional challenge to proceedings pending before the trier of fact or the Board. The motion papers shall conform to R. 2:8-1. Leave to appeal may be granted only when necessary to prevent irreparable injury. If leave to appeal is granted, the record below may, in the discretion of the Court, be supplemented by the filing of briefs and oral argument. The filing of any motion to the Supreme Court for interlocutory review authorized by these rules shall not automatically stay disciplinary proceedings unless the Court enters an order specifically granting a stay pending its resolution of the request.

(2) Final Review. In any case in which a constitutional challenge to the proceedings has been properly raised below and preserved pending review of the merits of the disciplinary matter by the Supreme Court, the aggrieved party may seek the review of the Court by proceeding in accordance with the applicable provisions of paragraph (b) of this rule.

(g) Review of Other Matters. All recommendations of the Board other than those otherwise referred to in this rule shall be reviewed by the Supreme Court on the full record below, supplemented as it may order on its own or a party's motion.

(h) Restraint on Attorney Accounts. A Supreme Court order imposing interim or final discipline may include a restraint on the disbursement of funds from accounts maintained by the respondent pursuant to Rule 1:21-6 or from other appropriate accounts. Applications for release of those funds shall be governed by Rule 1:20-23.

(i) Practice of Law Prohibited. No attorney who has been ordered disbarred, suspended, or transferred to disability-inactive status shall practice law after such disbarment or during the period of such suspension or disability, and every order of disbarment shall include a permanent injunction from such practice.

(j) Practicing Law in Violation of Supreme Court Order. Whenever there is reason to believe that an attorney may have violated an Order of the Supreme Court prohibiting that attorney from practicing law in this state, the Director may refer the underlying facts to the appropriate law enforcement agency. The Director also may file and prosecute an action for contempt under R. 1:10-2. Any action under R. 1:10-2 shall be instituted on order to show cause to the Assignment Judge of the vicinage in which the respondent is alleged to have engaged in the prohibited practice of law.

(k) Advice to Suspended and Disbarred Attorneys; Supreme Court Order. An order of the Supreme Court suspending an attorney shall contain a provision specifically advising the attorney of the requirements of R. 1:20-20(b)(15) for filing an affidavit of compliance within 30 days with the Director, the Clerk of the Supreme Court, and the Board; and of the serious consequences for failure to fully and timely comply with those requirements as provided in R. 1:20-20(c).

1:20-17. Reimbursement of Disciplinary Costs

(a) Generally. Except in extraordinary cases, the final order of discipline or final order of transfer to disability-inactive status shall impose costs as recommended by the Disciplinary Review Board.

(b) Amount and Nature of Costs Assessed. In calculating its recommenda-tion the Disciplinary Review Board shall assess both basic administrative costs and disciplinary expenses actually incurred.

(1) Basic Administrative Costs. Basic administrative costs shall be assessed as follows:

(A) For final Discipline by Consent (including Disbarment by Consent, if tendered prior to hearing), $650.

(B) For a Motion for Final Discipline or a Motion for Reciprocal Discipline, $1000.

(C) For other final discipline or transfer to disability-inactive status ordered by the Board or the Court, including Admonition, Reprimand, Censure, Suspension, Transfer to Disability-Inactive Status, Disbarment and Disbarment by Consent (if tendered after the commencement of hearing), $2,000.

(2) Disciplinary Expenses Actually Incurred. Disciplinary expenses actually incurred shall be separately assessed, including, but not limited to, the following:

(A) Costs of any outside experts, such as accountants, auditors, interpreters, physicians, and other consultants;

(B) Charges for service of process and notice by publication;

(C) Transcript and recording or court reporter costs;

(D) Costs of a special ethics master;

(E) Disciplinary Review Board reproduction costs at 15 cents per page;

(F) Costs and fees paid to witness;

(c) Disputes; Procedure. On the entry of an order imposing final discipline or final transfer to disability-inactive status by the Supreme Court that includes an authorization for imposition of costs, Counsel to the Board shall promptly furnish the respondent with a statement of disciplinary costs. Within 20 days thereafter the respondent shall reimburse in full all basic administrative costs and such disciplinary expenses actually incurred as to which there is no dispute. A respondent disputing any included actually-incurred disciplinary expense shall, within that time, specifically detail in writing the items disputed and the factual basis for the dispute. The Board shall review a timely filed letter of dispute without oral argument. Board Counsel shall

notify respondent of the Board's decision, which shall be final and not subject to appeal. Respondent shall remit full payment of any balance due within 20 days after receipt of said notice. Interest shall be charged on the unpaid balance of costs assessed beginning ten days after the date the assessment becomes final. The rate of interest charged shall be 10% per annum, or such other rate established by the Supreme Court from time to time.

Interest shall be charged on the unpaid balance of costs assessed beginning ten days after the date the assessment becomes final. The rate of interest charged shall be 10% per annum, or such other rate established by the Supreme Court from time to time.

(d) Claims of Extraordinary Financial Hardship. Service on respondent of the statement of disciplinary costs shall be accompanied by a notice advising that, in the event of inability to make payment by reason of extraordinary financial hardship, an installment payment schedule may be requested in writing. The request shall be made in writing within 20 days after service of the statement on respondent and shall include a proposed payment plan and be supported by a detailed statement of reasons together with such information specified in the notice. Respondent shall certify the truth of the information provided in accordance with R. 1:4-4.

The Board shall review a timely request under this section. The Board's decision shall be final and not subject to appeal. On respondent's failure to comply with the schedule of payments, the entire unpaid balance of disciplinary costs shall become immediately due and payable. Board Counsel may, in the exercise of discretion, decline to enter into further installment agreements with a respondent who has already defaulted on an agreed installment plan.

(e) Failure to Pay Disciplinary Costs.

(1) Temporary Suspension. On a default in payment required by this rule, Board Counsel, on ten days notice to the respondent, may file with the Supreme Court a certification of the default. The Supreme Court shall forthwith enter an order temporarily suspending the attorney from the practice of law until payment is made and until further order of the Court.

(2) Denial of Reinstatement. The Supreme Court shall not consider a recommendation for reinstatement unless accompanied by a Board certification that all assessed disciplinary costs have been paid.

(3) Docketing Judgment. Upon certification of the amount of disciplinary costs assessed and due, the Clerk of the Superior Court shall, without fee, enter on the civil judgment and order docket both the order authorizing costs and Board Counsel's certification of the amount due. Upon payment, Board Counsel shall execute a warrant for satisfaction.

1:20-18. Supervision of Disciplined Attorney

(a) Generally. An order of discipline or reinstatement entered by the Supreme Court may require the respondent to practice law under supervision by a practicing attorney. Such order shall include the general conditions prescribed by this rule and such specific additional conditions as the Director may require with the approval of the Supreme Court.

(b) Violation of Supervision or RPC's. The supervisor and the respondent shall report promptly to the Director any facts that appear to constitute a violation by the respondent of the Rules of Professional Conduct or the conditions of supervision.

(c) Mental or Physical Disability. The supervisor and the respondent shall report promptly to the Director any facts that appear to demonstrate alcohol or substance abuse by the respondent, or that indicate that the respondent may be incapacitated from practicing law by reason of mental or physical infirmity or illness.

(d) Weekly Conferences. The supervisor shall confer in person with the respondent at least weekly to review the status of all matters being handled.

(e) Time Records. The respondent shall maintain contemporaneous time records on all legal matters, which shall be retained for a minimum of one year after termination of the supervisory period.

(f) New Cases. The respondent shall not accept any cases without the prior approval of the supervisor.

(g) Respondent's Monthly Reports. The respondent shall provide monthly Case Listing Reports to the supervisor by the fifth business day of each month, listing for each case assigned to the respondent: (1) the case caption, (2) the full name and address of the client(s), (3) a brief description of the nature of the case, (4) a brief narrative of its current status, (5) the name of all opposing attorneys, and (6) in all litigated matters, the name of the court and docket number, as well as the names of all judges before whom the attorney appeared during that month. The respondent shall certify all monthly reports in accordance with Rule 1:4-4(b). Reports shall be submitted in a form acceptable to the Director.

(h) Supervisor's Quarterly Reports. The supervisor shall provide to the Director the supervisor's Quarterly Reports in a form acceptable to the Director beginning on the tenth business day of the third month following respondent's order of discipline or of reinstatement by the Supreme Court of New Jersey imposing Conditions of Supervision. Reports shall be made quarterly thereafter on the tenth business day of the month. The quarterly report shall be certified in accordance with Rule 1:4-4(b) and shall have appended to it a copy of each monthly Case Listing Report submitted by the respondent during the quarter. The quarterly report shall set forth the supervisor's overall analysis of the handling of all legal matters entrusted to the respondent and shall indicate specifically whether, in the supervisor's judgment, the respondent's handling of any matter is unsatisfactory. The supervisor shall support his or her conclusions by a brief statement of facts and reasons.

(i) Financial Record Keeping Instructions. During the term of this supervision, the supervisor shall instruct the respondent as to the proper maintenance of trust and business accounts and records in accordance with RPC 1.15 and Rule 1:21-6.

(j) Selection of Supervisor. The respondent shall submit the name of a proposed supervisor to the Director for approval.

(k) Termination of Supervision. After the expiration of time set forth in the order of discipline or reinstatement imposing the Conditions of Supervision, the respondent shall apply to the Supreme Court for termination of the conditions on notice to the Director, who shall file a report and recommendation with the Court.

(l) Failure to Comply. If during the term of the supervision, the Director becomes aware of facts that should be brought to the Court's attention, such as a respondent's failure to comply with the conditions of supervision or a supervisor's failure to comply therewith or a request to be relieved, the Director shall petition the Court for an appropriate order on notice to the supervisor and the respondent.

1:20-19. Appointment of Attorney-Trustee to Protect Clients' Interest

(a) Jurisdiction; Appointment.

(1) Regular Attorney-Trustee. If an attorney has been suspended or disbarred or transferred to disability-inactive status and has not complied with R. 1:20-20 (future activities of disciplined or disability-inactive attorneys), or has abandoned the law practice, or cannot be located, or has died, and no partner, shareholder, executor, administrator or other responsible party capable of conducting the respondent's affairs as stated hereinafter is known to exist, the Assignment Judge, or designee, in the vicinage in which the attorney maintained a practice may, on proper proof of the fact and on the application of any interested party, appoint one or more members of the bar of the vicinage where the law practice is situate as attorney-trustee. Where a responsible party capable of conducting respondent's affairs is known to exist, and where that person is a New Jersey attorney or has retained a New Jersey attorney, that attorney may be appointed and directed to take appropriate action. Notice of an order of appointment shall be given to the Director of the Office of Attorney Ethics and the secretaries of the appropriate Ethics Committee and Fee Committee and county bar association in the vicinage.

(2) Temporary Attorney-Trustee. When, in the opinion of the Assignment Judge, an attorney is otherwise unable to carry on the attorney's practice temporarily so that clients' matters are at risk, the Assignment Judge, or designee, in the vicinage in which the attorney maintained a practice may, on proper proof of the fact and on the application of any interested party, appoint a temporary attorney-trustee for a period of up to six months following the same conditions and procedures set forth in subparagraph (a)(1) of this Rule. The purposes of the temporary attorney-trustee shall

be to preserve, in so far as practical, the practice of the attorney and all attorney-client relationships pending a report to the Assignment Judge at 150 days after appointment as to the attorney's condition and ability to resume the practice. The Assignment Judge may then either dissolve the temporary attorney-trusteeship or convert it to a regular attorney-trusteeship as if created under subparagraph (a)(1) of this Rule.

The temporary attorney-trustee shall have the powers and responsibilities authorized by the Assignment Judge, as well as those specifically granted above and those in paragraphs (c), (e) and (h). The temporary attorney-trustee shall not have the powers granted under paragraphs (d), (f) and (g), except that the reports required by paragraph (d) shall be filed.

The temporary attorney-trustee shall not apply for legal fees within the first thirty days after appointment, but may at any time be awarded reasonable costs and expenses as stated under paragraph (h), including the right to satisfy those costs and expenses from the attorney's business or personal accounts as directed by the Assignment Judge. After thirty days from appointment, the temporary attorney-trustee may apply to the Assignment Judge for reduced legal fees below the normal hourly rate in accordance with paragraph (h).

The attorney whose practice is subjected to a temporary trusteeship shall have the right to make application at any time for an order vacating the temporary trusteeship on notice to all interested parties.

(b) Purposes; Inventory of Files, Trust and Other Assets. The purposes of the appointment shall be (1) to inventory active files and make reasonable efforts to distribute them to clients, (2) to take possession of the attorney trust and business accounts, (3) to make reasonable efforts to distribute identified trust funds to clients or other parties (other than the attorney), and (4) after obtaining an order of the court, to dispose of any remaining funds and assets as directed by the court. The attorney-trustee shall have no obligation or liability to the attorney. The attorney-trustee may take possession of the attorney's law practice and, in accordance with R.1:20-20(b)(13), all monies and fees due the attorney for the sole purpose of creating a fund for payment of reasonable fees, costs and expenses of the trusteeship as ordered by the court under paragraph (h).

(c) Protection of Client Information. Any attorney-trustee shall not disclose any information contained in any files under this rule without the consent of the client to whom the file relates, except as necessary to carry out the order of appointment or to comply with any request from an Ethics Committee or the Director.

(d) Reports; Instructions. The attorney-trustee shall file an initial report with the Assignment Judge or designee within 120 days after appointment and a final report prior to being discharged. The reports shall describe the nature and scope of the work accomplished and to be accomplished under this rule and the significant activities of the attorney-trustee in meeting the obligations under the rule. The final report must include accountings for any trust and business accounts, the disposition of active case files and any requests for disposition of remaining files and property. The attorney-trustee may apply to the Assignment Judge, or such other Judge as may be designated, for instructions whenever necessary to carry out or conclude the duties and obligations

imposed by this rule.

(e) Immunity. All attorney-trustees appointed pursuant to this rule shall be immune from liability for conduct in the performance of their official duties in accordance with R. 1:20-7(e). This immunity shall not extend to employment under section (i).

(f) Acceptance of Clients. With the consent of any client, the attorney-trustee may, but need not, accept employment to complete any legal matter.

(g) Legal Responsibility of Attorney. The attorney for whom an attorney-trustee has been appointed is liable to the attorney-trustee for all fees, costs, and expenses reasonably incurred by the attorney-trustee as approved by the court under paragraph (h).

(h) Legal Fees and Costs. The attorney-trustee shall be entitled to reimbursement from the attorney for (1) actual expenses incurred by the attorney-trustee for costs, including, but not limited to, reasonable secretarial, paralegal, legal, accounting, telephone, postage, moving and storage expenses, and (2) reasonable hourly attorneys' fees. Application for allowance of fees, costs, and expenses shall be made by affidavit to the appointing judge, or designee, who may enter a judgment in favor of the attorney-trustee against the attorney. The application shall be accompanied by an accounting in a form and substance acceptable to the court. The application shall be made on notice to the attorney or, if deceased, to the attorney's personal representative, or heirs. For good cause shown, an interim application for costs and legal fees may be made. The attorney-trustee shall be accorded a priority as an administrative expense for all attorney fees, costs, and expenses awarded by the court. If, after paying the attorney-trustee, there are funds or assets remaining, the Assignment Judge or designee may make such order of disposition as may be appropriate.

1:20-20. Future Activities of Attorney Who Has been Disciplined or Transferred to Disability Inactive Status

(a) Prohibited Association. No attorney or other entity authorized to practice law in the State of New Jersey shall, in connection with the practice of law, employ, permit or authorize to perform services for the attorney or other entity, or share or use office space with, another who has been disbarred, resigned with prejudice, transferred to disability-inactive status, or is under suspension from the practice of law in this or any other jurisdiction.

(b) Notice to Clients, Adverse Parties and Others. An attorney who is suspended, transferred to disability-inactive status, disbarred, or disbarred by consent or equivalent sanction:

(1) shall not practice law in any form either as principal, agent, servant, clerk or employee of another, and shall not appear as an attorney before any court, justice,

judge, board, commission, division or other public authority or agency;

(2) shall not occupy, share or use office space in which an attorney practices law;

(3) shall not furnish legal services, give an opinion concerning the law or its application or any advice with relation thereto, or suggest in any way to the public an entitlement to practice law, or draw any legal instrument;

(4) shall not use any stationery, sign or advertisement suggesting that the attorney, either alone or with any other person, has, owns, conducts, or maintains a law office or office of any kind for the practice of law, or that the attorney is entitled to practice law;

(5) shall, except for the purposes of disbursing trust monies for the 30-day period stated in this subparagraph, cease to use any bank accounts or checks on which the attorney's name appears as a lawyer or attorney-at-law or in connection with the words "law office". If the suspension is for a period greater than six months, or involves a temporary suspension that lasts for more than six months, or involves transfer to disability-inactive status, disbarment, disbarment by consent or their equivalent sanction, the attorney shall, within the 30 day period prescribed in subparagraph (15), disburse all attorney trust account monies that are appropriate to be disbursed and shall arrange to transfer the balance of any trust monies to an attorney admitted to practice law in this state and in good standing for appropriate disbursement, on notice to all interested parties, or dispose of the balance of funds in accordance with R. 1:21-6(j), "Unidentifiable and Unclaimed Trust Fund Accumulations and Trust Funds Held for Missing Owners"; however, it shall not be a violation of this subparagraph for an attorney to take appropriate action to comply after the stated 30-day period;

(6) shall, from the date of the order imposing discipline (regardless of the effective date thereof), not solicit or procure any legal business or retainers for the disciplined attorney or for any other attorney;

(7) shall promptly request the telephone company to remove any listing in the telephone directory indicating that the attorney is a lawyer, or holds a similar title;

(8) shall promptly request the publishers of Martindale-Hubbell Law Directory, the New Jersey Lawyers Diary and Manual, and any other law list in which the attorney's name appears, including all websites on which the attorney's name appears, to remove any listing indicating that that attorney is a member of the New Jersey Bar in good standing;

(9) shall notify the admitting authority in any jurisdiction to whose bar the attorney has been admitted of the disciplinary action taken in the State of New Jersey;

(10) shall, except as otherwise provided by paragraph (d) of this rule, promptly notify all clients in pending matters, other than litigation or administrative proceedings, of the attorney's suspension, transfer to disability-inactive status, disbarment, or disbarment by consent, and of the attorney's consequent inability to act as an attorney due to disbarment, suspension, or disability-inactive status, and shall advise said

clients to seek legal advice elsewhere and to obtain another attorney to complete their pending matters. Even if requested by a client, the attorney may not recommend another attorney to complete a matter. When a new attorney is selected by a client, the disciplined or former attorney shall promptly deliver the file and any other paper or property of the client to the new attorney or to the client if no new attorney is selected, without waiving any right to compensation earned as provided in paragraph (13) below;

(11) shall, except as otherwise provided by paragraph (d) of this rule, as to litigated or administrative proceedings pending in any court or administrative agency, promptly give notice of the suspension, transfer to disability-inactive status, disbarment, or disbarment by consent and of the consequent inability to act as an attorney due to disbarment, suspension, or disability-inactive status, to: (1) each client; (2) the attorney for each adverse party in any matter involving any clients; and (3) the Assignment Judge with respect to any action pending in any court in that vicinage, or the clerk of the appropriate appellate court or administrative agency in which a matter is pending. The notice to clients shall advise them to obtain another attorney and promptly to substitute that attorney for the disciplined or former attorney. Even if requested by a client, the disciplined or former attorney may not recommend an attorney to continue the action. The notices to opposing attorneys and the Assignment Judge or Court Clerk shall clearly indicate the caption and docket number of the case or cases and name and place of residence of each client involved. In the event a client involved in litigation or a pending proceeding does not obtain a substitute attorney within 20 days of the mailing of said notice, the disciplined or former attorney shall move pro se in the court or administrative tribunal in which the action or proceeding is pending for leave to withdraw therefrom. When a client selects a new attorney, the disciplined or former attorney shall promptly deliver the file and any other paper or property of the client to the new attorney or to the client if no attorney is selected, without waiving any right to compensation earned, as provided in paragraph (13), below;

(12) shall, in all cases in which the attorney is then acting, or who thereafter attempts to obtain letters of appointment from a Surrogate to act, in any specified fiduciary capacity, including, but not limited to, executor, administrator, guardian, receiver or conservator, promptly notify in writing all (1) co-fiduciaries, (2) beneficiaries, (3) Assignment Judges and Surrogates of any vicinage and county out of which the matter arose, of the attorney's suspension, transfer to disability-inactive status, disbarment, or disbarment by consent. Such notice shall clearly state the name of the matter, any caption and docket number, and, if applicable, the name and date of death or current residence of the decedent, settlor, individual or entity with respect to whose assets the attorney is acting as a fiduciary;

(13) shall not share in any fee for legal services performed by any other attorney following the disciplined or former attorney's prohibition from practice, but may be compensated for the reasonable value of services rendered and disbursements incurred prior to the effective date of the prohibition, provided the attorney has fully complied with the provisions of this rule and has filed the required affidavit of compliance under subparagraph (b)(15). The reasonable value of services for the disciplined or former attorney and the substituted attorney shall not exceed the amount the client would have had to pay had no substitution been required. If an attorney-trustee has been appointed under R. 1:20-19, all fees for legal services and other compensation due the attorney shall be paid solely to the attorney-trustee for disbursement as directed by the court in

accordance with the provisions of that rule. Compensation shall include any monies or other thing of value paid for legal services due or that is related to any agreement, sale, assignment or transfer of any aspect of the attorney's share of a law firm;

(14) shall maintain:

(A) files, documents, and other records relating to any matter that was the subject of a disciplinary investigation or proceeding;

(B) files, documents, and other records relating to all terminated matters in which the disciplined or former attorney represented a client prior to the imposition of discipline;

(C) files, documents, and other records of pending matters in which the disciplined or former attorney had responsibility on the date of, or represented a client during the year prior to, the imposition of discipline or resignation;

(D) all financial records related to the disciplined or former attorney's practice of law during the seven years preceding the imposition of discipline, including but not limited to bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns, and tax reports; and

(E) all records relating to compliance with this rule.

(15) shall within 30 days after the date of the order of suspension (regardless of the effective date thereof) file with the Director the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order. Signed copies of that affidavit shall be provided at the same time to the Clerk of the Supreme Court and to the Disciplinary Review Board. The affidavit shall be accompanied by a copy of all correspondence sent pursuant to this rule and shall also set forth the current residence or other address and telephone number of the disciplined or former attorney to which communications may be directed. The disciplined or former attorney shall thereafter inform the Director of any change in such residence, address, or telephone number. The affidavit shall also set forth whether the attorney maintained malpractice insurance coverage for the past five years and, for each policy maintained, the name of the carrier, the carrier's address, the policy number, and the dates of coverage. The affidavit shall also attach an alphabetical list of the names, addresses, telephone numbers, and file numbers of all clients whom the attorney represented on the date of discipline or transfer to disability-inactive status.

(c) Failure to Comply. Failure to comply fully and timely with the obligations of this rule and file the affidavit of compliance required by paragraph (b)(15) within the 30-day period, unless extended by the Director for good cause, shall, in the case of a suspension, preclude the Board from considering any petition for reinstatement until the expiration of six months from the date of filing proof of compliance in accordance with R.1:20-21(i)(A). Such failure shall also constitute a violation of RPC 8.1(b) (failure to cooperate with ethics authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice). The Director also may file and prosecute an action for contempt pursuant to R. 1:10-2.

(d) Definite Suspension of Six Months or Less. A lawyer who has been suspended for a definite period of six months or less is exempt from the requirements of paragraph (b)(7) and (b)(8).

(e) Responsibility of Partners and Shareholders. An attorney who is affiliated with the disciplined or former attorney as a partner, shareholder, or member shall take reasonable actions to ensure that the attorney complies with this rule. In lieu of compliance by the attorney with the requirement of paragraph (b)(10) and (b)(11), the firm, corporation, or limited liability entity may promptly notify all clients represented by the disciplined or former attorney of the attorney's inability to act due to disbarment, suspension, or disability-inactive status and that the firm will continue to represent the client unless the client requests in writing that the firm withdraw from the matter and substitute a new attorney.

If the disciplined or former attorney fails to comply with this rule within 30 days of the date of suspension, transfer, or disbarment, the law firm shall do so. Proof of compliance shall be by verified affidavit of a member of the firm, shareholder, or member filed with the Director within 30 days of the date of suspension, transfer, or disbarment. The affidavit shall be accompanied by a copy of all notices sent to clients pursuant to this paragraph.

1:20-21. Reinstatement After Final Discipline

(a) Definite Suspension of More Than Six Months and Indefinite Suspensions. After the expiration of a definite suspension of more than six months or at any time after an indefinite suspension has been ordered, an attorney may file a verified petition for reinstatement with the Disciplinary Review Board pursuant to this rule.

(b) Definite Suspension of Six Months or Less. A lawyer who has been suspended for a definite period of six months or less may file a petition for reinstatement and publish notice of reinstatement forty days prior to the expiration of the period of suspension. All other procedures specified by this rule shall apply, except that the petition need not contain responses to paragraphs (f)(5), and (f)(8) to (f)(10), inclusive.

(c) Filing and Service of Petition. The petitioner shall file an original and 12 copies of the verified petition with the Board and shall serve two copies on the Director.

(d) Costs. Petitions for reinstatement shall be accompanied by a non-refundable check payable to the Disciplinary Oversight Committee in the amount of $750 to cover the reasonable administrative costs of processing the petition. Either the Board or the Court may also direct the petitioner to pay such additional sum during the processing of a petition as it deems appropriate to meet the cost of actual out-of-pocket expenses, including, but not limited to, medical or psychiatric examinations, transcripts and other investigatory and review expenses deemed necessary to a proper evaluation of the reinstatement petition.

(e) Publication of Notice. Contemporaneously with the filing of the petition for reinstatement, or within twenty-one days prior thereto, the petitioner shall publish a notice of application for reinstatement in bold-faced type in all official newspapers designated by the Supreme Court and in a newspaper of general circulation in each county in which the respondent last maintained a law office and in the county in which respondent resided at the time of the imposition of discipline. Publication of a notice shall be sufficient if in the following language: NOTICE TO THE PUBLIC. John Doe, who was admitted to the bar of the State of New Jersey on _____, 20___ and who was thereafter suspended from the practice of law by the Supreme Court, is applying to be reinstated to the practice. Objections or relevant information concerning this application for reinstatement should be forwarded immediately to Chief Counsel, Disciplinary Review Board, P.O. Box 962, Trenton, New Jersey 08625-0962.

(f) Contents of Petition. The petitioner shall provide a certified petition for reinstatement setting forth all material facts on which the petitioner relies to establish fitness to resume the practice of law. The petition shall in the discretion of the Board considering the nature of the disciplinary offense contain, in correlatively numbered paragraphs, the following information:

(1) the name of the petitioner and a copy of a current photograph of petitioner, not smaller than three inches by three inches showing front and side views;

(2) the date on which the suspension was imposed and the citation of the reported opinion, if any;

(3) the age, current residence address and telephone number of the petitioner, the address of all residences maintained during the suspension period and the date of each residence;

(4) the nature of petitioner's occupation during the suspension, including the name and address of each employer, the dates of each employment, the positions occupied and titles held, the name, address and telephone of the immediate supervisor, and the reason for leaving the employment;

(5) the case caption, general nature, dates and disposition of every civil, criminal, administrative or disciplinary action which was pending during the period of suspension to which petitioner was either a party or claimed an interest;

(6) petitioner's written consent to the Board and to the Director to examine and secure copies of any records relating to any criminal investigation of or action against petitioner;

(7) a statement of the monthly earnings and other income of the petitioner and the sources from which all earnings and income were derived during the period of suspension;

(8) a statement of assets and financial obligations of the petitioner as of the date of the original suspension and at the time of the reinstatement application, the dates when acquired or incurred, and the names and addresses of all creditors;

(9) the names and addresses of all financial institutions at which petitioner had, or was signatory to, accounts, safety deposit boxes, deposits or loans during the period of suspension, the number of each account, box, deposit or loan; the date each account, box, deposit or loan was opened, approved or made; and the date each account, box, deposit or loan was closed, discharged or paid;

(10) copies of petitioner's federal and state income tax returns and any business tax returns for each of the three years immediately preceding the date the petition is filed and for each year, or part of a year, during the period of suspension and, in an appropriate form, petitioner's written consent to the Board and the Director to secure copies of the original returns;

(11) a statement of restitution made for any and all obligations to all former clients and the Lawyers' Fund for Client Protection and the source and amount of funds used for this purpose;

(12) whether the petitioner, during the period of suspension, sought or obtained assistance, consultation or treatment, whether as an in- or out-patient, for a mental or emotional disorder or for addiction to drugs or alcohol, if such services relate to the disciplinary offenses or the Board determines that such information is relevant to the petitioner's present ability to practice law. The name, address and telephone of each provider of these services, the services rendered, their duration and purpose and a copy of all medical records shall be provided to the Board;

(13) whether the petitioner, during the period of suspension, applied for admission or reinstatement to practice as an attorney in this state or any other state and the caption and details of the application;

(14) whether the petitioner has ever applied for or been granted a license or certificate relating to any business or occupation and whether that license or certificate has ever been the subject of any disciplinary action and the details thereof;

(15) a statement as to whether or not any applications were made during the period of suspension for a license requiring proof of good character, the dates, name, address and telephone of the authority to whom such applications were addressed and the disposition thereof;

(16) whether petitioner, during the period of suspension, engaged in the practice of law in any jurisdiction and all material facts relating thereto;

(17) a statement of any procedure or inquiry during the period of suspension, relating to petitioner's standing as a member of any other profession or organization, or holder of any license or office, which involved the censure, removal, suspension, revocation of license, or discipline of petitioner, and, as to each, the dates, facts, and the disposition thereof and the name, address and telephone of the authority in possession of the record thereof;

(18) a written representation of petitioner's intentions concerning the practice of law, if reinstated;

(19) a newly completed Annual Attorney Registration Statement;

(20) a copy of the detailed affidavit required to be filed in accordance with R. 1:20-20;

(21) such other information as the Director, the Board or the Supreme Court may from time to time require.

(g) Objections By Director; Recommendation By the Board. Within 21 days following receipt of the petition or 14 days if the period of suspension was six months or less, the Director shall file an original and 12 copies of a response with the Board either objecting or not objecting to the petition. The Director shall serve the respondent with a copy of the response. If the Director consents or fails to file objections, the Board may submit its findings and recommendations to the Supreme Court. If the Director files objections, the Board may set the matter down for oral argument on notice to the parties or may, after considering the objections, submit its findings and recommendations as to the attorney's fitness to practice law to the Supreme Court without argument. The Board may recommend and the Court may impose conditions on the attorney's reinstatement deemed necessary to protect the lawyer, clients or the public.

(h) Referral to Trier of Fact. In an appropriate case, the Board may refer specific issues regarding reinstatement to a trier of fact, which shall then hold a hearing and furnish the Board with a report of findings and recommendations.

(i) Consideration of Petition for Reinstatement. No petition for reinstatement shall be considered by the Board unless:

(A) the respondent first affirmatively demonstrates full and timely compliance with R. 1:20-20. If compliance has not occurred, and if the required affidavit of compliance has not been timely filed, the Board shall not consider the petition until the expiration of six months from the date of filing of that proof of compliance;

(B) all disciplinary costs assessed have been paid, unless an extraordinary financial hardship claim has been timely requested and granted and unless respondent is current in the schedule of payments thereunder;

(C) all orders for restitution have been paid;

(D) the respondent has reimbursed or has reached agreement in writing with the Lawyers' Fund for Client Protection to reimburse it in full for all sums paid or authorized to be paid as a result of the respondent's conduct;

(E) all annual registration fees and charges for ethics and the Lawyers' Fund for Client Protection have been paid.

(j) Successive Petitions. Except as otherwise ordered by the Supreme Court, a petitioner may not file a subsequent petition for reinstatement until six months after the Supreme Court has adversely decided the prior petition.

(k) Public Proceedings and Records. All reinstatement records and proceedings shall be considered public in accordance with R. 1:20-9.

(l) Standard of Proof. The standard of proof in reinstatement proceedings shall be by clear and convincing evidence.

(m) Burden of Proof; Burden of Going Forward. The burden of proof in proceedings seeking reinstatement shall be on the petitioner.

1:20-22. Resignation Without Prejudice

(a) Generally. A resignation without prejudice from the bar of this state of a member in good standing shall be submitted through the Director and may be accepted by the Supreme Court, provided that at the time of its submission, the member presents satisfactory proof that no disciplinary or criminal proceedings are pending in any jurisdiction and that, if the attorney has actively engaged in the practice of law in this state in the preceding two years, all clients for whom the attorney has performed any professional services or by whom the attorney has been retained during that time in this state have been notified of the resignation.

(b) Form. A resignation without prejudice submitted pursuant to this rule shall be in a form approved by the Director, Office of Attorney Ethics, and shall set forth the reason for the resignation. It shall be accompanied by an affidavit in the form approved by the Director.

(c) Effect. On acceptance of the resignation, which shall be by order of the Supreme Court, the membership in the bar of this state shall cease, and any subsequent application for membership shall be in accordance with the provisions of R. 1:24. An attorney whose resignation without prejudice from the bar is accepted by the Supreme Court shall cease the practice of law in this state as of the effective date of the order of acceptance. A resignation shall not affect the jurisdiction of the disciplinary system with regard to any unethical conduct that occurred prior to resignation.

1:20-23. Release of Restrained Funds in Attorney Accounts

(a) Petition for Release of Funds. A party claiming a right to attorney trust or business account funds or to other funds that have been restrained from disbursement by Supreme Court Order shall make any application for release of those funds to the Supreme Court. The petitioning party shall file an original plus eight copies of a verified petition setting forth the standing of the petitioner to make the application and the factual basis for the claim that the funds sought are the property of the petitioner. Relevant documentation shall be appended to the petition. Legal argument, if any, in support of the petitioner's contentions shall be submitted separately in the form of a brief.

(b) Notice. Two copies of the petition shall be served on the disciplined attorney, the Disciplinary Review Board, the Office of Attorney Ethics, the Lawyers' Fund for Client Protection, any attorney-trustee appointed pursuant to Rule 1:20-19, and any other parties in interest. Proof of service shall be filed with the petition.

(c) Response to Petition. Parties served with the petition shall have ten days within which to file and serve nine copies of a response.

(d) Supreme Court Action; Publication. If the Court determines the claimed funds are the property of the petitioner or of any other claimant, it shall enter an appropriate Order directing disbursement. The Court may make the release of funds subject to prior general notice by publication.

(e) Priority Over Remaining Funds. If the actual ownership of the funds cannot be established by clear and convincing evidence, the Lawyers' Fund for Client Protection shall have priority over the funds to the extent it has been subrogated to the rights of claimants against the Fund. If the Fund does not make a claim or if satisfaction of its claim does not exhaust the funds that have been restrained, the Disciplinary Oversight Committee shall have priority over the remaining funds to satisfy unpaid costs assessed against the disciplined attorney.

RULE 1:20A. DISTRICT FEE ARBITRATION COMMITTEES

1:20A-1. Appointment and Organization

(a) Fee Arbitration Districts. The Supreme Court shall establish, and may from time to time alter, fee arbitration districts consisting of defined geographical areas and shall appoint in each district a District Fee Arbitration Committee which shall consist of such number of members, not fewer than 8, as the Court may determine, at least 4 of whom shall be attorneys of this state and at least 2 of whom shall not be attorneys. Any person appointed shall either reside or work in the district or county in which the district is located.

(b) Appointments. Members of Fee Committees shall be appointed by and shall serve a term of 4 years. A member who has served a full term shall not be eligible for reappointment to a successive term but a member appointed to fill an unexpired term shall be eligible for reappointment to a full successive term. A member serving in connection with a proceeding in which testimony has begun at the time the member's term expires shall continue in such matter until its conclusion and the filing of an arbitration determination or stipulation of settlement unless relieved by the Supreme Court. In order that, as nearly as possible, the terms of one-quarter of the members shall expire each year, the Supreme Court may, when establishing a new fee committee, appoint members for terms of less than 4 years and members so appointed shall be eligible for reappointment to a full successive term.

(c) Officers; Organization. The Supreme Court shall annually designate a member of each Fee Committee to serve as chair and another member to serve as vice chair. When the chair is absent or unable to act or is disqualified from acting due to a conflict, the vice chair shall perform the duties of the chair. Each Fee Committee shall hold an organization meeting in September of each year and shall meet regularly, except when there is no business to be conducted. The Fee Committee shall also meet at the call of the Supreme Court, the Chair, the Board or the Director.

The Director shall, after consultation with the chair, appoint a secretary who shall not be a member of the Fee Committee but who shall be a member of the bar maintaining an office in the district or county in which the district is located. The secretary shall serve at the pleasure of the Director and be paid an amount annually set by the Supreme Court to reimburse the secretary for costs and expenses. The secretary shall keep full and complete records of all Fee Committee proceedings, shall maintain files with respect to all fee disputes received, shall transmit copies of all documents filed immediately on receipt thereof to the Director, and shall promptly notify the Director of each final disposition. Reports with respect to the work of the Fee Committee shall be filed by the secretary with the Director, as instructed by the Director.

(d) Office. Each Fee Committee shall receive fee dispute inquiries at the office of its secretary and at such additional places as shall be designated by the Director.

(e) Filing; Transfer. Unless specifically directed to the contrary by the Board or by the Director, a fee committee shall not act on fee arbitration requests involving an attorney who does not maintain an office within the district but shall refer that information to the Director for appropriate referral. A fee committee shall not render advisory opinions. On request of a fee committee or sua sponte, the Director may transfer any matter to another fee committee and may, on direction of the Supreme Court or sua sponte, supersede the functions of a fee committee.

1:20A-2. Jurisdiction

(a) Generally. Each Fee Committee shall, pursuant to these rules, have jurisdiction to arbitrate fee disputes between clients and attorneys, including pro hac vice attorneys, multijurisdictional practitioners, and Foreign Legal Consultants. Fee Committees shall also have jurisdiction to arbitrate disputes in which a person other than the client is legally bound to pay for the legal services, except that Fee Committees shall not have jurisdiction of such cases if the obligation arises out of the settlement of a legal action. A fee arbitration determination is final and binding upon the parties except as provided by R. 1:20A-3(c).

(b) Discretionary Jurisdiction. A Fee Committee may, in its discretion, decline to arbitrate fee disputes:

(1) in which persons who are not parties to the arbitration have an interest that would be substantially affected by the arbitration;

(2) in which the primary issues in dispute raise substantial legal questions in

addition to the basic fee dispute;

(3) in which the total fee charged exceeds $100,000, excluding out-of-pocket costs and disbursements;

(4) involving multijurisdictional practitioners where it appears that substantial services involving the practice of law in New Jersey have not been rendered in the matter.

(c) Absence of Jurisdiction. A Fee Committee shall not have jurisdiction to decide:

(1) a fee which is allowed or allowable as of right by a court or agency pursuant to any applicable rule or statute.

(2) claims for monetary damages resulting from legal malpractice, although a fee committee may consider the quality of services rendered in assessing the reasonableness of the fee pursuant RPC 1.5.

(A) Submission of a matter to fee arbitration shall not bar the client from filing an action in a court of competent jurisdiction for legal malpractice.

(B) No submission, testimony, decision or settlement made in connection with a fee arbitration proceeding shall be admissible evidence in a legal malpractice action.

(3) a fee for legal services rendered by the Office of the Public Defender, pursuant to N.J.S.A. 2A:158A-1 et seq.; and

(4) a fee in which no attorney's services have been rendered for more than six years from the last date services were rendered.

(d) Procedure for Determining Jurisdiction. All questions of jurisdiction shall be resolved initially by the secretary or, if a hearing panel has already been appointed, by the panel chair.

1:20A-3. Arbitration

(a) Submission.

(1) Request Form. A fee dispute shall be arbitrated only on the written request of a client or a third party defined by Rule 1:20A-2. Fee committees shall have authority to consider such a request whether or not the attorney has already received the fee in dispute and regardless of whether the attorney has been suspended, resigned, disbarred or transferred to disability inactive status since the fee was incurred. All requests for fee arbitration shall be made on forms approved by the Director, and a copy of each request so filed shall be promptly transmitted to the Office of Attorney Ethics. The filing of a Fee Arbitration Request Form with the secretary shall constitute a stay of all pending court actions for the collection of the fee. The secretary shall notify the appropriate court clerk

when any pending proceeding is stayed by this rule.

(2) Administrative Filing Fee. All requests for arbitration and all attorney responses must be accompanied by a non-refundable administrative filing fee of $50. Filing fees shall be paid only by check or money order payable to "Disciplinary Oversight Committee."

(i) Non-Payment. If the party making the fee arbitration request fails to submit the filing fee, the secretary shall not docket the matter and shall so inform the parties, who shall have no more than twenty days from the date of notification in writing to correct the deficiency. If the attorney fails to submit the fee, the secretary shall inform the attorney that unless payment is made within twenty days from the date the attorney is notified in writing, the attorney shall be barred from further participation, and the matter will proceed uncontested.

(ii) Dishonored Instruments. If a negotiable instrument submitted by a party is returned unpaid for any reason, the matter shall be stayed pending the resubmission of a certified or cashier's check in double the amount of the original filing fee within twenty days of the date the party is notified in writing by the secretary of the return. Failure of the party filing the fee request to make a timely resubmission shall result in dismissal of the matter with prejudice. If a resubmitted instrument is returned unpaid for any reason, the matter shall be dismissed with prejudice. Failure of a responding attorney to make a timely resubmission shall be a bar to the attorney's further participation, and the fee arbitration shall proceed uncontested.

(b) Procedure.

(1) Hearing Panel; Burden of Proof. All arbitration proceedings shall be heard before a hearing panel of at least three (3) members of the fee committee, a majority of whom shall be attorneys, except that in all cases in which the amount of the total fee charged is less than $3,000, the hearing may be held before a single attorney member at the direction of the chair. A quorum for the hearing of any matter in which the fee charged is $3,000 or more shall consist of at least three (3) members of the fee committee. The determination of a matter shall be made by a majority of the membership sitting on the hearing panel, provided a quorum is present. When by reason of absence, disability, or disqualification the number of members of the panel able to act is fewer than a quorum, with the consent of the client and the attorney the hearing may proceed before two members of the panel. The secretary of the Fee Committee shall not be eligible to sit on any hearing panel. The determination of a matter shall be made in accordance with R.P.C. 1.5. The burden of proof shall be on the attorney to prove the reasonableness of the fee in accordance with R.P.C. 1.5 by a preponderance of the evidence. Within thirty (30) days after the docketing of a request for fee arbitration a client may, in writing, notify the secretary of a withdrawal from the proceeding; thereafter a client shall have no right of withdrawal. After a matter has been withdrawn by the client, the client shall not be permitted to resubmit it to fee arbitration.

(2) Notice; Attorney Response. The Fee Committee shall notify the parties at least 10 days in advance, in writing, of the time and place of hearing, and shall have the power, at a party's request and for good cause shown, or on its own motion, to compel the attendance of witnesses and the production of documents by the issuance of

subpoenas in accordance with R. 1:20-7(i). All parties shall promptly report changes of address to the secretary of the Fee Committee, the hearing panel chair or single member arbitrator, and other parties. All service on attorneys required by fee arbitration rules shall be made in accordance with Rule 1:20-7(h), except that service by mail may be made by regular mail, unless the letter will result in barring an attorney from further participation or unless the attorney updates an address as stated above in which event service will be made at that address. Service on non-attorney parties shall be made at their last known address by regular mail, unless the address has been updated as stated above, in which event it shall be sent to the updated address.

The secretary of the Fee Committee shall serve on the attorney a copy of the client's written request for fee arbitration, and any supplemental documentation supplied to the panel; the secretary shall also forward to the attorney for completion an Attorney Fee Response form in a form approved by the Director. The secretary shall also serve a copy of the client's request for fee arbitration and an Attorney Fee Response on the law firm, if any, of which the original attorney is a member. The attorney shall specifically set forth in the Attorney Fee Response the name of any other third party attorney or law firm which the original attorney claims is liable for all or a part of the client's claim. The attorney shall file with the secretary the completed Attorney Fee Response, together with any supplemental documentation, within 20 days of receipt of the client's written request for fee arbitration; the attorney shall certify that a true copy of the Attorney Fee Response has been served on the client. Failure to file the Attorney Fee Response shall not delay the scheduling of a hearing. If the attorney fails to timely file an attorney fee response, the secretary shall inform the attorney that unless an attorney fee response is filed, and the filing fee paid, within 20 days of the date that the attorney is notified in writing, the attorney shall be barred from further participation, and the matter will proceed uncontested. Nothing in this section shall preclude the panel or arbitrator in its discretion from refusing to consider evidence offered by the attorney which would reasonably be expected to have been disclosed on the Attorney Fee Response.

(3) Third Party Practice. In the event that the attorney has named a third party attorney or law firm as potentially liable in whole or part for the fee, the original attorney shall, within the time for filing the Attorney Fee Response with the secretary, serve a copy of the client's Request For Fee Arbitration and a copy of the Attorney Fee Response on the third party attorney or law firm, stating clearly in a cover letter that a third party fee dispute claim is being made against them. A copy of such letter shall be filed with the secretary, who shall forward to the third party attorney or law firm for completion an Attorney Fee Response form, which shall be filed with the secretary and served by the third party attorney on the client and the original attorney as provided for in the case of the original attorney. A third party attorney or law firm so noticed shall be deemed a party with all of the rights of and obligations of the original attorney.

(4) Conduct of Hearing; Determination. All arbitration hearings shall be conducted formally and in private, but the strict rules of evidence need not be observed. All witnesses including all parties to the proceeding shall be duly sworn, and no stenographic or other similar record shall be made except in exceptional circumstances at the direction of the Board or the Director. Both the client and the attorney whose fee is questioned shall have the right to be present at all times during the hearing with their attorneys, if any. If special circumstances dictate, the trier of fact may accept testimony

of a witness by telephone or video conference. The written determination of the hearing panel or the single member arbitrator shall be in the form approved by the Director and shall have annexed a brief statement of reasons therefor. If a stay of a proceeding pending in court has been entered prior to the Fee Committee's determination, when the determination is rendered the secretary of the Fee Committee shall, if requested by either party, send a copy of the determination to the Clerk of the Court who is to vacate the stay and relist the matter. Where a third party attorney or law firm has been properly joined the arbitration determination shall clearly state the individuals or entities liable for the fee, or to whom the fee is due and owing. It shall be served on the parties and filed with the Director by ordinary mail within thirty (30) days following the conclusion of the hearing or from the end of any time period permitted for the supplemental briefs or other materials. Both the attorney and the client shall have 30 days from receipt to comply with the determination of the Fee Committee. Enforcement of arbitration determinations and stipulations of settlement shall be governed by paragraph (e).

(c) Appeal. No appeal from the determination of a Fee Committee may be taken by the client or the attorney to the Disciplinary Review Board except where facts are alleged that:

(1) any member of the Fee Committee hearing the fee dispute failed to be disqualified in accordance with the standards set forth in R. 1:12-1; or

(2) the Fee Committee failed substantially to comply with the procedural requirements of R. 1:20A, or there was substantial procedural unfairness that led to an unjust result; or

(3) there was actual fraud on the part of any member of the Fee Committee; or

(4) there was a palpable mistake of law by the fee committee which on its face was gross, unmistakable, or in manifest disregard of the applicable law, which mistake has led to an unjust result.

(d) Procedure on Appeal. The party taking an appeal shall file a notice of appeal in the form prescribed by the Board within twenty-one days after the parties' receipt of the Fee Committee's written arbitration determination. The notice of appeal shall be filed with the Board and shall include a statement of the ground for appeal and an affidavit or certification stating the factual basis therefor. Copies of the notice of appeal shall be served on the other parties, the secretary of the Fee Committee and the hearing panel chair by the party appealing who shall certify such service in the notice of appeal. The filing of a notice of appeal from a Fee Committee determination shall act as a stay of execution of any judgment obtained as a result of a fee arbitration process. That stay shall not be lifted until final conclusion of the fee arbitration proceedings. The hearing panel chair of the Fee Committee shall, within twenty-one days of receipt of the notice of appeal, furnish to the Board a specific reply to the facts in the notice of appeal, setting forth the alleged grounds for appeal and shall serve a copy of the reply on all other parties. The Board may, in its discretion, decide an appeal without a response from the hearing panel chair. Within the same twenty-one day time period, the secretary of the Fee Committee or the Office of Attorney Ethics shall file with the Board the record of proceedings before the Fee Committee and any briefs or other papers filed with the

Fee Committee. Subject to the same time limitations, any other party to the fee proceedings may file a response with the Board and shall certify service on all other parties, the secretary, and the hearing panel chair.

The Board shall dismiss the appeal on notice to the parties if it determines that the notice of appeal fails to state a ground for appeal specified in paragraph (c) of this rule or that the affidavit or certification fails to state a factual basis for such ground. If the notice of appeal and supporting affidavit or certification comply with these rules, the Board shall review the challenge to the arbitration. If it finds that there has been a violation of Rule 1:20A-3(c), the Board shall remand the fee dispute to a Fee Committee for a new arbitration hearing, or determine the matter itself if it deems such action appropriate.

(e) Enforcement. Whenever a Fee Committee determines, or the parties by signed stipulation of settlement agree, that a refund of all or part of the fee paid by a client should be made and the attorney fails to appeal or to comply with such determination or stipulation within thirty (30) days of receipt thereof, the matter shall be referred to the Director for such action as may be appropriate, in accordance with R. 1:20-15(k). In the event of an appeal, no enforcement of the Fee Committee's determination will occur while that appeal is pending before the Board.

If an action for collection of the fee is pending when the client's written request for arbitration is filed under Rule 1:20A-3(a) and is stayed thereby pending a determination by the Fee Committee, the amount of the fee or refund as so determined may be entered as a judgment in the action unless the full balance due is paid within 30 days of receipt of the arbitration determination. If no such action is pending, the attorney or client may, by summary action brought pursuant to Rule 4:67, obtain judgment in the amount of the fee or refund as determined by the Fee Committee. In any application for the entry of a judgment in accordance with this rule, no court shall have jurisdiction to review a fee arbitration committee determination. Said review is reserved exclusively to the Disciplinary Review Board under R. 1:20-15(l).

On payment and collection of any balance due from a client or third party under an arbitration determination or stipulation of settlement, the attorney shall promptly prepare, execute and provide the client or third party with a warrant for satisfaction of any judgment entered, if requested or, if a civil action for the fee is pending, shall cause it to be dismissed. The client or third party shall bear the cost of filing any warrant for satisfaction.

1:20A-4. Referral to Office of Attorney Ethics

When a grievance involves aspects of both a fee dispute and a charge of ethical misconduct, the Fee Committee shall first determine the propriety of the fee charged unless it clearly appears to the Fee Committee, or to the Director, that there is presented an ethical question of a serious or emergent nature, in which event the Fee Committee shall administratively dismiss the matter and transmit the file to the Director for processing. In all cases it shall be the duty of each Fee Committee, after hearing and

determination of the fee, to refer any matter that it concludes may involve ethical misconduct that raises a substantial question as to the attorney's honesty, trustworthiness or fitness as a lawyer in other respects (including overreaching) to the Director for investigation. Such referrals shall be made in letter form detailing the facts known to the Fee Committee and shall include a complete copy of the Fee Committee's file. Nothing in this rule shall preclude a client from filing an independent grievance with an Ethics Committee at the conclusion of a fee dispute proceeding.

1:20A-5. Records; Confidentiality; Immunity

Each Fee Committee shall maintain such records and file such reports as shall be required by the Director. Except as may be otherwise necessary for compliance with these rules or to take ancillary legal action in respect thereof, all records, documents, files, hearings, transcripts or recordings of hearings, if any, and proceedings made and conducted in accordance with these rules shall be confidential. They shall not be disclosed to or attended by anyone unless (1) the Board so directs following written application to the Board with notice to the Director and the attorney whose fee was questioned; or (2) on order of the Supreme Court. Fee Committee members, secretaries and their lawfully appointed designees and staff shall be entitled to the immunity as provided by Rule 1:20-7(e).

1:20A-6. Pre-Action Notice to Client

No lawsuit to recover a fee may be filed until the expiration of the 30 day period herein giving Pre-Action Notice to a client; however, this shall not prevent a lawyer from instituting any ancillary legal action. Pre-Action Notice shall be given in writing, which shall be sent by certified mail and regular mail to the last known address of the client, or, alternatively, hand delivered to the client, and which shall contain the name, address and telephone number of the current secretary of the Fee Committee in a district where the lawyer maintains an office. If unknown, the appropriate Fee Committee secretary listed in the most current New Jersey Lawyers Diary and Manual shall be sufficient. The notice shall specifically advise the client of the right to request fee arbitration and that the client should immediately call the secretary to request appropriate forms; the notice shall also state that if the client does not promptly communicate with the Fee Committee secretary and file the approved form of request for fee arbitration within 30 days after receiving pre-action notice by the lawyer, the client shall lose the right to initiate fee arbitration. The attorney's complaint shall allege the giving of the notice required by this rule or it shall be dismissed.

1:21-1. Who May Practice; Attorney Access and Availability: Appearance in Court

(a) Qualifications. Except as provided below, no person shall practice law in this State unless that person is an attorney holding a plenary license to practice in this State, is in good standing, and complies with the following requirements:

(1) An Attorney need not maintain a fixed physical location for the practice of law, but must structure his or her practice in such a manner as to assure, as set forth in RPC 1.4, prompt and reliable communication with and accessibility by clients, other counsel, and judicial and administrative tribunals before which the attorney may practice, provided that an attorney must designate one or more fixed physical locations where client files and the attorney's business and financial records may be inspected on short notice by duly authorized regulatory authorities, where mail or hand-deliveries may be made and promptly received, and where process may be served on the attorney for all actions, including disciplinary actions, that may arise out of the practice of law and activities related thereto.

(2) An attorney who is not domiciled in this State and does not maintain a fixed physical location for the practice of law in this State, but who meets all qualifications for the practice of law set forth herein must designate the Clerk of the Supreme Court as agent upon whom service of process may be made for the purposes set forth in subsection (a)(1) of this rule, in the event that service cannot otherwise be effectuated pursuant to the appropriate Rules of Court. The designation of the Clerk as agent shall be made on a form approved by the Supreme Court.

(3) The system of prompt and reliable communication required by this rule may be achieved through maintenance of telephone service staffed by individuals with whom the attorney is in regular contact during normal business hours, through promptly returned voicemail or electronic mail service, or through any other means demonstrably likely to meet the standard enunciated in subsection (a)(1).

(4) An attorney shall be reasonably available for in-person consultations requested by clients at mutually convenient times and places.

A person not qualifying to practice pursuant to the first paragraph of this rule shall nonetheless be permitted to appear and prosecute or defend an action in any court of this State if the person (1) is a real party in interest to the action or the guardian of the party; or (2) has been admitted to speak pro hac vice pursuant to R. 1:21-2; (3) is a law student or law graduate practicing within the limits of R. 1:21-3; or (4) is an in-house counsel licensed and practicing within the limitations of R. 1:27-2.

Attorneys admitted to the practice of law in another United States jurisdiction may practice law in this state in accordance with RPC 5.5(b) and (c) as long as they comply with Rule 1:21-1-(a)-(1).

No attorney authorized to practice in this State shall permit another person to practice in this State in the attorney's name or as the attorney's partner, employee or

associate unless such other person satisfies the requirements of this rule.

(b) Appearance. All attorneys and pro se parties appearing in any action shall be under the control of the court in which they appear and subject to appropriate disciplinary action. An attorney admitted in another jurisdiction shall not be deemed to be making an appearance in this State by reason of taking a deposition pursuant to R. 4:11-4.

(c) Prohibition on Entities. Except as otherwise provided by paragraph (d) of this rule and by R. 1:21-1A (professional corporations), R. 1:21-1B (limited liability companies), R. 1:21-1C (limited liability partnerships), R. 6:10 (appearances in landlord-tenant actions), R. 6:11 (appearances in small claims actions), R. 7:6-2(a) (pleas in municipal court), R. 7:8-7(a) (presence of defendant in municipal court) and by R. 7:12-4(d) (municipal court violations bureau), an entity, however formed and for whatever purpose, other than a sole proprietorship shall neither appear nor file any paper in any action in any court of this State except through an attorney authorized to practice in this State.

(d) Federal Government Agencies. Staff attorneys employed full time by agencies of the federal government that have an office in New Jersey may represent the interests of that agency in federal and state courts in New Jersey without complying with subsection (a)(1) of this rule.

(e) Legal Assistance Organizations. Nonprofit organizations incorporated in this or any other state for the purpose of providing legal assistance to the poor or functioning as a public interest law firm, and other federally tax exempt legal assistance organizations or trusts, such as those defined by 26 U.S.C.A. 120(b) and 501(c)(20), that provide legal assistance to a defined and limited class of clients, may practice law in their own names through staff attorneys who are members of the bar of the State of New Jersey, provided that: (1) the legal work serves the intended beneficiaries of the organizational purpose, (2) the staff attorney responsible for the matter signs all papers prepared by the organization, and (3) the relationship between staff attorney and client meets the attorney's professional responsibilities to the client and is not subject to interference, control, or direction by the organization's board or employees except for a supervising attorney who is a member of the New Jersey bar.

(f) Appearances Before Office of Administrative Law and Administrative Agencies. Subject to such limitations and procedural rules as may be established by the Office of Administrative Law, an appearance by a non-attorney in a contested case before the Office of Administrative Law or an administrative agency may be permitted, on application, in any of the following circumstances:

(1) where required by federal statute or regulation;

(2) to represent a state agency if the Attorney General does not provide representation in the particular matter and the non-attorney representative is an employee of the agency with special expertise or experience in the matter in controversy;

(3) to represent a county welfare agency if County Counsel does not provide representation in the particular matter and the non-attorney representative is an

employee of the agency with special expertise or experience in the matter in controversy;

(4) to assist in providing representation to an indigent as part of a Legal Services program if the non-attorney is a paralegal or legal assistant employed by that program;

(5) to represent a state, county or local government employee in Civil Service proceedings, provided (i) the non-attorney making such appearance is an authorized representative of a labor organization and (ii) the labor organization is the duly authorized representative of the employee for collective bargaining purposes;

(6) to represent a close corporation provided the non-attorney is a principal of the corporation;

(7) to assist an individual who is not represented by an attorney provided (i) the presentation appears likely to be enhanced by such assistance, (ii) the individual certifies that he or she lacks the means to retain an attorney and that representation is not available through a Legal Services program and (iii) the conduct of the proceeding by the Office of Administrative Law will not be impaired by such assistance;

(8) to represent parents or children in special education proceedings, provided the non-attorney has knowledge or training with respect to handicapped pupils and their educational needs so as to enable the non-attorney to facilitate the presentation of the claims or defenses of the parent or child;

(9) to represent union members and employees entitled to union representation in public employment relations proceedings, provided the appearance is by a union representative;

(10) to represent a county or local government appointing authority in Civil Service proceedings, provided the non-attorney representative is an employee of the appointing authority with special expertise or experience in the matter in controversy and the legal representative for the county or municipality does not provide representation in the particular matter; or

(11) to represent a claimant or employer before the Appeal Tribunals or Board of Review of the Department of Labor.

No representation or assistance may be undertaken pursuant to subsection (f) by any disbarred or suspended attorney or by any person who would otherwise receive a fee for such representation.

(g) Appearances at Personal Injury Protection Arbitrations. A non-attorney may represent an insurance company employer at a Personal Injury Protection (PIP) arbitration.

1:21-6. Recordkeeping; Sharing of Fees; Examination of Records

(a) Required Trust and Business Accounts. Every attorney who practices in this state shall maintain in a financial institution in New Jersey, in the attorney's own name, or in the name of a partnership of attorneys, or in the name of the professional corporation of which the attorney is a member, or in the name of the attorney or partnership of attorneys by whom employed:

(1) a trust account or accounts, separate from any business and personal accounts and from any fiduciary accounts that the attorney may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity, into which trust account or accounts funds entrusted to the attorney's care shall be deposited; and

(2) a business account into which all funds received for professional services shall be deposited.

One or more of the trust accounts shall be the IOLTA account or accounts required by Rule 1:28A.

Other than fiduciary accounts maintained by an attorney as executor, guardian, trustee, or receiver, or in any other similar fiduciary capacity, all attorney trust accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, shall be prominently designated as an "Attorney Trust Account." Nothing herein shall prohibit any additional descriptive designation for a specific trust account. All business accounts, as well as all deposit slips and all checks drawn thereon, shall be prominently designated as an "Attorney Business Account," an "Attorney Professional Account," or an "Attorney Office Account." The IOLTA account or accounts shall each be designated "IOLTA Attorney Trust Account."

The names of institutions in which such primary attorney trust and business accounts are maintained and identification numbers of each account shall be recorded on the annual registration form filed with the annual payment, pursuant to Rule 1:20-1(b) and Rule 1:28-2, to the Disciplinary Oversight Committee and the New Jersey Lawyers' Fund for Client Protection. Such information shall be available for use in accordance with paragraph (h) of this rule. For all IOLTA accounts, the account numbers, the name the account is under, and the depository institution shall be indicated on the registration statement. The signed annual registration statement required by Rule 1:20-1(c) shall constitute authorization to depository institutions to convert an existing non-interest bearing account to an IOLTA account.

(b) Account Location; Financial Institution's Reporting Requirements. An attorney trust account shall be maintained only in New Jersey financial institutions approved by the Supreme Court, which shall annually publish a list of such approved institutions. A financial institution shall be approved if it shall file with the Supreme Court an agreement, in a form provided by the Court, to report to the Office of Attorney Ethics in the event any properly payable attorney trust account instrument is presented against insufficient funds, irrespective of whether the instrument is honored; any such agreement shall apply to all branches of the financial institution and shall not be

canceled except on thirty days' notice in writing to the Office of Attorney Ethics. The agreement shall further provide that all reports made by the financial institution shall be in the following format: (1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (2) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby. Such reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any; if an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

In addition, each financial institution approved by the Supreme Court must co-operate with the IOLTA Program, and must offer an IOLTA account to any attorney who wishes to open one, and must from its income on such IOLTA accounts remit to the Fund the amount remaining after providing such institution a just and reasonable return equivalent to its return on similar non-IOLTA interest-bearing deposits. These remittances shall be monthly unless otherwise authorized by the Fund.

Nothing herein shall prevent an attorney from establishing a separate interest-bearing account for an individual client in accordance with these rules, providing that all interest earned shall be the sole property of the client and may not be retained by the attorney.

In addition to the reports specified above, approved financial institutions shall agree to cooperate fully with the Office of Attorney Ethics and to produce any attorney trust account or attorney business account records on receipt of a subpoena therefor.

Digital images of these records may be maintained by financial institutions provided that: (a) imaged copies of checks shall, when printed (including, but not limited to, when images are provided to the attorney with a monthly statement or otherwise or when subpoenaed by the Office of Attorney Ethics), be limited to no more than two checks per page (showing the front and back of each check) and (b) all digital records shall be maintained for a period of seven years. Nothing herein shall preclude a financial institution from charging an attorney or law firm for the reasonable cost of producing the reports and records required by this Rule. Every attorney or law firm in this state shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(c) Required Bookkeeping Records.

(1) Attorneys, partnerships of attorneys and professional corporations who practice in this state shall maintain in a current status and retain for a period of seven years after the event that they record:

(A) appropriate receipts and disbursements journals containing a record of all deposits in and withdrawals from the accounts specified in paragraph (a) of this rule and of any other bank account which concerns or affects their practice of law, specifically identifying the date, source and description of each item deposited as well as the date, payee and purpose of each disbursement. All trust account receipts shall

be deposited intact and the duplicate deposit slip shall be sufficiently detailed to identify each item. All trust account withdrawals shall be made only by attorney authorized financial institution transfers as stated below or by check payable to a named payee and not to cash. Each electronic transfer out of an attorney trust account must be made on signed written instructions from the attorney to the financial institution. The financial institution must confirm each authorized transfer by returning a document to the attorney showing the date of the transfer, the payee, and the amount. Only an attorney admitted to practice law in this state shall be an authorized signatory on an attorney trust account, and only an attorney shall be permitted to authorize electronic transfers as above provided; and

(B) an appropriate ledger book, having at least one single page for each separate trust client, for all trust accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts of charges or withdrawals from such accounts, and the names of all persons to whom such funds were disbursed. A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed; and

(C) copies of all retainer and compensation agreements with clients; and

(D) copies of all statements to clients showing the disbursement of funds to them or on their behalf; and

(E) copies of all bills rendered to clients; and

(F) copies of all records showing payments to attorneys, investigators or other persons, not in their regular employ, for services rendered or performed; and

(G) originals of all checkbooks with running balances and check stubs, bank statements, prenumbered cancelled checks and duplicate deposit slips, except that, where the financial institution provides proper digital images or copies thereof to the attorney, then these digital images or copies shall be maintained; all checks, withdrawals and deposit slips, when related to a particular client, shall include, and attorneys shall complete, a distinct area identifying the client's last name or file number of the matter; and

(H) copies of all records, showing that at least monthly a reconciliation has been made of the cash balance derived from the cash receipts and cash disbursement journal totals, the checkbook balance, the bank statement balance and the client trust ledger sheet balances; and

(I) copies of those portions of each client's case file reasonably necessary for a complete understanding of the financial transactions pertaining thereto.

(2) ATM or cash withdrawals from all attorney trust accounts are prohibited.

(3) No attorney trust account shall have any agreement for overdraft

protection.

(d) Type and Availability of Bookkeeping Records. The financial books and other records required by paragraphs (a) and (c) of this rule shall be maintained in accordance with generally accepted accounting practice. Bookkeeping records may be maintained by computer provided they otherwise comply with this rule and provided further that printed copies and computer files in industry-standard formats can be made on demand in accordance with this section or section (h). They shall be located at the principal New Jersey office of each attorney, partnership or professional corporation and shall be available for inspection, checks for compliance with this Rule and copying at that location by a duly authorized representative of the Office of Attorney Ethics. When made available pursuant to this rule, all such books and records shall remain confidential except for the purposes thereof or by direction of the Supreme Court, and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege.

(e) Dissolutions. Upon the dissolution of any partnership of attorneys or of any professional corporation, the former partners or shareholders shall make appropriate arrangements for the maintenance by one of them or by a successor firm of the records specified in paragraph (c) of this rule.

(f) Attorneys Practicing with Foreign Attorneys or Firms. All of the requirements of this rule shall be applicable to every attorney rendering legal services in this state regardless whether affiliated with or otherwise related in any way to an attorney, partnership, legal corporation, limited liability company, or limited liability partnership formed or registered in another state.

(g) Attorneys Associated with Out of State Attorneys. An attorney who practices in this state shall maintain and preserve for seven years a record of all fees received and expenses incurred in connection with any matter in which the attorney was associated with an attorney of another state.

(h) Availability of Records. Any of the records required to be kept by this rule shall be produced in response to a subpoena duces tecum issued in connection with an ethics investigation or hearing pursuant to R. 1:20-1 to 1:20-11, or shall be produced at the direction of the Disciplinary Review Board or the Supreme Court. They shall be available upon request for review and audit by the Office of Attorney Ethics. Every attorney shall be required to cooperate and to respond completely to questions by the Office of Attorney Ethics regarding all transactions concerning records required to be kept under this rule. When so produced, all such records shall remain confidential except for the purposes of the particular proceeding and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege. When produced or examined during the course of a disciplinary or random audit, both the attorney or law firm and the producers and licensors of computerized software shall be conclusively deemed to have consented to the use of said software by disciplinary authorities as evidence during the course of the disciplinary proceeding.

(i) Disciplinary Action. An attorney who fails to comply with the requirements of this rule in respect of the maintenance, availability and preservation of accounts and records or who fails to produce or to respond completely to questions regarding such

records as required shall be deemed to be in violation of R.P.C. 1.15(d) and R.P.C. 8.1(b).

(j) Unidentifiable and Unclaimed Trust Fund Accumulations and Trust Funds Held for Missing Owners. When, for a period in excess of two years, an attorney's trust account contains trust funds which are either unidentifiable, unclaimed, or which are held for missing owners, such funds shall be so designated. A reasonable search shall then be made by the attorney to determine the beneficial owner of any unidentifiable or unclaimed accumulation, or the whereabouts of any missing owner. If the beneficial owner of an unidentified or unclaimed accumulation is determined, or if the missing beneficial owner is located, the funds shall be delivered to the beneficial owner when due. Trust funds which remain unidentifiable or unclaimed, and funds which are held for missing owners, after being designated as such, may, after the passage of one year during which time a diligent search and inquiry fails to identify the beneficial owner or the whereabouts of a missing owner, be paid to the Clerk of the Superior Court for deposit with the Superior Court Trust Fund. The Clerk shall hold the same in trust for the beneficial owners or for ultimate disposition as provided by order of the Supreme Court. All applications for payment to the Superior Court Clerk under this section shall be supported by a detailed affidavit setting forth specifically the facts and all reasonable efforts of search, inquiry and notice. The Clerk of the Superior Court may decline to accept funds where the petition does not evidence diligent search and inquiry or otherwise fails to conform with this section.

1:21-7. Contingent Fees

(a) As used in this rule the term "contingent fee arrangement" means an agreement for legal services of an attorney or attorneys, including any associated or forwarding counsel, under which compensation, contingent in whole or in part upon the successful accomplishment or disposition of the subject matter of the agreement, is to be in an amount which either is fixed or is to be determined under a formula.

(b) An attorney shall not enter into a contingent fee arrangement without first having advised the client of the right and afforded the client an opportunity to retain the attorney under an arrangement for compensation on the basis of the reasonable value of the services.

(c) In any matter where a client's claim for damages is based upon the alleged tortious conduct of another, including products liability claims and claims among family members that are subject to Part V of these Rules but excluding statutorily based discrimination and employment claims, and the client is not a subrogee, an attorney shall not contract for, charge, or collect a contingent fee in excess of the following limits:

(1) 33 1/3 % on the first $750,000 recovered;

(2) 30% on the next $750,000 recovered;

(3) 25% on the next $750,000 recovered;

(4) 20% on the next $750,000 recovered; and

(5) on all amounts recovered in excess of the above by application for reasonable fee in accordance with the provisions of paragraph (f) hereof; and

(6) where the amount recovered is for the benefit of a client who was a minor or mentally incapacitated when the contingent fee arrangement was made, the foregoing limits shall apply, except that the fee on any amount recovered by settlement before empaneling of the jury or, in a bench trial, the earlier to occur of plaintiff's opening statement or the commencement of testimony of the first witness, shall not exceed 25%.

(d) The permissible fee provided for in paragraph (c) shall be computed on the net sum recovered after deducting disbursements in connection with the institution and prosecution of the claim, whether advanced by the attorney or by the client, including investigation expenses, expenses for expert or other testimony or evidence, the cost of briefs and transcripts on appeal, and any interest included in a judgment pursuant to R. 4:42-11(b); but no deduction need be made for post-judgment interest or for liens, assignments or claims in favor of hospitals or for medical care and treatment by doctors and nurses, or similar items. The permissible fee shall include legal services rendered on any appeal or review proceeding or on any retrial, but this shall not be deemed to require an attorney to take an appeal. When joint representation is undertaken in both the direct and derivative action, or when a claim for wrongful death is joined with a claim on behalf of a decedent, the contingent fee shall be calculated on the aggregate sum of the recovery.

(e) Paragraph (c) of this rule is intended to fix maximum permissible fees and does not preclude an attorney from entering into a contingent fee arrangement providing for, or from charging or collecting a contingent fee below such limits. In all cases contingent fees charged or collected must conform to RPC 1.5(a).

(f) If at the conclusion of a matter an attorney considers the fee permitted by paragraph (c) to be inadequate, an application on written notice to the client may be made to the Assignment Judge or the designee of the Assignment Judge for the hearing and determining of a reasonable fee in light of all the circumstances. This rule shall not preclude the exercise of a client's existing right to a court review of the reasonableness of an attorney's fee.

(g) Where the amount of the contingent fee is limited by the provisions of paragraph (c) of this rule, the contingent fee arrangement shall be in writing, signed both by the attorney and the client, and a signed duplicate shall be given to the client. Upon conclusion of the matter resulting in a recovery, the attorney shall prepare and furnish the client with a signed closing statement.

(h) Calculation of Fee in Structured Settlements. As used herein the term "structured settlement" refers to the payment of any settlement between the parties or judgment entered pursuant to a proceeding approved by the Court, the terms of which provide for the payment of the funds to be received by the plaintiff on an installment basis. For purposes of paragraph (c), the basis for calculation of a contingent fee shall be the value of the structured settlement as herein defined. Value shall consist of any cash payment made upon consummation of the settlement plus the actual cost to the party making the settlement of the deferred payment aspects thereof. In the event that the party paying the settlement does not purchase the deferred payment component,

the actual cost thereof shall be the actual cost assigned by that party to that component. For further purposes of this rule, the party making the settlement offer shall, at the time the offer is made, disclose to the party receiving the settlement offer its actual cost and, if it does not purchase the deferred payment aspect of the settlement, the factors and assumptions used by it in assigning actual cost.

(i) Calculation of Fee in Settlement of Class or Multiple Party Actions. When representation is undertaken on behalf of several persons whose respective claims, whether or not joined in one action, arise out of the same transaction or set of facts or involve substantially identical liability issues, the contingent fee shall be calculated on the basis of the aggregate sum of all recoveries, whether by judgment, settlement or both, and shall be charged to the clients in proportion to the recovery of each. Counsel may, however, make application for modification of the fee pursuant to paragraph (f) of this rule in appropriate cases.

RULES OF PROFESSIONAL CONDUCT

Adopted Effective September 10, 1984
Includes amendments through those effective September 1, 2018.

INTRODUCTION

The Supreme Court has adopted the ABA Model Rules of Professional Conduct, as recommended by the Supreme court Committee on the Model Rules of Professional conduct (the "Debevoise Committee") and as revised by the Court. Among the several other recommendations taken into account by the Court in adopting these rules were those by the New Jersey State Bar Association (NJSBA), the New Jersey Prosecutor's Association, the United States Securities and Exchange Commission, the United States Department of Justice, and private practitioners.

The explanatory comments that follow each rule have not been adopted by the Court nor should they be considered as a formal part of the rules. For assistance in interpreting these rules, reference should be made to the official ABA Comments and the commentary by the Debevoise Committee in its June 24, 1983 report, which appeared as a supplement to the July 28, 1983 issue of the *New Jersey Law Journal*.

SPECIAL NOTE: RPC 7.1 through RPC 7.5 are DR 2-101 through DR 2-105 as amended January 16, 1984, with minor editorial changes. They have been renumbered consistent with the ABA Model Rule numbering scheme. The explanatory comments that accompanied the adoption of these amended rules (as published in the January 26, 1984 issue of the *New Jersey Law Journal*, 113 N.J.L.J. 91-93) are again included here for ease of reference (also with minor editorial changes). It should be further noted that the Court is in the process of preparing an additional revision to RPC 7.3 as it relates to prepaid legal services plans, to be soon published for comments in the New Jersey Law Journal.

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(*l*) 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 (e) amended and new paragraph (f) 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 (c) 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;
(3) to prevent the client from causing death or substantial bodily harm to himself or herself; or

(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 BY SUPREME COURT (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 (eg., 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 BY SUPREME COURT
(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, 2012 to be effective September 4, 2012; paragraph (d) amended, new paragraph (f) adopted, and Official Comment added August 1, 2016 to be effective September 1, 2016; paragraphs (a) and (b) amended, and additional Official Comment added July 27, 2018 to be effective September 1, 2018.

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 services 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.

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.

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.

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 15, 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 BY SUPREME COURT (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.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (a) amended November 17, 2003 to be effective January 1, 2004.

RPC 3.4 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.

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.

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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.

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.

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.

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.

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

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document containing lawyer-client communications has the obligation to preserve the document.

OFFICIAL COMMENT BY SUPREME COURT
(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 BY SUPREME COURT
(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; caption 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 15, 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-or-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.

OFFICIAL COMMENT BY SUPREME COURT (NOVEMBER 17, 2003)

Three years from the January 1, 2004 effective date of the amendments to RPC 5.5, the Supreme Court will have its Professional Responsibility Rules Committee undertake a comprehensive evaluation of the experience gained in multijurisdictional practice to determine whether any modifications to the RPC 5.5 amendments as adopted are necessary or desirable.

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 discernable 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).

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, 1990; paragraph (b) amended January 5, 2009 to be effective immediately; paragraph (a)(3) amended and Official Comment adopted November 2, 2009 to be effective immediately.

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.

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 16, 1985, to be effective December 16, 1986; paragraph (c) amended October 15, 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:
(1) 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) 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.

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.

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.

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 8, 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.

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.

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.

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"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).

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 any 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; paragraph (b) 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, or (e) email address.

Note: Adopted June 29, 1990, to be effective September 4, 1990; amended August 14, 2013 to be effective October 1, 2013.

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)(iii and iv) must be no smaller than the font size generally used in the advertisement.

(c) The word "ADVERTISEMENT' require 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. The envelope shall contain no language other than the lawyer's name, firm, and address: the word "ADVERTISEMENT"; and the recipient's name and address.

Note: Adopted March 2, 2005, to be effective immediately; paragraphs (a) and (c) amended August 14, 2013 to be effective October 1, 2013; paragraphs (a) and (c) amended February 10, 2015 to be effective March 1, 2015.

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)

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: Guideline and Official Comment adopted May, 15, 2012 to be effective June 1, 2012; revised Guideline and Official Comment adopted October 15, 2014 to be effective immediately.

Appendix G

OAE Guide:

"The Zoom Connection Test: Making Sure the Participants Will Be Ready to Go Forward on Zoom on the Day of the Hearing"

The Zoom Connection Test:

Making Sure the Participants Will Be Ready to Go Forward on Zoom on the Day of the Hearing

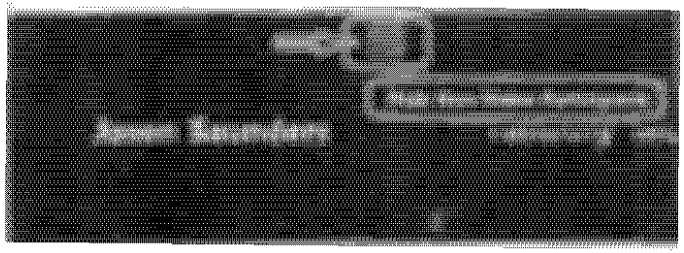
a. BASIC INFORMATION:

Using Zoom	***Please Do This Step Before the Zoom Connection Test***	***Make sure you have downloaded the latest version of Zoom*** from the Zoom website before the Zoom Connection Test. The Zoom website is at https://zoom.us/.
Who Must Attend	1. Every Member of the Hearing Panel, or Special Ethics Master 2. Presenter 3. BOTH Respondent AND Respondent's Counsel	Attendance is mandatory for Zoom Connection Test. Participants are required to appear onscreen with camera and microphone on, and to stay on the session until the moderator announces that all topics have been covered. Hearing cannot proceed if any member of the Hearing Panel has not attended the Zoom Connection Test. Where a party fails to attend: see next note.
What if a Party Doesn't Attend	Objections May Be Deemed Waived by Presider if That Party Encounters Technical Issues at Hearing	Any party who fails to attend the mandatory Zoom Connection Test has been put on continuing notice that such absence would be deemed to be a waiver, at the time of the hearing, of any objection (not already raised by formal motion before the hearing) to the virtual nature of the hearing that could and/or should have been addressed prior to the hearing, and/or any issue that could have been identified and/or addressed at the Zoom Connection Test. Court Omnibus Orders authorize use of Zoom for attorney disciplinary hearings (see Court Orders in *OAE Hearings Manual*, Appendix A); Court Rules for 25 years have allowed use of telephone for attorney disciplinary hearings. See R. 1:20-6(c)(2)(A).

Who Schedules the Zoom Connection Test with OAE, and the How and When of Scheduling	**Presider Should Take the Lead, Following from Dates Agreed to by Participants at Pre-Hearing Conference** **Panel Chair Should Schedule Zoom Connection Test for Full Hearing Panel**	The presider, other members of Hearing Panel, and the parties (Presenter, Respondent, and Respondent's Counsel) should all attend the same Zoom Connection Test, if schedules allow. The Panel Chair should require the participants to agree on the Zoom Connection Test date at the Pre-Hearing Conference. The presider should then submit the request to schedule the Zoom Connection Test to Jan Vinegar at the OAE by email. Any participant who cannot attend the Zoom Connection Test on the date when other participants agree to attend will be responsible for contacting Jan Vinegar separately at the OAE to arrange for their own Zoom Connection Test. No presider should accept as an excuse that a party or Hearing Panel Member did not participate in the Zoom Connection Test because they were confused about how to schedule their separate Zoom Connection Test. If, after a Zoom Connection Test is scheduled, a participant finds out about a scheduling conflict, ***the Zoom Connection Test should nonetheless proceed for all other participants.*** The participant who did not attend will be responsible for making a new Zoom Connection Test appointment with the OAE. ***How to Schedule***: email Janice Vinegar, at oae.mbx@njcourts.gov and Janice.Vinegar@NJCourts.gov. Subject line: ZOOM CONNECTION TEST SCHEDULING. ***When to Schedule***: In time for all participants to have completed the Zoom Connection Test at least 14 days before date of hearing
What if a Participant Cannot Attend the Zoom Connection Test on the Date Scheduled for Other Participants	**Not a Problem, as Long as Every Party, Presider, and Panel Member in Every Hearing Makes Sure that They Attend a Zoom Connection Test at Least 14 Days Before the Scheduled Hearing Date**	The Zoom Connection Test will ***not*** address any substantive issues relating to any hearing. The Zoom Connection Test is ***not*** a Pre-Hearing Conference. The participants are on notice that they should ***not*** bring up any substantive issues specific to their particular hearing at the Zoom Connection Test. The presider must make sure that there are no *ex parte* conversations in connection with any hearing, and that includes at the Zoom Connection Test. The participants in particular hearings are encouraged to attend the same Zoom Connection Test as a matter of convenience, and to contain the burden on the OAE staff, since every party and every hearing panel in every hearing will be seeking to schedule Zoom Connection Tests with the OAE prior to their hearing dates.

Witnesses May Be Included in, or Sent the Invitation to, the Zoom Connection Test, if Presider Authorizes	**Any Specific Issues Relating to Witnesses' Training on Zoom Must Be Raised with the Presider, Before the Hearing, by the Party Who Seeks to Call that Witness**	Each party is responsible for their own witnesses, and for taking the necessary steps before the date of the hearing so their witnesses will be able to log in and participate in the hearing on Zoom. Any application by a party to have a witness included in a Zoom Connection Test must be filed with the presider in writing for the presider to decide, prior to the hearing. The presider then must communicate with the OAE (Attention: Janice Vinegar at oae.mbx@njcourts.gov and Janice.Vinegar@NJCourts.gov) in order to address whether a Zoom Connection Test for additional participants should or could be scheduled. ***NOTE**: The Zoom Connection Test for Grievants and witnesses would typically be scheduled as a separate session from the Zoom Connection Test for the parties and presiders.*
What Each Party Must Do for their Witnesses to Be Sent Zoom Login Information for the Hearing	**Procedure to Be Completed Before the OAE Can Send any Zoom Invitation to any Other Recipient (Including any Witness or Grievant)**	Each participant is prohibited from forwarding the Zoom invitation to any other recipient. The parties are on notice that they must follow these procedures in order to get authorization from the presider to have the OAE send the Zoom invitation for the particular proceedings to the witness or the grievant: 1. Each party must send a written request to the presider, if they seek to send the Zoom invitation to any witness or the grievant or anyone else. The request must include the reason that the party is asking the presider to direct the OAE to send the Zoom invitation to the specific recipient, and the request must include the email address of the specific recipient to be sent the Zoom invitation; and 2. the presider must then authorize the OAE support staff to send the Zoom invitation to that recipient. ***The parties are on notice that they are specifically prohibited from forwarding any Zoom invitation to any witness, or any other person or entity of any sort, and that only the OAE can do that. Zoom invitations are specific to the individual recipient identified with the particular email address. This notice applies to any technical or IT assistants whom any party may seek to have present during the hearing.***
Who Conducts the Zoom Connection Test	**OAE Technical Support Staff**	But the parties and the Hearing Panel must all attend.

b. TOPICS COVERED IN THE ZOOM CONNECTION TEST SESSION:

How the Hearing Will Look on Zoom on the Hearing Day	You will log into Zoom and OAE staff will make sure they can see and hear you, and you can see and hear them. We expect that you will be able to log in the same way, and be connected through audio and video the same way, on the day of the hearing.
Specific Zoom Features to Be Used During the Hearing	The Zoom Connection Test will address how to use the following features of Zoom: 1. "mute" and "stop video" features, when needed, or when required by presider during the hearing;
	2. "Hide Non Video Participants," so only the parties, the hearing panel, and/or a witness (during the period that the witness is giving testimony) will appear onscreen during the Zoom hearing; The names of attendees whose cameras are turned off will appear in black boxes. Click on the upper right blue box beside any of the black boxed-names, so that the "Hide Non-Video Participants" selection appears, and then click on that selection: 
	3. viewing options, such as gallery or full-screen view; When you click on these boxes (which should appear in the upper right of your viewing screen), your screen view will change.  
	4. the breakout room, and waiting room feature, and how each works, in very broad summary;

	5. do not use the "Raise Hand" or any "Reactions" features on Zoom. If a party seeks to speak, use the same methods that you would use if you were in a courtroom;
	6. ScreenShare feature of Zoom: If either of the parties seeks to use ScreenShare to display exhibits on Zoom during the hearing, they may do so. The OAE Zoom Moderator will activate ScreenShare at the start of questioning by counsel. OAE technical support staff would not otherwise be involved in how counsel uses ScreenShare, beyond activating the feature. ***<u>WARNING</u>: Any party using the ScreenShare feature is on notice that they must turn off other apps before using ScreenShare. <u>If they fail to do so, incoming emails and/or other messages may be displayed for all to see</u>. Please also take steps so your desktop computer screen will not be publicly displayed.*** ***Since attorney-client communications may be at issue, you must be vigilant to heed this warning.***

c. ADDITIONAL IMPORTANT INFORMATION TO KEEP AT HAND AS YOU PREPARE FOR THE HEARING:

1. The Presider Must Control the Hearing at All Times	The parties are attending the proceedings through virtual technology, but the Court Rules are the same. The presider must preside and maintain the order of the proceedings at all times. The parties must abide by the rules of procedure for court proceedings at all times during the hearing.
2. CourtSmart: Official Record	An OAE non-attorney staff member will be assigned to coordinate the CourtSmart recording during the hearing. The Supreme Court has directed that the official record of the hearing is the CourtSmart audio recording (***not*** the Zoom recording).
3. OAE Staff Provide Technical Assistance for the Presider	OAE staff will be available to provide technical assistance to moderate the Zoom session. OAE staff may assist the presider during the hearing – if requested or needed by the presider – solely as to technical, non-substantive issues arising out of the virtual technology. An OAE non-attorney staff member serves off-camera as Zoom moderator during the hearing, and provides limited technical assistance, at the Zoom Connection Test and at the hearing, in making sure the hearing goes forward on the Zoom platform.

	All questions or requests from the parties must be directed to the presider. No participant in the proceedings should speak while on the record with an OAE staff member. The OAE staff members are specifically directed to speak only with the presider, and to answer only those questions asked by the presider during the hearing.
4. Login Information for the Hearing	OAE staff will confirm at the time of the Zoom Connection Test that each participant is able to log in, with the link included in the Zoom invitation sent to the participant by OAE support staff prior to the Zoom Connection Test. (The Zoom invitation to join the hearing will be sent to the parties in the same manner.)
5. Zoom Invitations Must Not Be Shared or Forwarded	The procedures with which the participants must comply for having anyone other than themselves allowed to log in on Zoom for the hearing are spelled out in this document. The participants are required to comply with these procedures. No Zoom invitation issued by the OAE may be forwarded or shared with anyone other than the intended recipient (parties and hearing panel members, or other specifically authorized identified recipient only).
6. When Should a Participant Log in on the Hearing Date	Each participant must log into Zoom for the hearing at least 20 minutes before the hearing is scheduled to begin. The OAE Zoom monitor will admit the participants when the OAE Zoom monitor is specifically authorized to do so by the presider. Until that point, the participant will be held in the waiting room, and the Zoom screen will state that information.
7. What a Participant Should See and Hear on Zoom	OAE staff will make sure during the Zoom Connection Test that each participant can see the Zoom video feed on their computer screen, and that they can hear the proceedings, and that the Zoom moderator at the OAE can see and hear the participant at the time of the Zoom Connection Test.
8. Participant's Contact Information for the Hearing	Each participant must confirm, prior to the hearing, the email address and cellphone number that the participant will use and be reachable at on the day of the hearing, and for the duration of the hearing.
9. Confirmation that Each Participant Must Be Identified by Full Name on Zoom Screen	Each participant must identify themselves by correct name (written out in full) and true identity (not by nickname or email address, or a different Zoom account holder's identity) when they accept the Zoom invitation and attempt to log in to Zoom at the time of the hearing.
10. Notification System for Participant to Use	Each participant must remain on notice that it is the individual responsibility of the participant to inform the presider should the participant encounter a technical issue that interferes with their ability to see or hear the proceedings on Zoom during the hearing. The presider may not be able to pause the hearing and/or to address

During the Hearing (Where Technical Issue Is Presented)	the issue for any participant who declines or fails to give notice of the particular issue to the presider as the issue arises. Each party-attorney is responsible for bringing to the presider's attention any information warranting the presider's action (including Zoom connection problems or interruptions) encountered by that party's witness, or by the respondent (if represented by counsel).
11. Resources for the Participants	The participants are referred to the Court Rules on hearings (R. 1:20-4 to -9), and the resources that the OAE has made available for attorney disciplinary hearings – in particular, the *OAE Hearings Manual* ("OAE Manual on Conducting Virtual Remote Proceeding"), and the appendix materials included therein.
12. Specific OAE Resource Guides that the Parties Should Provide to Their Witnesses	The OAE's Guides for Zoom hearings include: • "How to Join and Participate in a Zoom Virtual Courtroom" (*OAE Hearings Manual,* Appendix C); • "Witness Instructions for Remote Disciplinary Proceedings" (*OAE Hearings Manual,* Appendix E). The parties should make sure that they provide these resources in advance to anyone who may be called as a witness during the hearing. The presenter should provide these resources to the Grievant before the hearing.
13. The Parties Are Expected to Use Their Own Resources (Without OAE Staff Involvement) in the Presentation of their Case, the Evidence, or the Exhibits on Zoom	The only training given by the OAE consists of the Zoom Connection Test, which is provided to all participants in the Zoom Connection Test equally. The OAE also provides the parties and the Hearing Panel (or Special Ethics Master) with the *OAE Hearings Manual.* OAE staff are not able to provide to any participant specialized, individual training in how to use Zoom, or any features or capabilities of Zoom. Each participant in the hearing who seeks to display or to use an exhibit in any way during the proceedings must take the necessary steps of self-education -- independently, in advance, and without relying on OAE staff during the proceedings -- to determine how to do that, so that the participant will be able to take that action, if they choose, during the hearing. Please pay attention to the ***WARNING*** on page 6 about making sure you only display the intended information on ScreenShare.
14. Zoom and the OAE (or Judiciary) Are Wholly Separate Entities. For Information About How Zoom Works or How to	The participants are responsible for educating themselves on how to use Zoom during the hearing. The Judiciary is not connected in any way with Zoom, and simply uses the Zoom platform to conduct hearings through remote technology. The Zoom website lists information available there about Zoom, such as: i. Sharing Your Screen (how to)

Use Zoom, Please Contact Zoom.	ii. Live Training Webinars iii. Getting Started Guide for New Users iv. Zoom Video Tutorials v. Live interactive support features, including ability to send questions to "Bold the Zoom Virtual Assistant" [interactive pop-up feature on the Zoom website] for immediate response vi. Top 20 Zoom Resources tips and information. There are additional resources and training videos available on the internet on how to use Zoom, including YouTube videos.
15. Technical Assistance During the Hearing: Only if Authorized in Advance by the Presider, and the Technical Assistants Must Not Speak on the Record or Have Camera on at Any Time	If authorized by the presider, the parties may be assisted during the proceedings by their own technical assistants, provided that the assistant remains off camera and with microphone turned off at all times. The party must seek and obtain the presider's permission in advance to have the assistant sent the Zoom invitation by the OAE to be able to log in through Zoom for the hearing. The parties cannot share a Zoom invitation with a technical assistant; only the OAE can issue Zoom invitations for the hearing or the Zoom Connection Test. During the hearing, the party's technical assistant must communicate with the party through text or phone call or email. The staff assistant must not speak on the record during the proceedings, which are conducted in the same manner as court proceedings.
16. Penalties for Unauthorized Transmittal or Recording of Hearing	The Supreme Court has given notice of the penalties, including criminal sanctions, that may be imposed for violation of the Court's procedures, with regard to the unauthorized broadcasting, transmittal, or recording of attorney disciplinary hearings. See OAE Director's Memorandum, June 19, 2020.
17. Parties and Presider Must be On-Camera During Hearing	During the hearing, the parties (respondent and respondent's counsel, and the presenter) and the presider (including all members of the hearing panel) must remain visible on camera, unless the presider determines otherwise (e.g., for attorney-client private consultations, which may occur in breakout rooms). If respondent appears in the same room with counsel and shares a computer screen, ***both*** must appear on camera at all times. Court Rules require the respondent to be present at all times during the hearing.
18. When a Non-Party Will Appear on Camera	Only the parties and the Hearing Panel or Special Ethics Master may appear on camera during the hearing. Any witness should appear on camera only for the duration of that witness' testimony. No other person (including

	grievant, any OAE staff member [other than the presenter] who may have been involved in the investigation or who may be providing technical support during the hearing, and any observer of any sort) may appear on camera during the hearing, except during the period that the specific person is testifying as a witness in the hearing. Such observers may watch the proceedings with camera off and microphone muted. The presider should excuse each witness on the completion of their testimony. If the witness is unable to turn off their camera, the presider should ask the OAE Zoom Moderator to do so.
19. Hearings Are Public	Attorney disciplinary hearings are open to the public. Should a member of the public ask to attend, the presider should direct the person to send the request to the OAE Director. See OAE Director's June 19, 2020 Memo, para. 17.
20. Public Observers and Grievants Must Take Appropriate Steps Before the Hearing to Be Admitted to View the Hearing on Zoom	Any member of the public who seeks to attend the hearing must provide the OAE with the name and the email address of the person who seeks to attend the hearing, at least three days prior to the hearing, for security purposes. The OAE will send the Zoom invitation to that identified recipient prior to the hearing date. The recipient must make sure to be identified by name when seeking to log into the hearing, because the OAE Zoom moderator will not admit to the hearing anyone other than the recipients who were sent the invitation by the OAE. The following applies to any viewer of the hearing other than the hearing panel and the parties. That means that this applies to any public observers, as well as to any grievant: You will be able to view only those parts of the proceedings that are on the record (i.e., only when the CourtSmart recording is activated). You will not be admitted to attend any non-public bench conferences or any breaks in the proceedings. When the record is paused for any reason, you will be moved to the Waiting Room. You must make sure that, whenever you are admitted to the hearing on Zoom, your camera is kept off and your microphone is muted. You will not be able to speak to the hearing panel or to the parties, unless you are called to testify as a witness by a party. The OAE will not be able to provide any technical assistance to any grievant or public observer at the hearing.
21. Presider Must Confirm that all of the Following Has Occurred Before the Hearing Can Start	The presider must confirm that all of the following has happened, before the hearing should begin. ***If any step has not been completed, the presider would need to address the specific circumstances before the hearing could proceed:*** 1. The participants required to complete this Zoom **Connection Test** have done so.

	2. The Presenter has confirmed that the **Grievant** has been notified of the hearing. If Grievant has not been given notice, the hearing cannot proceed. 3. All prehearing applications, objections and **motions** have been submitted in writing by the parties, with the **decisions already issued** by the presider as to all issues presented, and the presider has made sure the record is complete as to all such matters. 4. Any **protective order**, if needed, is already in place. 5. The parties have properly **redacted** all exhibits and have taken all necessary steps to preserve confidentiality as to all exhibits and the hearing record. 6. **The** parties have each provided **copies of all exhibits** in either hard copy or electronic format (as determined at the Pre-Hearing Conference) to each member of the Hearing Panel, and to each other, prior to the hearing. 7. The parties have each provided a **hard-copy set of all exhibits to the presider**, for the presider to maintain that set of exhibits as the **original hearing record**. 8. The parties have each provided their **Exhibit List** in the proper form to each member of the Hearing Panel, and to each other, and to the OAE CourtSmart monitor, prior to the hearing. 9. All requests for **translators, interpreters, or any accommodation** have been arranged through the OAE. 10. The OAE staff member has confirmed that the **CourtSmart line** is operational and ready to record. 11. The OAE staff member has confirmed that the **Judiciary's Zoom account** is operational, and that there is no impediment to starting the hearing on Zoom. 12. **If** presider has authorized such assistance in advance: The parties have confirmed that they have instructed any person providing them with **technical assistance** during the hearing to remain off camera and with microphone muted at all times during the hearing. 13. The OAE will admit from the **Waiting Room** only persons who identify themselves by full name at login. Any grievant or member of the public admitted from the Waiting Room must keep camera off and microphone muted for the duration of time that they may observe the proceedings on Zoom.

Appendix H

Case Management Orders – Templates
(both should be issued in all cases by the presider, following the Case management Conference)

1. **Sample Case Management Order for Virtual Hearing: Case Management Order, Pursuant to R. 1:20-5(b)(4)**
   (to be issued in all cases by the presider within 7 days following prehearing conference; R. 1:20-5(b)(4). The template includes all categories encompassed in the Court Rule, to be addressed before hearing proceeds.)

2. **Supplemental Case Management Order, Pursuant to R. 1:20-5(b)(4): Instructions for the Public Hearing to be Conducted in this Attorney Disciplinary Case**
   (to be issued in all cases by the presider, to give notice and comprehensive instructions to all parties as to the procedures in place for attorney disciplinary hearings to be conducted virtually)

Appendix H

Part 1

Case Management Orders – Templates
(both should be issued in all cases by the presider, following the Case management Conference)

Sample Case Management Order for Virtual Hearing:
Case Management Order, Pursuant to R. 1:20-5(b)(4)
(to be issued in all cases by the presider within 7 days following prehearing conference; R. 1:20-5(b)(4). The template includes all categories encompassed in the Court Rule, to be addressed before hearing proceeds.)

SAMPLE CASE MANAGEMENT ORDER FOR VIRTUAL HEARING

(following from the Supreme Courts' Omnibus Orders on Court Operations during the COVID-19 Pandemic)

Before any attorney disciplinary proceeding can proceed, the Panel Chair or Special Master must make sure that all categories listed in this proposed Order have been addressed, with all pre-hearing motions resolved by the presider before the hearing date.

Relevant Court Rule:

R. 1:20-5(b)(4). Case Management Order. ***Within seven days following the prehearing conference,*** the hearing panel chair or special ethics master shall issue a ***case management order***, designated as such in the caption, memorializing any agreements by the parties and any determinations made respecting any matters considered at the conference. The case management order, which constitutes part of the record, shall be served on the presenter or ethics counsel and the respondent and filed with the vice chair and the Director. [emphasis added]

SUPREME COURT OF NEW JERSEY
DISTRICT ## ETHICS COMMITTEE
[name], Panel Chair
[address]
[phone]

SUPREME COURT OF NEW JERSEY
District ## Ethics Committee
District Docket No. ##-####-####E

District ## Ethics Committee,[1]	:	
	:	
Complainant	:	
	:	**CASE MANAGEMENT**
v.	:	**ORDER, PURSUANT TO**
	:	**RULE 1:20-5(b)(4)**
[Name],	:	
Respondent	:	

APPEARANCES:

[NAME AND ADDRESS], Presenter

[NAME AND ADDRESS], Respondent [OR RESPONDENT'S COUNSEL]

[NAME], HEARING PANEL CHAIR

---

[1] *All text in RED should be removed before this template is used for the Case Management Order. The presider will need to fill in the blanks. Special Masters will need to remove reference to the "Hearing Panel Chair" or "Hearing Panel."*

NOTE about docket number and case name:

The case name will be "Office of Attorney Ethics v. [Respondent]" only if the Presenter is an OAE staff attorney. Such a case will have two docket numbers per complaint. One will start with XIV, and the other will consist of a Roman numeral between I and XIII. The Panel Chair should make sure to read both docket numbers into the record at the start of each day of the hearing, and to make sure that the record is marked with both docket numbers.

If the Presenter is <u>not</u> an OAE staff member, then the OAE is not a party to the case and should not be referred to as having had any role in the prosecution. All cases prosecuted by volunteer members of the District Ethics Committees only have one docket number per complaint.

A prehearing conference having been conducted [*Specify:* by Zoom, telephone conference, or other means] on [*date*], with Hearing Panel Chair [*name*], and with the following counsel for the parties participating [*Insert names of Presenter and of Respondent's counsel* **or** *of pro se Respondent*], and with Respondent [*name*] also appearing remotely; the following constitutes the Case Management Order entered, pursuant to R. 1:20-5(b)(4):

A. ISSUES AS TO THE PLEADINGS

1. The parties agree in general that the issues to be resolved by the Hearing Panel are whether Respondent violated the Rules of Professional Conduct as alleged in the Complaint and, if so, what is the appropriate sanction to be recommended for Respondent's alleged unethical conduct.
2. [*specify any other issues as to the pleadings, including any insufficiency of the Answer, if objected to by the Presenter*]

B. EMAIL ADDRESSES OF THE PARTIES

1. The parties have provided the Panel Chair and each other with their email addresses, and they have been given notice that they must inform the Panel Chair and each other, and Janice Vinegar, the CourtSmart/Hearings Coordinator at the Office of Attorney Ethics (OAE) (email to Janice.Vinegar@NJCourts.gov), if their email contact information should change, prior to the date of the hearing.
2. The parties have been given notice that they will need to provide a cell phone number at which they may be reached by call or by text on the hearing date. The parties are directed to send that cell phone number in an email to the Panel Chair, the adverse party, and to Janice Vinegar of the OAE.

C. NOTICE GIVEN TO THE PARTIES THAT THE HEARING WILL BE CONDUCTED REMOTELY, USING VIRTUAL TECHNOLOGY (Zoom or Phone)

1. The parties have been notified by the Panel Chair that, pursuant to the Omnibus Orders of the Supreme Court, issued because of the COVID-19 pandemic, the hearing in this matter must be conducted virtually, using remote technology (Zoom or phone, only).
2. The parties have been notified that no part of the hearing will be in-person, and the hearing panel, parties, counsel, witnesses, technical monitors, any other participants, and/or any observers will all appear or be heard remotely from separate locations.
3. The parties have been notified by the Panel Chair that they will receive written notice from the **Hearing Coordinator**, who is a staff member of the Office of Attorney Ethics (OAE), by email, prior to the hearing, with the details of how to log into the proceeding on the Judiciary Zoom account.

D. NOTICE GIVEN TO THE PARTIES OF THE PRE-HEARING CONNECTION TEST FOR THE ZOOM SYSTEM TO BE USED AT THE HEARING; DUTY OF THE PARTIES TO SCHEDULE THE TEST OR FORFEIT THAT OPPORTUNITY AND ANY RELATED OBJECTION TO THE PROCEEDINGS

1. The parties have been notified by the Panel Chair that they must participate in a Pre-Hearing Zoom Connection Test (the "Zoom Connection Test"), prior to the hearing. The Hearing Panel will also be required to complete the Zoom Connection Test. During the Zoom Connection Test, which is coordinated by the OAE, the participants would be able to connect through the Judiciary's Zoom account, in order to have a preview of the system that would be used for the remote proceedings at the time of the hearing.

2. The Pre-Hearing Connection Test should take roughly twenty minutes, unless there are technical complications or issues. The Hearing Panel will participate in the Zoom Connection Test on the following date and time: _____ _____. The parties (including Presenter, Respondent, and Respondent's counsel, all of whom are required to participate) should notify the Panel Chair in writing if they will attend the Zoom Connection Test at that time. If they are unable or otherwise decline to do so, they must make their own arrangements to attend the Zoom Connection Test at another time. To schedule the Zoom Connection Test, contact the OAE (Attention: Jan Vinegar, CourtSmart and Hearings Coordinator, Janice.Vinegar@NJCourts.gov, 609 403-7800, ext. 34172). The requests for proposed appointment times should be submitted to Ms. Vinegar by email (copied to the parties).

3. Any party (including either the Respondent or Respondent's counsel, as well as the Presenter) who fails to complete the Zoom Connection Test prior to the hearing date will be deemed to have waived any objection to proceeding remotely on the Judiciary's Zoom account, unless the objection relates to an issue that is distinguishable from any that the party would have been expected to have addressed and resolved by participating in the Zoom Connection Test.

E. LISTING OF ADMISSIONS AND STIPULATIONS OF THE PARTIES WITH RESPECT TO ALLEGATIONS; ANY DEFENSES; AND ANY AGGRAVATION OR MITIGATION

1. [Admissions:]
2. [Stipulations:]
3. [Affirmative or Other Defenses:]

4. [Aggravating Factors:]

5. [Mitigation:]

F. FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES

1. The Complaint of the District Ethics Committee [or OAE] outlines and sets forth the factual and legal contentions, and each RPC or other source of law specifically charged against the Respondent in the Complaint.
2. Respondent's Verified Answer outlines and sets forth Respondent's factual and legal contentions.
3. At the conclusion of the hearing, the Presenter and Respondent shall be permitted to submit a post-hearing brief to address the facts as developed during the hearing and supported by the evidence, and to provide legal argument addressing those facts, including as to the issue of whether any violation is supported by clear and convincing evidence, and whether any discipline should be imposed, and the quantum of such discipline.

G. THE IDENTIFICATION AND LIMITATION OF WITNESSES, INCLUDING CHARACTER AND EXPERT WITNESSES

1. The Presenter has named the following witnesses, who may be called to testify at the hearing in the above matter:

[LIST EACH WITNESS BY NAME AND WITH ADDRESS, EMAIL, AND CELLPHONE CONTACT INFORMATION]

2. The Respondent has named the following witnesses, who may be called to testify at the hearing in the above matter:

[LIST EACH WITNESS BY NAME AND WITH ADDRESS, EMAIL, AND CELLPHONE CONTACT INFORMATION]

3. Expert witness information:

[LIST EACH WITNESS BY NAME AND WITH ADDRESS, EMAIL, AND CELLPHONE CONTACT INFORMATION; INCLUDE INFORMATION ABOUT DEADLINES FOR EXPERT REPORTS]

H. DEADLINE FOR THE COMPLETION OF DISCOVERY

1. The parties have confirmed that all discovery has been completed

   [OR:] All discovery in this matter shall be completed no later than [DATE].

2. [EXPERT REPORTS: Identify any issues]

3. [specify any issues relating to discovery; specify if the parties have confirmed that there are no outstanding discovery issues]

I. PREHEARING MOTIONS: MANDATORY PROCEDURES AND DEADLINES

1. The parties have given notice, prior to the Pre-Hearing Conference, that they intend to file the following motions, prior to the hearing.

   i. Presenter's motions:

   [specify]

   ii. Respondent's motions:

   [specify]

2. The hearing cannot commence until ***all*** prehearing motions will have been formally decided by the Panel Chair.

3. The parties have been put on notice that ***all*** applications for relief (including all prehearing motions and/or motions *in limine*), and ***all*** objections to the proceedings, including as to the virtual format of the proceedings and/or the virtual or phone technology to be used for the remote proceedings, must be submitted by formal ***written*** motion, conforming with R. 1:6-2, to be filed with the Panel Chair and served at the same time on the adverse party, ***at least two weeks (14 days) prior to the scheduled hearing date***.
4. Any response to the motion must be formal and in writing, to be filed with the Panel Chair within five days after receipt of the motion, and served at the same time on the moving party. The Panel Chair may change that schedule for any response, on written application of the party seeking any additional time.
5. The record of the motion shall consist of the moving papers and the response, with no right of reply, unless authorized by the Panel Chair. The party seeking to be allowed to reply must first ask the Panel Chair in writing for permission to submit that reply and be granted that permission in writing by the Panel Chair, before that party is allowed to submit the reply.
6. All such motions must be resolved by formal decision of the Panel Chair issued at least three days prior to the start of the hearing.
7. The parties have been put on notice that any motions for any relief that could have been identified prior to the hearing through reasonable diligence, but which were not filed with the Panel Chair at least two weeks prior to the scheduled hearing date, shall be denied, unless the Panel Chair determines, in the circumstances presented and as formally briefed by the party submitting the out-of-time motion, that the hearing should

be adjourned to allow consideration of the motion for good cause and in the interests of justice, prior to the hearing.

J. HEARING DATES

1. The hearing dates in this matter are: [DATES]
2. The parties are directed to make sure that the Pre-Hearing Connection Test (the Zoom Connection Test), as described earlier in this Order, will have been conducted and completed by [DATE].
3. The hearings will be conducted by Zoom on the Judiciary account, and it will be recorded on the Judiciary's CourtSmart recording system.
4. The hearing shall commence each day at 10 a.m., to be completed by 4:15 p.m. that day.
5. The hearing must end at 4:15 p.m. sharp on any hearing day. No proceedings on the record can continue after 4:15 p.m., and the CourtSmart recording system will be terminated automatically by the CourtSmart monitor (an OAE staff member) at that time, with the Zoom connection also ended at the same time. The presider and the parties are on notice that this procedure will be followed on every day of the hearing, and it will apply to the technological communication system automatically.
6. The Presenter will confirm on the date of the hearing, on the record at the start of the hearing, that the Grievant (if any) will have been given advance notice of the date and time of the hearing, and how to view it on the Zoom video link. By R. 1:20-6(c)(2)(D), the Grievant, and the Grievant's attorney, shall have the right to be present at all times during the hearing.

7. Respondent's presence at all hearings is mandatory. R. 1:20-6(c)(2)(D).

K. ISSUANCE OF ANY SUBPOENAS NECESSARY TO PRESENTATION OF THE CASE

1. The Presenter will arrange with the Hearing Panel Chair for the issuance of any subpoenas sought by the Presenter.
2. The Respondent will arrange with the Hearing Panel Chair for the issuance of any subpoenas sought by the Respondent.
3. Both parties must give each other notice of the subpoenas to be issued by each, before each subpoena issued.
4. In those cases where both the Presenter and Respondent are issuing subpoenas for the same witness, counsel will make arrangements to issue one subpoena for each such witness, so that the witness does not have to be subpoenaed twice.
5. Counsel will make every effort to ensure that subpoenas are issued sufficiently in advance of the witness' appearance so that the witness will appear on time to testify.
6. The party calling the witness will be responsible for making sure the witness will be able to appear remotely on the technology to be used for the hearing (Zoom), and for providing to the witness the information about how to appear through the virtual technology.
7. If a witness is unable to appear by the remote system being used for this hearing (Zoom), the witness will have to testify by phone, which is allowed by R. 1:20-6(c)(2)(A).

L. PREMARKING OF ALL EXHIBITS

1. All exhibits must be pre-marked by the party seeking to use the exhibit at the hearing.
2. Counsel will meet remotely (internet or telephone) and confer to arrange to pre-mark all exhibits.
3. On or before [DATE], counsel will submit to the Panel Chair a list of pre-marked exhibits. The exhibits will be marked either as:
    a. joint exhibits ("J"), which should consist of exhibits to be submitted on behalf of both parties;
    b. Presenter's exhibits, to be marked as "P" exhibits;
    c. Respondent's exhibits, to be marked as "R" exhibits; or
    d. Hearing Panel exhibits, to be marked as "HP" (including for pleadings and Orders relating to the proceedings).
    e. Any stipulation of the parties should be marked "SP."
4. The parties must each, or jointly, submit to the Panel Chair, to the other Hearing Panel Members, to each other, and to Jan Vinegar at the OAE, at least three days prior to the hearing, an **Exhibit List**, ***in chart form, which shall include the following information, in separate columns:***
    a. Exhibit number;
    b. Short description of the content of the exhibit, in narrative form;
    c. How many pages are contained in the exhibit, which must have numbered pages, and the identification of the page numbers (e.g., Bates number 000001 to 000295, or pages 1 to 7);

d. Two columns should be marked as follows: "for identification" and "in evidence," for tracking of what a party moves into evidence, and what the presider admits into evidence.

5. It is particularly important, because of the virtual nature of the hearing, that all questions of the admissibility of the proposed exhibits must have been presented by motion to the Panel Chair at least two weeks prior to the hearing date, in accord with the procedures for motions, set forth earlier in this Order.

6. The parties shall provide a ***hardcopy set of all exhibits to the Panel Chair*** at least five days prior to the hearing date. That hard copy set of exhibits shall constitute the ***original hearing record.***

7. The parties shall provide to the other members of the Hearing Panel, and to each other, a complete set of all exhibits in [*specify:* hard copy or electronic format] at least five days prior to the hearing date. [*Add, if the parties have agreed to provide the exhibits in electronic format.*] The parties shall also provide a copy of all hearing exhibits in electronic format to the Panel Chair on that same date.

8. The parties are alerted to R. 1:7-3 (creating a recorded of excluded evidence), as to any issue relating to excluded material which they seek to have included or otherwise detailed in the record.

M. ADDITIONAL ISSUES

1. Issues as to confidentiality of any part of the record: [*specify*]

2. The parties are on notice of their duty to take all necessary and appropriate steps to protect all categories of confidential or otherwise-protected information so that such

information will not be disclosed in the publicly-filed pleadings, or in the public hearing of this case.

3. The parties are on notice that such categories of information to be maintained as confidential or otherwise-protected against public disclosure include, but are not limited to, the following:

    a. confidential personal identifiers, as listed in R. 1:38-7(a);

    b. any attorney disciplinary records whose continuing confidentiality is mandated by R. 1:20-9, unless they are already public records within the scope of R. 1:20-9(d);

    c. records of any fee arbitration proceedings;

    d. civil commitments;

    e. expungements;

    f. medical, psychological or mental health records or information;

    g. disability issues;

    h. sexual abuse or harassment matters concerning any identified or identifiable victim;

    i. domestic violence;

    j. restraining orders;

    k. family part proceedings;

    l. guardianship or adoptions;

    m. juvenile family crisis or juvenile delinquency proceedings;

    n. child protection or child placement matters;

    o. paternity issues; or

    p. any administrative, court, or other records excluded from public access.

4. Issues as to whether a ***protective order*** will be needed or requested for any part of the record: [*specify, or state that each party has confirmed that no protective order should be issued*]

5. Issues as to ***translation or interpreting*** services needed for the hearing: [*specify, or state that each party has confirmed that there will be no need for any translation or interpreting services at this hearing*]

6. Issues as to any ***disability*** or any issue of ***special accommodation***: [*specify, or state that each party has confirmed that there will be no disability accommodation needed or requested for this hearing*]

7. Other: [*specify*]

N. PRIORITY OF DISCIPLINARY PROCEEDINGS UNDER RULE 1:20-8

1. Counsel shall be under a continuing duty to notify the Hearing Panel Chair promptly of any scheduling conflicts that occur which may interfere with the hearing dates scheduled for this matter.

2. Counsel are under a further duty to observe the priority to be accorded attorney disciplinary proceedings over other matters, pursuant to R. 1:20-8(g).

3. No request for extensions of time or for the adjournment of the hearing date shall be granted unless good cause is shown, with the requests to be made in writing, by letter or motion, stating with specificity the facts on which the request is based. R. 1:20-7(k).

The parties are further on notice that the penalties for violation of this Order, or for any failure to comply with its terms, include but are not limited to the sanctions set forth in R. 1:20-5(c).

With the parties having been on notice of these procedures and directions for this attorney disciplinary matter, their attention to, and compliance with, and strict adherence to this Case Management Order is

SO ORDERED, this _____ day of _____, 2020.

_____

Hearing Panel Chair

Appendix H

Part 2

Case Management Orders – Templates
(both should be issued in all cases by the presider, following the Case management Conference)

Supplemental Case Management Order, Pursuant to R. 1:20-5(b)(4): Instructions for the Public Hearing to be Conducted in this Attorney Disciplinary Case
(to be issued in all cases by the presider, to give notice and comprehensive instructions to all parties as to the procedures in place for attorney disciplinary hearings to be conducted virtually)

EXHIBIT

SUPREME COURT OF NEW JERSEY
DISTRICT ## ETHICS COMMITTEE
[name], Panel Chair [or Special Ethics Master]
[address]
[phone]

SUPREME COURT OF NEW JERSEY
District ## Ethics Committee
District Docket No. ##-####-####E

District ## Ethics Committee [or Office of Attorney Ethics, for OAE-prosecuted cases, only],	:	
Complainant	:	**SUPPLEMENTAL CASE MANAGEMENT ORDER, PURSUANT TO RULE 1:20-5(b)(4)**
v.	:	
[Name],	:	
Respondent	:	

INSTRUCTIONS FOR THE PUBLIC HEARING TO BE CONDUCTED IN THIS ATTORNEY DISCIPLINARY CASE[1]

I. NOTICE OF THESE INSTRUCTIONS ISSUED TO THE PARTIES BEFORE THE HEARING

The parties are being given these written instructions well in advance of the hearing in this case, and they have been directed to read these instructions, to follow them, and to abide by the procedures and deadlines set forth herein. The parties have been alerted to R. 1:20-5(c), as to the

[1] All documents identified herein as an "**Appendix**" are included in the *Office of Attorney Ethics Manual on Conducting Virtual Remote Proceedings* (cited herein as ***OAE Hearings Manual***).

authority of the ***presider*** (either the Hearing Panel Chair or Special Ethics Master) to impose sanctions on any party who fails to abide by the Rules and orders relating to this hearing.

These instructions supplement all Case Management Orders issued by the presider to date in these proceedings, with the full force and effect of an Order of the presider. See R. 1:20-5(c).

The OAE has provided a reference manual for hearings, which has been made available to the parties as the ***Office of Attorney Ethics Manual on Conducting Virtual Remote Proceedings***, with source documents included as Appendices to that manual, which is referred to herein as the ***OAE Hearings Manual***. In particular, the participants in this hearing are referred to the following, and they are responsible and accountable for having read the following, and for abiding by the procedures and directions set forth therein:

Appendix A, Parts 1 to 3:	Omnibus and Other Orders of the Supreme Court, and Notices to the Bar Relevant to Virtual Hearings
Appendix B, Parts 1 and 2:	Memoranda issued by the OAE Director, June 19, 2020, and September 23, 2020
Appendix C:	OAE Guide, "How to Join and Participate in a Zoom Virtual Hearing"
Appendix E:	OAE Guide, "Witness Instructions for Remote Disciplinary Proceedings"
Appendix F:	Court Rules and RPCs relevant to this hearing
Appendix G:	OAE Guide: "The Zoom Connection Test: Making Sure the Participants Will Be Ready to Go Forward on Zoom on the Day of the Hearing"

II. USE OF REMOTE TECHNOLOGY DURING THIS HEARING

a. How this Hearing Will Be Conducted and Recorded

This hearing will be conducted remotely, by Zoom and/or, if needed, phone technology. The procedures that will be used follow from the Omnibus Orders of the Supreme Court, issued during the COVID-19 Pandemic, and the additional information and directions issued by the Director of the Office of Attorney Ethics (OAE) for remote hearings.

The participants in this hearing – and all members of the Bar – have been on notice of the series of Omnibus Orders issued by the Supreme Court, starting on March 27, 2020, addressing how court proceedings will be conducted during the COVID-19 Pandemic. This hearing is proceeding by

Zoom and phone technology, following from the directions of the Supreme Court, as set forth in its Orders. The Orders have been made available to the parties and they are set forth in **Appendix A, Parts 1 through 3** to the *OAE Hearings Manual*. Following from the directions of the Supreme Court, the OAE Director has issued two Memoranda, specifying the procedures for presiders to follow for the recommencement of attorney disciplinary hearings by remote technology. Those Memoranda, dated June 19 and September 23, 2020, appear as **Appendix B, Parts 1 and 2** to the *OAE Hearings Manual*. This hearing will proceed in accord with the directions set forth in the OAE Director's Memoranda.

b. Opportunity Already Afforded to the Parties to Have Conducted a Zoom Connection Test, to Address Technical Issues Prior to the Hearing

The parties and the full Hearing Panel (or Special Ethics Master) are required to participate in a practice internet connection test for Zoom (a "***Zoom Connection Test***") prior to the hearing, during which OAE IT staff would assist the participants as they test their equipment, software, and bandwidth for Zoom. The Zoom Connection Test is specifically intended to anticipate and to address technical issues relating to Zoom that might otherwise arise during the hearing.

The parties have been provided with the document entitled "The Zoom Connection Test: Making Sure the Participants Will Be Ready to Go Forward on Zoom on the Day of the Hearing," which is **Appendix G,** included in the *OAE Hearings Manual*. That document sets forth the information about how to schedule the Zoom Connection Test and what is covered in the Zoom Connection Test. It is expected that the Zoom Connection Test will take roughly 20 minutes to complete. The presider would arrange the date and time of the Zoom Connection Test with the OAE, so that the Hearing Panel would be able to attend the same session. The presider would make reasonable efforts to notify the parties of that scheduled date, to alert the parties so they could attend the same Zoom Connection Test as the Hearing Panel [if applicable], if the parties were able. The parties do not have to attend the Zoom Connection Test at the same time as any other participants in this hearing, since the Zoom Connection Test will address only technical issues as to how to connect through Zoom for any hearing. No issues specific to this particular hearing would or should be addressed at any Zoom Connection Test session conducted by the OAE.

The parties and the Hearing Panel have been on notice that it was expected that they would each participate in the Zoom Connection Test well in advance of the hearing date. The parties have also been notified that, ***if the party did not take part in the Zoom Connection Test, that party would be deemed to have waived any objection at the time of the hearing as to any technical matters that they had notice and opportunity to have addressed in advance of the hearing, but declined to do so.***

The Zoom Connection Test is available for the parties (Presenter, Respondent, and Respondent's Counsel) and the Hearing Panel [or Special Ethics Master], only. Should any party seek to have their witnesses, the grievant, or any other person included in a Zoom Connection Test, such ***specific application*** should be submitted to the presider in writing, with notice to the adverse party, at least 14 days prior to the hearing date. The presider would consider the application, and, if the presider determines the requested relief to be appropriate and necessary, the presider would send an email to OAE Hearings Coordinator Jan Vinegar (email to Janice.Vinegar@NJCourts.gov and OAE.mbx@NJCourts.gov; subject line: "Zoom Connection Test for Witnesses") at least one week prior to the scheduled hearing date. It is expected that the OAE will conduct Zoom Connection Test sessions between 8:45 and 9:30 a.m. on some weekdays to be determined by the OAE, with that schedule intended to avoid interference with regularly-scheduled hearings which OAE staff must also monitor.

c. Notice Concerning Camera and Microphone During Hearing

The only persons at the hearing who should have their ***cameras turned on*** at any time during the hearing would be the following:

- the three members of the Hearing Panel [or Special Ethics Master],
- the Presenter,
- Respondent's counsel,
- the Respondent,
- any witness (but only during the period of the witness's testimony),

- OAE Zoom and/or CourtSmart hearing monitors, and/ or OAE IT support staff (but ***only*** if there was a specific need for the staff member to appear on camera, as determined by the presider).

The parties (Presenter and Respondent) should keep their ***microphones muted*** at all times, unless they are addressing the presider. The parties must each be visible on camera at all times during the hearing, including if Respondent and Respondent's counsel choose to appear in the same room using the same computer for the Zoom transmission. In such circumstances, both must remain visible onscreen throughout the hearing.

If Respondent is represented by counsel, Respondent's counsel should be the only one addressing the presider, unless the presider specifically asks the Respondent to speak. The Respondent should keep Respondent's ***microphone muted*** at all other times.

All others who are viewing the proceeding (including any Grievant and any member of the public) would need to keep their ***camera*** turned ***off***, with their ***microphone muted***.

d. Speaking on the Record: Only When Authorized, Following Formal Request to the Presider, and Only If Such Authorization Is Given

The presider will be responsible for keeping order at all times during the proceedings, and no party or attendee may speak unless recognized and allowed by the presider.

The parties and the Hearing Panel must remain on notice that the ***CourtSmart recording system will continue recording all that is said during the proceedings, with live microphones at all times***, unless the presider directs that CourtSmart should be paused or turned off, in a manner similar to how the recording system works in a live courtroom. The parties are on notice that, if they seek to consult privately with any witnesses or third parties, or to conduct any off-the-record communications, they would need to ask to be placed in a Zoom breakout room, or otherwise to use another method of communication for conversations to remain private and not recorded on CourtSmart (e.g., phone, text, email).

In case of emergency, including serious technical issue, an OAE staff member may need to speak on the record. When that happens, the OAE staff member(s) – which may be either the CourtSmart monitor, or the Zoom moderator, or the IT supervisor, all of whom will be assisting the

presider at the hearing -- will need to identify themselves on the record, and then to state succinctly and clearly the reason for the interruption. The OAE staff member(s) will then wait to be recognized by the presider, who may allow the OAE staff member(s) to speak further.

Should such an interruption of the proceedings occur, the parties are on notice that they should not speak, unless they follow formal procedures by asking to be recognized by the presider and waiting for the presider to determine whether input from either party is needed or appropriate, in the particular circumstances presented. At all times during these proceedings, all participants must treat the proceedings as formal, court events, where the ***standard rules for court appearances apply and will be enforced by the presider.***

e. Unauthorized Recording of the Proceedings Is Forbidden by Law

All participants in the hearing (including any grievant, any witnesses, and any members of the public) are on continuing notice that the Supreme Court has given express and specific warning of the penalties (including pursuant to criminal law) for unauthorized recording or transmission of the proceedings. The information relating to this issue is spelled out in paragraphs 18 and 19 of the OAE Director's June 19, 2020 Memorandum (**Appendix B, Part 1**).

No party (and no other participant in the hearing, and no viewer of the proceedings) may have two Zoom sessions, or any other internet recording platform or program running at the same time as the hearing in this matter, if any portion of the hearing on Zoom (including voice or visual images) will be captured, or be viewable, or audible on the platform or program being run separately by the party. This means that a Respondent may not have Skype or Zoom or Teams or any other internet-based system of communication open at the same time as the hearing as the means of communicating with Respondent's counsel (or with an offsite IT technical assistant, for example). The alternatives for such communication are specifically limited to a voice call on cellphone or landline, a text message, or an email, if the Respondent declines the opportunity to use the breakout room feature on Zoom.

f. Breakout Room Availability, and Procedure for the Respondent to Consult with Counsel *(if represented by counsel, only)*, or for the Hearing Panel to Speak Privately, or for any Party to Meet with a Witness or Technical or Other Assistant

The Respondent and Respondent's counsel (if any) may be in separate locations, and either may seek to consult with the other during these proceedings, except during the time that the Respondent may be called to testify in this hearing. At other times, the Respondent may communicate with counsel through text message or by email, or by phone. The Respondent or Respondent's counsel may ask to be placed for that purpose in a breakout room on Zoom, where they may consult in private and off the record, separately from any of the other participants in these proceedings.

Other participants in the hearing (including the Hearing Panel and either of the parties) may also ask to be placed in a breakout room for private consultation.

The OAE Zoom Moderator will inform the presider, before moving any hearing participants to a breakout room, that CourtSmart will be paused until the presider directs that CourtSmart recording should be restarted, on the completion of the breakout session.

During breakout sessions, it will be particularly important to make sure that there is no discussion of the case among any of the other participants. The members of the Hearing Panel and the Presenter may consider whether to ask to be placed in separate waiting rooms, to await the completion of the separate consultation taking place at that time in the breakout room. All participants should be vigilant at that time to make sure that there is no substantive discussion of the case in the absence of one of the parties.

The presider may set a time limit on the breakout session, to ensure the timely resumption of the hearing. The presider will make sure the participants are all back on the record, with Zoom and CourtSmart again working, before the hearing may resume.

g. Prohibition on Any Ex Parte Discussions of the Case by the Hearing Panel Chair or Hearing Panel [if applicable]

The Panel Chair, as presider, will take appropriate steps throughout the hearing – including whenever one party leaves the hearing for any reason, including for breakout room sessions or any

witness or client consultations – to make sure that there are no *ex parte* discussions of the case. The Panel Chair will take appropriate steps throughout the hearing to make sure that, if the Hearing Panel or the Panel Chair will discuss the case in the presence of either party, ***both*** the Presenter and the Respondent's counsel will be present before such discussion commences.

h. Procedures to Be Followed If There Is Any Problem with Virtual Technology, and Authorization Since 1995 Under the Court Rules for Use of Telephone for the Hearing

If, at any time during these proceedings, a party experiences any technical problem that affects their ability to hear and/or observe the proceedings, that party should state on the record the issue presented ***immediately***. At the end of the testimony of each witness, the parties will also have the opportunity to place on the record any issue presented as to the ability of that party to see or to hear the proceedings. The presider will determine at that time what, if any, corrective or other action should be taken to address the issue (such as by having a question or a portion of testimony repeated). Please keep in mind that ***there is no way to replay the CourtSmart record while the hearing is in progress***. There is no "rewind and replay" capability for the CourtSmart record, while the hearing is in progress. If testimony must be repeated, that means that the witness will have to answer the same questions again, as a live witness.

The presider will also allow the parties to state on the record, at the end of each day of the proceedings, issues affecting their ability to see or to hear the proceedings, if they claim any impediment to have occurred. But the parties should be on the alert of the need to inform the presider immediately if such an issue should arise, so that it may be addressed immediately. The parties are also expected to take appropriate steps to make sure the record is complete as to any issue presented.

If the Respondent is not represented by counsel, the *pro se* Respondent will need to alert the presider of any technical problems as they arise. If the Respondent is represented by counsel during the hearing, however, any such information should be stated on the record ***only*** by Respondent's counsel, as soon as counsel becomes aware of the issue.

Since 1995, R. 1:20-6(c)(2)(A) has allowed "the trier of fact to accept testimony of a witness by telephone and/or video conference." If a witness or a party cannot connect with the proceedings

on Zoom, the presider would have telephone as an available option for the proceedings to move forward.

i. Zoom Invitation and Login Information to Be Provided by the OAE to the Parties Before the Hearing

The OAE will notify each party and the Hearing Panel (or Special Ethics Master) by email of the Zoom login information to be used at the time of the hearing, and the OAE will send that notice typically at least two days prior to the scheduled event (lead time allowing). The email will include the unique meeting identification number and password, which will give the parties access to the hearing for the duration of the entire proceeding.

j. Zoom Invitation Must Not Be Provided by Either Party to Any Other Recipient – Including Any Witnesses. OAE Will Send Invitation to Witnesses if Authorized in Writing by the Presider

The parties are prohibited from forwarding the email containing the Zoom login information to any other recipient. A party seeking to have the invitation sent to a grievant or any witness must first have asked the presider to make the formal request in an email to the OAE, submitted to Janice Vinegar, who handles Zoom invitations (Janice.Vinegar@NJCourts.gov and OAE.mbx@NJCourts.gov). The email to Jan Vinegar should identify the particular proceeding and include the name and email address of the proposed recipient, with the subject line of the email identified as "Witness Needs Zoom Invitation for [name] Hearing." The OAE will send the invitation with the Zoom information to the proposed recipient ***only if and after*** the presider will have approved the request.

The parties are responsible for following this procedure to make sure that all witnesses will receive the Zoom login information in a timely manner so as to have notice of, and opportunity to appear at, the hearing on Zoom at the proper time. The Presenter is responsible for following this procedure to make sure that any Grievant receives timely and appropriate notice of the Zoom login procedures for the hearing. The Presenter must not forward the Zoom login notice to the Grievant, and instead must take these steps to have the OAE send the login information to the Grievant.

The OAE will send a confirmation email to the presider prior to the hearing date, setting forth the list of all parties and witnesses who have ben sent the Zoom invitation by the OAE for the hearing. See **Appendix I** (templates for confirmation emails to be sent by OAE prior to hearing).

k. Notice on Use of Technology for Attorney Disciplinary Hearings

The parties are expected to have prepared for the hearing by obtaining the necessary equipment and software well before the hearing begins. The parties have been informed that, whenever possible, participants should use computers, laptops, or tablets -- ***not*** mobile phones -- to attend the remote hearing. The parties have been on notice that all participants in the hearing (including the witnesses called by the parties) must ensure that their bandwidth is adequate for video conferencing and should use an appropriately-cabled LAN, WiFi, or substantial LTE Mobile connection. The parties have been on notice that cabled network connections are preferred, and that mobile data use may incur cellular carrier charges, which are and shall remain the responsibility of the remote participant.

The parties have been on notice that they are each responsible for their own technology and equipment, and must become familiar with Zoom's controls well before the hearing. The parties have been on notice that they must also test their device's video, microphone, and speaker controls well before the date of the hearing to ensure compatibility with the Zoom platform. The parties have been on notice that the OAE can only provide ***limited*** support or assistance prior to or during the remote hearing. The parties have been on notice that directions for how to test Zoom capability prior to the proceeding can be found at https://support.zoom.us/hc/en-us/articles/201362313-How-Do-I-Test-My-Video (webpage available as of September 21, 2020). The parties have been on notice that, if they experienced technical issues with their equipment, they would need to consult Zoom training and support materials on their own prior to the hearing date, at https://support.zoom.us/hc/en-us (available as of September 21, 2020).

The parties have also had available to them the Judiciary publication that has been adapted by the OAE for attorney disciplinary proceedings: "How to Join and Participate in a Zoom Virtual Courtroom." That guide is annexed to the *OAE Hearings Manual* as **Appendix C**.

The parties have also had available to them the OAE publication, "Witness Instructions for Remote Disciplinary Proceedings," which is **Appendix E.** The parties have had the opportunity, prior to the hearing, to have provided these materials to any person whom they would seek to call as a witness at the hearing, in order to help that witness become familiar with Zoom technology and to be able to participate in the hearing.

I. General Information Concerning Witnesses and Subpoenas for Remote Proceedings

Consistent with the Supreme Court's Omnibus Orders and R. 1:20-7(i) and R. 1:20-6(c)(2)(A), the testimony of all witnesses will be taken virtually at this hearing. Any subpoena issued for the appearance of a witness for this virtual hearing must clearly have informed the witness that the witness will be required to appear from the remote location of their choice, and would need to have:

(i) a computer, smartphone, tablet, or other device with video conference capabilities (camera, microphone and monitor),

(ii) Zoom video conference software (which is available at no cost on the internet),

(iii) an email address, and

(iv) internet service with sufficient broadband for a video conference.

The subpoena would also have to have instructed the witness that the witness must immediately contact the person requesting the witness's appearance to provide an email address and telephone number where the witness could be reached during the scheduled virtual court hearing. The parties have been on notice that it is the responsibility of the party requesting or issuing the subpoena to confirm the ability of each of their witnesses to participate in a video conference or audio conference. The parties have also been on notice that R. 1:20-6(c)(2)(A) allows the presider to authorize the taking of a witness's testimony by phone, if the circumstances warrant.

The parties have been on notice that, if a witness is not able to participate in the virtual court hearing from their home or other selected location, it would be the responsibility of the person issuing the subpoena to make arrangements for the witness to appear at a location (remote; not in-person) having sufficient video conference or audio conference capabilities (or telephone reception).

The parties have been on notice that, consistent with R. 1:20-6(c)(2)(A), all witnesses must testify under oath or affirmation, which should be administered by the presider.[2] The parties have been on further notice that the party calling the witness should make sure in advance that the witness was provided, prior to the hearing, with the information in **Appendixes C and E** (information about testifying through Zoom).

The parties have been on notice, and they remain on continuing notice, of the procedures to be followed if the party seeks to have any witness included in the Zoom Connection Test. See **Appendix G**. The parties have been on notice that the OAE does not have sufficient staff or other available resources to provide training on how to use Zoom to the witnesses whom the parties may seek to call at the hearing. The parties have been on notice that they must take the appropriate and timely steps to make sure that their witnesses will be able to testify through Zoom or phone technology at the remote hearing to be conducted in this matter.

III. ISSUES RELATING TO ALL ATTORNEY DISCIPLINARY HEARINGS

a. Purpose of the Attorney Disciplinary System

All participants in these proceedings must all bear in mind the directive of the Supreme Court as to attorney disciplinary cases: That they are intended to preserve public confidence in the attorney disciplinary system, the Courts, and the legal profession as a whole.

b. Mandatory Attendance of Respondent at Hearing

Respondent's presence at all times at the hearing is mandatory.[3] If Respondent is not present at any time during the proceedings, the presider will need to be informed of that fact so that it will be recorded in the hearing record. The Respondent will need to remain on camera throughout the hearing.

c. Mandatory Notice to Have Been Given to Grievant

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[2] The text of the oath and/or affirmation is set forth below in footnote 21.

[3] R. 1:20-6(c)(2)(D).

The Presenter has been and remains responsible for giving adequate written notice to the Grievant (if any) of the hearing, so the Grievant could view or listen to the proceedings remotely as they occur. If the Grievant has not been given notice by the Presenter of the date and time of the hearing, and the information about how to connect on Zoom, this hearing will need to be adjourned until the Presenter completes those steps.

The Grievant has the right to observe the proceedings. The parties would determine whether the Grievant or any other witness would be called to testify during the hearing. The Grievant has the right to be represented by retained counsel, but Grievant's counsel should not speak on the record during the proceedings, unless Grievant's counsel is called as a witness to testify.[4] Grievant's counsel's role is limited to consulting with the Grievant. If Grievant seeks to have counsel view the proceedings, the Presenter must follow the steps set forth in **Appendix G** for having the OAE send the Zoom invitation with the login information to Grievant's counsel, prior to the hearing. Grievant and Grievant's counsel could then watch and hear the proceedings on Zoom, but they would be required at all times to keep their cameras off and their microphones muted.

d. Right of Continuous Presence During the Hearing

Both the Grievant and Respondent have the right to be present at ***all*** times during the Hearing, as does Office of Attorney Ethics personnel.[5]

e. Requests for Sequestration

Requests for sequestration of witnesses are granted routinely by the presider, unless inappropriate under the circumstances.[6] At the time that the application is made, the presider will inform the parties and the OAE Zoom Moderator of the procedures to be followed to effect the sequestration on Zoom or by phone.

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[4] See R. 1:20-4(g)(3).
[5] R. 1:20-6(c)(2)(D).
[6] R. 1:20-6(c)(2)(D).

f. Presider Cannot Address Constitutional Questions

The ***presider is not permitted to rule on constitutional questions***,[7] and no such questions should be directed to the presider. That is a qualification on the power of the presider set by Court Rule. There are no interlocutory appeals from the decisions of the presider, except for constitutional issues.[8]

g. Procedural Issues

By Court Rule, these proceedings are public and the audio portion of the hearing (***not*** the video) will be recorded live, on the CourtSmart recording system of the New Jersey Judiciary.[9] The participants in this hearing must adhere to the following guidelines to protect the accuracy and clarity of the formal record of these proceedings. The participants are on notice – indeed, they are forewarned – that they should expect every word that they say during the Zoom session (***except*** in breakout sessions), whether the hearing is paused or on the record, will be captured on the CourtSmart recording, and be guided accordingly.

All statements on the record need to be audible and understandable. All parties and witnesses must keep their voices up. If anyone cannot hear or understand what is said, either due to acoustics or pronunciation or any technical issue, that party must alert the presider immediately of that. The parties must make sure that all comments and requests are directed to the presider, only, who will then determine any appropriate response or action.

The presider may request that that which is not understood be repeated and, if need be, spelled out. Gestures of the head or hand cannot be recorded, and should therefore be avoided. Rather, all testimony should be verbal, using words, and all statements on the record should be uttered in a manner that can be transcribed at a later date by an officially approved transcriber (who will ***not*** present for these proceedings), should a transcript come to be ordered at a later date. The parties will need to be on notice that ambiguous sounds may not be capable of transcription and they should be avoided. If either the Presenter or Respondent's counsel (or Respondent, if *pro se)* seeks

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[7] R. 1:20-4(e); R. 1:20-15(h); see R. 1:20-16(f)(1).
[8] R. 1:20-16(f)(1).
[9] R. 1:20-6(b)(2)(F); R. 1:20-6(c)(2)(A).

clarification of any part of the record, counsel should make the presider aware of the issue as it occurs.

The presider will recognize the parties seeking to be heard. This will bring decorum to the proceedings and will assist to identify who is speaking on the recording. The presider will take steps where needed to make sure that only one person is speaking at any time. Everyone should listen to what is said. That will result in a better understanding for all present and make for a clearer record.

h. Notice to the Parties of Their Continuing Duty to Protect and Preserve all Categories of Confidential Information, and to Have Taken Steps, If Needed, to Have a Protective Order Issued Prior to the Hearing by the Presider

The video and/or phone technology being used for these proceedings, and the fact that this is a public hearing, make the risk of accidental or inadvertent disclosure of confidential or protected information all the more urgent to identify, to avert, and to remedy. ***The parties have been on notice, and they continue to be on notice, of the duty to be vigilant and to act, where needed, to make sure that no confidential or protected information will be disclosed during these public proceedings.*** The parties are reminded that they bear this duty, not only where the confidential information is contained in an exhibit or pleading which they have submitted, but also where it arises in a document submitted by an adversary, or when a party-opponent is questioning a witness and that questioning elicits testimony that contains information of a confidential or otherwise protected nature. When this issue arises, each (or either or both) of the parties should immediately bring it to the attention of the presider, who would go off the record to address and to resolve the confidentiality issue presented.

The parties are reminded that the categories of information ***requiring their continuing vigilance*** include – but are not limited to – the following:

a. confidential personal identifiers, as listed in R. 1:38-7(a);

b. any attorney disciplinary records whose continuing confidentiality is mandated by R. 1:20-9, unless they are already public records within the scope of R. 1:20-9(d);

c. records of any fee arbitration proceedings;

d. civil commitments;

e. expungements;

f. medical, psychological or mental health records or information;

g. disability issues;

h. sexual abuse or harassment matters concerning any identified or identifiable victim;

i. domestic violence;

j. restraining orders;

k. family part proceedings;

l. guardianship or adoptions;

m. juvenile family crisis or juvenile delinquency proceedings;

n. child protection or child placement matters;

o. paternity issues; or

p. any administrative, court, or other records excluded from public access.

The parties and the participants in these proceedings are on express and specific notice of their continuing responsibility to make sure:

1. that no confidential information will be, or will have been, disclosed on the record in any attorney disciplinary proceedings, ***including in the pleadings***; and
2. that proper ***redaction*** of hearing records -- including the pleadings -- will have ***already occurred*** before the start of this hearing, and before the testimony or exhibit is made part of the public record.

The parties have been on notice of the procedures for having applied prior to the hearing for a ***protective order***, if such an order were necessary or appropriate to "prohibit the disclosure of specific information to protect the interests of a grievant, witness, third party or respondent."[10]

During the course of this hearing, all parties and participants are put on further notice to make sure that the home address and telephone information of the parties and any witnesses will ***not*** be included as part of the public record.

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[10] R. 1:20-9(h).

The Supreme Court has recognized the ***increased risk in a virtual setting of inadvertent disclosure of confidential information,***[11] which may be heightened when the audio and/or video record of the proceedings may be available in a manner which the attorney disciplinary system had not previously experienced. The information cannot be erased from the public domain, once it is broadcast through internet technology: ***All parties to this proceeding have an individual duty to ensure that they preserve the confidentiality of all categories of information that must be protected against public disclosure.***

i. Conduct of the Hearing, Under the Court Rules

The Court Rules specify that this hearing is formal,[12] and all of the hearing procedures must reflect the solemnity of these proceedings. For any hearing conducted before a Hearing Panel, the Hearing Panel will govern itself accordingly and the parties are expected and required to do so as well. That said, because it may be helpful or even necessary, the individual Hearing Panel Members may speak at times and seek clarification.

Attorney disciplinary proceedings are neither civil nor criminal in nature.[13] Since this is not a criminal proceeding, this proceeding does not involve the determination of a Respondent's "guilt" or "innocence," since those are concepts rooted in criminal law. The issue in this attorney disciplinary proceeding is whether clear and convincing evidence supports the finding of a violation of any Rule of Professional Conduct or any other disciplinary rule or law, as charged in the complaint, against the Respondent. The ultimate issue is whether the Respondent will be found to have violated any disciplinary rule by clear and convincing evidence, or whether the evidence is insufficient to meet that standard, with the result that no disciplinary violation should be found.

Hearings such as this are conducted formally and publicly, as required by Court Rule.[14] The presider will follow, to the extent applicable here, the rules governing procedures in civil actions, starting with opening statements, offers of proof, presentation of witnesses, and closing arguments.

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[11] Supreme Court Orders on COVID-19 procedures, 2020. **Appendix A.**
[12] R. 1:20-8(b).
[13] R. 1:20-7(a).
[14] R. 1:20-6(b)(2)(F); R. 1:20-8(b).

Formal charges of unethical conduct must be established by clear and convincing evidence.[15] The Presenter bears the burden of establishing by clear and convincing evidence that Respondent has committed the alleged ethical violations.[16] The burden of proof in proceedings seeking discipline or demonstrating aggravating factors relevant to unethical conduct charges is on the Presenter.[17] The burden of going forward regarding defenses or demonstrating mitigating factors relevant to charges of unethical conduct is on the Respondent.[18]

The Rules of Evidence may be relaxed in disciplinary proceedings, by Court Rule.[19] The Rules of Evidence are not suspended in these proceedings, however, and it is expected that the party seeking the relaxation of an evidence rule should be able to articulate the reason why the Rules of Evidence should be relaxed in the circumstances presented. The Court Rules further provide that the residuum evidence rule shall apply.[20]

During the hearing, witnesses, if any, will be placed under oath or affirmation by the presider,[21] and each witness will provide their name, spelling out their last name for the record. If there is a specific need to have the business address (***not*** the home address) included in the record, a party should make that request to the presider and state the specific reason on the record. The presider will then rule on the application before proceeding. Since such a request would be made of

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[15] R. 1:20-6(c)(2)(C).

[16] R. 1:20-6(c)(2)(B)-(C).

[17] R. 1:20-6(c)(2)(C).

[18] R. 1:20-6(c)(2)(C).

[19] R. 1:20-7(b).

[20] R. 1:20-7(b). On the residuum rule and the clear and convincing standard of evidence, see **Appendix D**, at pages **D28-D30**.

[21] R. 1:20-6(c)(2). The presider should give the witness the choice of swearing or affirming. Based on the choice expressed by the witness, the presider would ask the witness the following, before the witness can begin to testify:

> ***Oath***:
> Do you solemnly swear that the testimony you shall give in this matter shall be the truth, the whole truth, and nothing but the truth, so help you God?
>
> ***Affirmation***:
> Do you solemnly affirm, under penalty of perjury, that the testimony that you shall give in this matter shall be the truth, the whole truth, and nothing but the truth?

a testifying witness who has already appeared for the hearing, it would seem that any issue of the contact information for the particular witness would at that point be moot. ***No home address or home phone information of any person should be made part of the public record, including on any exhibit.*** If an exhibit contains a home address or a home phone number, the party offering the exhibit is responsible to make sure that information will be redacted ***before*** the exhibit is admitted into evidence.

Applications for rulings should be directed to the presider. [For hearings before a Hearing Panel:] After an application is made, the Panel Chair may consult, where appropriate, with members of the Hearing Panel and shall rule thereon, to the extent possible.

j. Role of the Hearing Panel [or Special Ethics Master]

The Hearing Panel [or Special Ethics Master] will ultimately make one of two findings. The Hearing Panel can either conclude:

(a) that clear and convincing evidence supports the determination that the Respondent has committed unethical conduct, in which case the Hearing Panel [or Special Ethics Master] would then make a recommendation of the discipline to be imposed, with that decision to be submitted thereafter to the Disciplinary Review Board for *de novo* review on the record of these proceedings;[22] or

(b) instead, that the evidence does not meet the clear and convincing standard to support the finding of any violation charged in the complaint, following which the Hearing Panel [or Special Ethics Master] would issue a Hearing Report recommending dismissal. The parties and the Office of Attorney Ethics would then be given notice of that dismissal recommendation, and of the right to appeal that decision to the Disciplinary Review Board.

It must be borne in mind that the Hearing Panel [or Special Ethics Master] issues a ***recommendation***, in either event. If the recommendation of dismissal is not appealed by a party or by the Office of Attorney Ethics, after each has been given proper written notice of that recommendation, it will become final on the conclusion of the time for the filing of the appeal with the Disciplinary Review Board. Any recommendation of discipline by this Panel [or the Special

[22] R. 1:20-15(f).

Ethics Master] must be transmitted to the Disciplinary Review Board, which will conduct *de novo* review of the record and issue a further decision in the matter. The decision of the Disciplinary Review Board becomes final on the entry of the appropriate order of discipline by the Clerk of the New Jersey Supreme Court.[23]

All disciplinary decisions are based on precedent, and the Supreme Court has directed participants in the attorney disciplinary system to follow precedent for such cases.

k. Opportunity for the Parties to Submit Written Summations

The parties may request the opportunity to submit summation briefs, at the conclusion of the hearing, setting forth the legal analyses of the issues presented, so that the Hearing Panel [or Special Ethics Master] may give full, fair, and deliberate attention to the issues presented. The Respondent would typically be expected to submit first, with the Presenter (who bears the burden of proof on the issues of the violations and the discipline) to submit thereafter, in accord with the schedule to be set by the presider. The full Hearing Panel [or Special Ethics Master] will issue its written Hearing Report, on completion of its review of the record.

The Hearing Panel [or Special Ethics Master] shall not consider any information concerning prior final discipline or disability of the Respondent until a finding of unethical conduct has first been made, unless such information is probative of issues pending before the Hearing Panel[or Special Ethics Master]. Should the Hearing Panel [or Special Ethics Master] reach a finding of unethical conduct, the presider would then ask the Office of Attorney Ethics to disclose to the presider and to the parties a summary of any orders, letters or opinions imposing temporary or final discipline or disability on the Respondent. Within five days of receipt of that notice, the parties may submit, if they choose, written argument on the issue of the effect to be given thereto.[24]

The Hearing Panel [or Special Ethics Master] shall submit thereafter the Hearing Report, consisting of the written findings of fact and conclusions of law on each issue presented, together with the record of the hearing. [For hearings heard before a Hearing Panel:] The Hearing Report will not be issued until it has been reviewed by all members of the Hearing Panel, with opportunity

[23] R. 1:20-16(a).
[24] R. 1:20-7(n).

given to all Hearing Panel members to join in the Report or to issue their own concurrence or dissenting opinion.

The Hearing Report and the hearing record shall be provided in full to the Office of Attorney Ethics, which Office shall transmit to the Disciplinary Review Board the full record, if there has been any finding by the Hearing Panel [or Special Ethics Master] of misconduct and/or a recommendation of discipline to be imposed on the Respondent.[25]

l. Procedures for Requests for Adjournments

The parties have been on notice that any requests for additional time or adjournments in the proceedings must be in writing, stating with specificity the facts on which the request is based, and specifying the definite and reasonably short interval requested in the specific circumstances.[26] Medical excuses should contain a doctor's note, but should not contain confidential medical information (**Appendix A, Part 2**, at **A126**). Such applications should be filed with the presider by letter or by motion, to be included in the record of these proceedings.

m. Timeline for the Conclusion of These Proceedings

By Court Rule, this hearing must conclude within 45 days of its commencement.[27] The Hearing Report must be submitted to the Office of Attorney Ethics and served on the parties within 60 days of the hearing's conclusion, except in extraordinary circumstances.[28]

n. Order of Opening Statements

For opening statements, since the Presenter bears the burden of proof, the Presenter would be expected to address the Hearing Panel first.

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[25] R. 1:20-6(c)(2)(E).
[26] R. 1:20-7(k).
[27] R. 1:20-5(b)(5).
[28] R. 1:20-5(b)(5).

IV. ISSUES SPECIFIC TO THIS HEARING

a. The Hearing Panel [Unless a Special Ethics Master Is the Presider]

This matter will be heard by a Panel consisting of:

- _____, a public member of the District Ethics Committee;
- _____, an attorney member of the same committee; and
- _____, an attorney member of the same committee, who is also serving as the presider.

If either the Presenter or the Respondent objects for any reason to the composition of the Hearing Panel, that objection must be submitted in writing in accord with the schedule for the submission of motions set by the presider at the Pre-Hearing Conference.

b. Issues Addressed at the Pre-Hearing Conference and in the Case Management Order Issued Following That Conference

The Pre-Hearing Conference in this matter was conducted on _____ [*date*]. The parties were on notice that any and all prehearing issues needed to be raised at that conference, or according to the schedule set at or after that conference. The parties were put on notice that all such issues had to be raised and resolved ***prior to*** the hearing date, and that no prehearing issues would be considered at the hearing. At the Pre-Hearing Conference, the parties were made aware that the following issues had to be addressed and resolved ***prior to*** the hearing date:

i. any issues relating to the virtual nature of the proceedings, and that all proceedings relating to the attorney disciplinary hearing would be conducted remotely, using virtual technology (specifically, Zoom);
ii. the admissibility of evidence;
iii. the marking, redaction, and preservation of evidence;
iv. whether a protective order would be needed;
v. whether any interpreter, translator, or any type of hearing accommodation would be needed; and

vi. how each party would arrange so that each Hearing Panel Member [or the Special Ethics Master] and the adverse party would have, at the time of the hearing, copies of all exhibits and of the pleadings for their individual use, and whether the exhibits would be in hard copy or in electronic format, or in both; and

vii. how each party would be required to provide all exhibits in hard copy to the presider (who is responsible for overseeing and keeping track of the hearing record), so the presider would have the hearing record in documentary, hard-copy form, physically in front of the presider throughout, and at the close of the hearing.

c. Issues Relating to Pre-Marking of Exhibits, and the Mandatory Preparation and Distribution of the Exhibit List, Prior to the Hearing

The parties were informed at the Pre-Hearing Conference of the need, and the procedures to be followed, for the pre-marking and distribution of all exhibits and evidence, so that each of the parties and each member of the Hearing Panel would have those materials in front of them for their individual viewing and review at the hearing. The parties were also required to have provided to each other, and to each of the members of the Hearing Panel, and to the CourtSmart Operator at the OAE (by email to Janice.Vinegar@NJCourts.gov), the Exhibit List, specifying:

- the exhibit number,
- a concise narrative description of the exhibit, and
- the number of pages (or the Bates numbers) of the exhibit (with the pages individually numbered, either by Bates-number, or by standard sequential designation, beginning with page 1).

It is mandated by the remote technology that is being used for the hearing that the parties will have provided ***before the date of the hearing*** to each other, and to the individual members of this Hearing Panel, the Exhibit List and copies of all exhibits to be used in the hearing. The parties will also have needed to have discussed and resolved how they would show or present to any witness (including any who may need to appear by phone), during the course of the hearing, a particular exhibit or any item not in evidence. The parties have been on notice that they needed to address

these issues prior to the hearing, and that, if they declined to do so before the hearing, they would nonetheless be directed and required by the presider to proceed forward on the date of the hearing.

d. Presider's Responsibility to Obtain and to Maintain the Original Hearing Record

The presider is responsible for maintaining the original hearing record. The presider will need to be provided during the hearing with the hard copy of every item admitted into evidence. The parties have already been on notice that they needed to have provided the presider with the **set of pre-marked exhibits in hard copy** prior to the hearing date, so that the presider would have that hard-copy set at hand for the start of the hearing. During the course of the hearing, the presider will have to maintain the exhibits admitted into evidence in hard copy. At the end of the hearing, the presider will be required to make sure that the parties have accounted for all evidence, before the record can be closed, and that all exhibits in hard copy are in the possession of the presider. [For cases prosecuted before DEC Hearing Panels:] The presider will be responsible for making sure that the complete hearing record is delivered in hard copy, along with the Hearing Panel Report, to the District Ethics Committee Vice Chair, so that the record may then be turned over to the OAE for transmittal to the Disciplinary Review Board, in accord with Court Rules.

e. Notice to Have Been Given Before the Hearing to Presider as to Any Issue of Language, Disability, or Special Needs

The parties have also been on notice of the need for them to have taken specific action ***before*** the hearing, so that any issue of disability or accommodation or any need for a translator or interpreter would have been addressed with the presider. Such issues cannot be addressed by the presider for the first time on the date of the hearing, and the parties have been on notice of the need for them to take prompt, appropriate action to address such issues, if the circumstances indicate any need. No interpreter can be used during a hearing unless the OAE will have arranged for those services in the manner prescribed by Judiciary guidelines, prior to the hearing. If there is any disability accommodation or request that has not been brought to the presider's attention before the hearing date, that issue cannot and should not be raised and resolved for the first time on the hearing date.

With the parties having been on notice of these procedures and directions for this attorney disciplinary matter -- including in the specific **Appendixes** referenced herein -- their attention to, and compliance with, and strict adherence to these "Instructions for the Public Hearing to Be Conducted in this Attorney Disciplinary Case," is

SO ORDERED, this _____ day of _____, 2020.

_____

Hearing Panel Chair
or Special Ethics Master

Appendix I

Notices sent by email from the OAE to the participants prior to the hearing:

1. Hearing Notice email:
    a. confirming who has been sent the Zoom invitation,
    b. giving instructions in a nutshell for the start of the hearing, and
    c. **attaching** the scripts for the presider's opening and closing statements (to be read into the record), and the Checklist for the presider to complete at the close of the hearing

2. Zoom invitation email, which is sent by the OAE to all participants in the hearing, and which attaches:
    a. The Zoom Connection Test (provided again to all participants)
    b. Appendix C: "How to Join and Participate in a Zoom Virtual Courtroom" (provided again to all participants)
    c. Appendix F: Witness Instructions for Remote Disciplinary Proceedings" (provided again to all participants)

Isabel McGinty

To: ZOOM INVITATION AND LOGIN INFORMATION FOR HEARING
Subject: ZOOM LOGIN INFORMATION: Hearing; OAE [or DEC] v. [Respondent], Docket No xxx-xxxx-xxxxE;

Zoom login information
HEARING NOTICE

District Ethics Committee [or Office of Attorney Ethics] v. [Respondent]
Docket No. xx-xxxx-xxxxE

OAEvircrtrm.mailbox@njcourts.gov is inviting you to a scheduled NJ Courts Virtual Courtroom.

Day & Time: [day], [date], 2020 [time] AM Eastern Time (US and Canada)

At least one day before the hearing, please make sure that you provide the Office of Attorney Ethics (OAE) with the cell phone number and email address that you will use on the date of the hearing. Please be alerted that the OAE will only admit to the hearing those using email addresses &/or devices that identify the particular participant. Should you require entry with another device – iPad, cellular phone, etc. – please let the OAE staff know in advance of the hearing by emailing the following addresses: **Janice Vinegar <janice.vinegar@njcourts.gov>; OAE Mailbox <oae.mbx@njcourts.gov>.**
Please make sure that your correct name appears on the Zoom screen at the time of the hearing.

The recipients of this email are prohibited from forwarding it to any other recipient. The parties must inform the presider (Hearing Panel Chair or Special Ethics Master) of any persons (including all witnesses and the Grievant) who need to be given notice of the hearing. The presider will then need to provide that information (including name of intended recipient, email, and cell phone, if known) to the OAE at the two addresses listed above (J. Vinegar and OAE Mailbox; subject line: "Zoom Invitations for Hearing in **[Case Name/or Docket No.]**."
The parties are alerted that they must communicate with their witnesses to inform them that they will be kept in the waiting room until they are called to testify, or until the presider authorizes them to be admitted to the Zoom session. The parties are responsible for providing the witnesses with information about when and how they will be asked to testify on Zoom. All participants are reminded that they are responsible for reading and acting on the information in the attachments to this email.
Thank you in advance for your understanding and patience.

Join NJ Courts Virtual Courtroom
https://njcourts.zoom.us/##

Meeting ID: ##########
Password: ##########

One tap mobile
+19294362866,,98022738517# US (New York)
+13017158592,,98022738517# US (Germantown)

Dial by your location
+1 929 436 2866 US (New York)
+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
888 475 4499 US Toll-free
833 548 0276 US Toll-free
833 548 0282 US Toll-free
877 853 5257 US Toll-free
Meeting ID: ############
Password: ############

Join by SIP
############@zoomcrc.com

Join by H.323
162.255.37.11 (US West)
162.255.36.11 (US East)
Meeting ID: ############
Password: ############

NOTICE AND WARNING:

The unauthorized recording and/or use of this court event may subject the individual involved to criminal charges, including a violation of the New Jersey Anti-Piracy Act, N.J.S.A. 2C:21-21, among other possible charges.

Attachments:

1. **Zoom Connection Test**
2. **Appendix C: "How to Join and Participate in a Zoom Virtual Courtroom"**
3. **Appendix E: "Witness Instructions for Remote Disciplinary Proceedings"**

):	MODEL EMAIL FOR HEARING BEFORE A SPECIAL ETHICS MASTER
Subject:	Hearing; OAE v. [Respondent], Docket No. XIV-xxxx-xxxxE

HEARING NOTICE (TO BE CONDUCTED BEFORE A SPECIAL ETHICS MASTER)

Office of Attorney Ethics v. [Respondent]
Docket No. XIV-xxxx-xxxxE

Attachments:

1. **Instructions for the Special Ethics Master to Open the Hearing (includes the Opening Statement which should be read into the record by the Special Master to start the hearing)**
2. **Closing Remarks to Be Read into the Record by the Special Ethics Master**
3. **Special Ethics Master's Checklist to be completed at the end of the hearing (confirming the exhibits in evidence and what else constitutes the documents in the hearing record)**

PLEASE REPLY TO THE* SPECIAL MASTER *AS TO ANY ISSUES SPECIFIC TO YOUR HEARING

Dear Special Master:

. am confirming the following information for the hearing in the case noted above, which is scheduled to proceed on the Judiciary's Zoom account scheduled for [day], [date], at [time]. The hearing must end for the day by 4:15 pm. The notice of the hearing, with Zoom log in information, has been sent already to the presenter, respondent, and respondent's counsel, as well as to you as the presider. All of those persons have attended the Zoom Connection Test, as required [or email will specify who has not attended Zoom Connection Test]. We have also sent the Zoom notice to the persons listed below, so they will have the login information.

The participants in the hearing are the following:

[name], Special Master
[name], Presenter
[name], Respondent
[name], Respondent's Counsel *[if Respondent is represented]*

The OAE has sent the Zoom login notice for the hearing to the grievant, [name; if any], and to the following additional persons (witnesses [if any]):

[name]
[name]
[name]

The parties are on notice that they must inform their witnesses of the specific information on when to log in on Zoom. They will reach the Waiting Room when they log in, and OAE staff will **not** be providing any information to the witness-in-waiting, other than admitting the witness to the proceedings when the presider instructs the Zoom moderator to do that. The parties are reminded to read the OAE handouts entitled "The Zoom Test," and Appendix C and E (attached to the Zoom invitation), as far as their need to provide further information to the witnesses. The parties

are reminded that they should also check the information in this email to make sure that all who need to be sent the login information from the OAE are those specified in this email.

The parties should make sure that they have sent their **Exhibit Lists** by email to the OAE (email to Janice Vinegar <janice.vinegar@njcourts.gov>; ***and*** to OAE Mailbox <oae.mbx@njcourts.gov>). That may help OAE staff in making sure that the record is clear as to admission of evidence, and what should be included in the record, which we may not receive in hard copy from the presider for several weeks thereafter (at the same time that the OAE receives the Hearing Report). Counsel should be alerted that the OAE Zoom moderator will activate the "ScreenShare" feature on Zoom at the start of each witness examination, should counsel seek to use that to show an exhibit to the witness.

During the hearing, two different OAE staff members will serve in assisting roles. One staff member will monitor the CourtSmart line; the other will serve as Zoom moderator and doorkeeper. The staff will not be at the OAE offices; they will be working separately and remotely. OAE staff may be assisted, if needed, by the OAE IT Supervisor (also working remotely). If, at any time during the proceedings, a technical issues may arise that needs to be addressed, the presider may want to go off the record briefly to have the appropriate OAE staff member(s) assist in whatever way may be needed. The CourtSmart recording will be on at all times unless the presider directs the OAE staff member to stop or to pause the recording. During Breakout sessions on Zoom, the OAE Zoom Monitor will inform the presider that the CourtSmart session will be paused for the duration of the Breakout session, while one or more of the participants in the hearing will be away from the hearing. The presider should also be sure to pause the CourtSmart recording during all breaks.

OAE staff who have been working on the technical side of the hearing (and on the templates for remote proceedings) hope that we are able to provide the presider with whatever technical assistance or backup that you may need during the hearing. All OAE personnel assisting with the technical aspects will be off camera and with muted microphones. If the parties need to alert the presider of an issue during the proceedings, they should do so on the record, or use the cell numbers and email addresses already available to them. The OAE will **not** be providing a separate emergency call-in number for this hearing.

The participants should log in to Zoom twenty minutes before the scheduled start time for the hearing, and each should test their audio while they wait to be admitted to the hearing. The presider will then determine when the parties will be admitted to the hearing. In the meantime, the parties will see the message on their computer screen that they are waiting to be admitted by the moderator to the Zoom event. The participants should take appropriate steps, before the start of the session, to make sure that the grievant will be admitted to view the proceedings from the start of the hearing (with camera off and microphone muted).

The participants in the hearing are blind copied on this email.

Sincerely,

Isabel McGinty
Assistant Ethics Counsel and Statewide Ethics Coordinator
Office of Attorney Ethics
P.O. Box 963
Trenton, NJ 08625
609 403-7800, ext. 34142
609 403-7597 fax
isabel.mcginty@njcourts.gov

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Isabel McGinty

To: MODEL EMAIL FOR HEARING BEFORE A HEARING PANEL
Subject: Hearing; DEC v. [Respondent], Docket No. xx-xxxx-xxxxE

HEARING NOTICE (TO BE CONDUCTED BEFORE A HEARING PANEL)

District Ethics Committee v. [Respondent]
Docket No. xx-xxxx-xxxxE

Attachments:

1. **Instructions for the Hearing Panel Chair to Open the Hearing (includes the Opening Statement which should be read into the record by the Panel Chair to start the hearing)**
2. **Closing Remarks to Be Read into the Record by the Hearing Panel Chair**
3. **Hearing Panel Chair's Checklist to be completed at the end of the hearing (confirming the exhibits in evidence and what else constitutes the documents in the hearing record)**

PLEASE REPLY TO THE PANEL CHAIR AS TO ANY ISSUES SPECIFIC TO YOUR HEARING

Dear Panel Chair:

I am confirming the following information for the hearing in the case noted above, which is scheduled to proceed on the Judiciary's Zoom account scheduled for [day], [date], at [time]. The hearing must end for the day by 4:15 pm. The notice of the hearing, with Zoom log in information, has been sent to the hearing panel, the presenter, respondent and respondent's counsel. All of those persons have attended the Zoom Connection Test, as required [or email will specify who has not attended Zoom Connection Test]. We have also sent the Zoom notice to the persons listed below, so they will have the login information.

The participants in the hearing are the following:

[name], Panel Chair
[name], Attorney Member of the Hearing Panel
[name], Public Member of the Hearing Panel
[name], Presenter
[name], Respondent
[name], Respondent's Counsel

The OAE has sent the Zoom login notice for the hearing to the grievant, [name], and to the following additional persons (witnesses):

[name]
[name]
[name]

The parties are on notice that they must inform their witnesses of the specific information on when to log in on Zoom. They will reach the Waiting Room when they log in, and OAE staff will **not** be providing any information to the witness-in-waiting, other than admitting the witness to the proceedings when the presider instructs the Zoom moderator to do that. The parties are reminded to read the OAE handouts entitled "The Zoom Test," and Appendix C

and E (attached to the Zoom invitation), as far as their need to provide further information to the witnesses. The parties are reminded that they should also check the information in this email to make sure that all who need to be sent the login information from the OAE are those specified in this email.

The parties should make sure that they have sent their **Exhibit Lists** by email to the OAE (email to Janice Vinegar <janice.vinegar@njcourts.gov>; OAE Mailbox <oae.mbx@njcourts.gov>). That may help OAE staff in making sure that the record is clear as to admission of evidence, and what should be included in the record, which we may not receive in hard copy from the Hearing Panel Chair for several weeks thereafter (at the same time that the OAE receives the Hearing Panel Report). Counsel should be alerted that the OAE Zoom moderator will activate the "ScreenShare" feature on Zoom at the start of each witness examination, should counsel seek to use that to show an exhibit to the witness.

During the hearing, two different OAE staff members will serve in assisting roles. One staff member will monitor the CourtSmart line; the other will serve as Zoom moderator and doorkeeper. The staff will not be at the OAE offices; they will be working separately and remotely. OAE staff may be assisted, if needed, by the OAE IT Supervisor (also working remotely). If, at any time during the proceedings, a technical issues may arise that needs to be addressed, the Panel Chair may want to go off the record briefly to have the appropriate OAE staff member(s) assist in whatever way may be needed. The CourtSmart recording will be on at all times unless the Panel Chair directs the OAE staff member to stop or to pause the recording. During Breakout sessions on Zoom, the OAE Zoom Monitor will inform the presider that the CourtSmart session will be paused for the duration of the Breakout session, while one or more of the participants in the hearing will be away from the hearing. The presider should also be sure to pause the CourtSmart recording during all breaks.

OAE staff who have been working on the technical side of the hearing (and on the templates for remote proceedings) hope that we are able to provide the Panel Chair with whatever technical assistance or backup that you may need during the hearing. All OAE personnel assisting with the technical aspects will be off camera and with muted microphones. If the parties need to alert the Panel Chair of an issue during the proceedings, they should do so on the record, or use the cell numbers and email addresses already available to them. The OAE will **not** be providing a separate emergency call-in number for this hearing.

The participants should log in to Zoom twenty minutes before the scheduled start time for the hearing, and each should test their audio while they wait to be admitted to the hearing. The Panel Chair would first ask the Zoom moderator to admit the two other members of the Hearing Panel. The Panel Chair will then determine when the parties will be admitted to the hearing. In the meantime, the parties will see the message on their computer screen that they are waiting to be admitted by the moderator to the Zoom event. The participants should take appropriate steps, before the start of the session, to make sure that the grievant will be admitted to view the proceedings from the start of the hearing (with camera off and microphone muted).

The participants in the hearing are blind copied on this email.

Sincerely,

Isabel McGinty
Assistant Ethics Counsel and Statewide Ethics Coordinator
Office of Attorney Ethics
P.O. Box 963
Trenton, NJ 08625
609 403-7800, ext. 34142
609 403-7597 fax
isabel.mcginty@njcourts.gov

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restrictions and penalties regarding its unauthorized disclosure or other use. You are prohibited from copying, distributing or otherwise using this information if you are not the intended recipient. If you have received this e-mail in error, please notify us immediately by return e-mail and delete this e-mail and all attachments from your system. Thank You.

Appendix J

Templates for Use by the Hearing Panel Chair to Open and Close the Hearing:

1. Instructions for the Hearing Panel Chair to Open the Hearing (includes the **Opening** Statement which should be read into the record by the Panel Chair to start the hearing)

2. **Closing** Remarks to Be Read into the Record by the Hearing Panel Chair

3. Hearing Panel Chair's **Checklist** to be completed at the end of the hearing (confirming the exhibits in evidence and what else constitutes the documents in the hearing record)

Appendix J

Part 1

Templates for Use by the Hearing Panel Chair to Open and Close the Hearing:

Instructions for the Hearing Panel Chair to Open the Hearing (includes the **Opening** Statement which should be read into the record by the Panel Chair to start the hearing)

Case name: _____

Docket No.: _____

INSTRUCTIONS FOR THE HEARING PANEL CHAIR TO OPEN THE HEARING (for CourtSmart Proceeding on Zoom)

PART 1. STEPS TO TAKE BEFORE GOING ON THE RECORD

1. Make sure that CourtSmart and Zoom are working. **OAE staff members serving as moderators will confirm whether they are ready to proceed on CourtSmart and Zoom.**

2. The attendees need to be admitted from the waiting room. The first attendees to be admitted should be the other members of the Hearing Panel.

3. Once the Presenter and the Respondent's Counsel and Respondent are all present in the waiting room, the Hearing Panel Chair should direct the Zoom moderator to admit them as a group at the appropriate time.

4. Please confirm with the Presenter that the Grievant has been given notice of the hearing. The OAE Zoom Moderator will confirm whether the Zoom invitation to the hearing has been sent to any Grievant, and whether the Grievant is in the waiting room. If the Grievant has not been given notice of the hearing, the hearing cannot proceed.

5. Please address any issues relating to sequestration of witnesses before going on the record. The hearing is open to the public, and OAE staff will need specific direction on what should happen if other persons (including witnesses) seek entry to the proceedings, once the hearing starts. Any sequestration order should not include the Grievant, who has the right to attend the hearing.

6. Please remember to keep witnesses on camera only for the duration of their testimony. When the witness completes testimony, please direct the witness to turn off their camera. (Witness may remain off-camera, viewing the proceedings, unless sequestered.) OAE staff can assist in turning off witness' camera, if requested by presider.

7. Before you go on the record to start the hearing, you may want to determine the schedule for any breaks, including lunch.

8. Please remind all participants to keep the login information (Zoom invitation) nearby, in case they need to log off and log back in, or if their Zoom connection drops, for any reason. The fastest way to address technical difficulties of any sort is by logging off and logging back in. The underlying problem may simply resolve itself with no further action needed.

9. During any breaks, please remember to direct that CourtSmart be paused. You may want to alert the parties to turn off their microphones and cameras for the duration of the break. The presider should keep your microphone on at all times, so other participants can hear your directions, and so they will know when to return to the proceedings.

10. At the end of the testimony of each witness, and at the end of each day of the hearing, please make sure the parties have the opportunity to memorialize on the hearing record any **specific information** relating to the virtual nature of the proceedings and relating to any inability or difficulty in seeing or hearing the proceedings, and also addressing why the party did not raise the issue immediately when it happened.

11. Make sure that the exhibits have been circulated to the parties, and that you, as presider, have the full set of exhibits, since you will be responsible for maintaining that record when the hearing ends.

12. After the parties rest their cases, make sure you conduct a conference with the parties to identify all that is part of the hearing record, and to go over all of the exhibits that have been formally admitted into evidence.

13. Before the hearing ends, confirm for the parties whether they will give oral closing arguments, or whether they request to submit written summations, or whether they seek to do both. If there will be written summations, please set the schedule.

14. Please remember to **read into the record** the presider's opening statement at the start of the hearing (**Appendix J, Part 1**, which is this document).

15. Please remember to **read into the record** the presider's closing statement at the end of the hearing (**Appendix J, Part 2**).

16. Please remember to **fill out** the presider's Checklist, on the record at the end of the hearing (**Appendix J, Part 3**).

PART 2. THE START OF THE HEARING RECORD.

THE FOLLOWING INSTRUCTIONS SHOULD BE READ INTO THE RECORD BY THE HEARING PANEL CHAIR TO OPEN THE HEARING:

Please say the following:

I direct this question to the OAE CourtSmart Operator: Please confirm that the CourtSmart recording system has been turned on. *[Wait for the CourtSmart Operator to state that CourtSmart is working.]*

We are now on the record.

We are convening the matter of **[CASE NAME AND DOCKET NUMBER].**

We will begin by having the parties place their appearances on the record, starting with the Presenter, and then followed by [Respondent's counsel and] Respondent:

[PARTIES ENTER APPEARANCES]

I. THE HEARING PANEL

The parties have had prior notice of the composition of the Hearing Panel. This matter is being heard by a Panel consisting of:

- ***[name]***, a public member of the District Ethics Committee;
- ***[name]***, an attorney member of the same committee; and
- Myself, ***[name]***, an attorney member of the same committee. I am also serving as the Hearing Panel Chair.

The parties have been on notice of the composition of the hearing panel, so as to have raised any objections to have been addressed and resolved prior to today's hearing.

II. CASE MANAGEMENT ORDERS ISSUED IN THESE PROCEEDINGS ARE BINDING ON THIS HEARING

[Include this introduction where the presider has issued the Case Management Orders [templates for the Case Management Orders are at Appendix H, Parts 1 and 2:]

The procedures to be followed for this proceeding have been spelled out in detail in the Case Management Orders issued by the presider in this matter. The parties are on continuing notice of the contents and directives of those Orders, and the information contained in those Orders.

III. USE OF REMOTE TECHNOLOGY DURING THIS HEARING

This hearing will be conducted remotely, by Zoom and/or, if needed, phone technology. The official record of these proceedings is the audio recording, which is being captured through the CourtSmart recording system. Office of Attorney Ethics staff are assisting off-camera as monitors to make sure that the Zoom and CourtSmart technologies operate as intended during these proceedings.

The only persons at the hearing who should have their ***cameras turned on*** at any time during the hearing would be the following:

- the three members of the Hearing Panel,
- the Presenter,
- the Respondent,
- any witness (but only during the period of the witness's testimony).

The parties (Presenter and Respondent) should keep their ***microphones muted*** at all times, unless they are addressing the Panel Chair. It is recommended, as well,

that other Hearing Panel Members keep their microphones muted when not speaking, in order to minimize background noise.

All others who are viewing the proceeding would need to keep their ***camera*** turned ***off***, with their ***microphone muted***. The Grievant has the right to observe all of the hearing, if the Grievant so chooses. But the Grievant would need to keep microphone on mute and video turned off, unless called as a witness by either of the parties.

The Hearing Panel Chair will be responsible for keeping order at all times during the proceedings, and no party or attendee may speak unless recognized and allowed by the Panel Chair.

The parties and the Hearing Panel must remain on notice that the ***CourtSmart recording system will continue recording all that is said during the proceedings, with live microphones at all times***, in a manner similar to how the recording system works in a live courtroom. The parties are on notice that, if they seek to consult privately with any witnesses or third parties, or to conduct any off-the-record communications, they would need to ask to be placed in a Zoom breakout room, or otherwise to use another method of communication for conversations to remain private and not recorded on CourtSmart (e.g., phone, text, email).

At all times during these proceedings, all participants must treat the proceedings as formal, court events, where the ***standard rules for court appearances apply and will be enforced by the Panel Chair.***

The parties are on notice that the Supreme Court has given express and specific warning of the penalties (including pursuant to criminal law) for unauthorized recording or transmission of the proceedings.

If, at any time during these proceedings, a party experiences any technical problems that affects their ability to hear and/or observe the proceedings, that party should state on the record the issue presented ***immediately***. The Panel Chair will determine at that time what, if any, corrective or other action should be taken to address the issue. Please keep in mind that there is no way to rewind CourtSmart or to replay testimony on the CourtSmart recording system.

The parties have been on notice that they are each responsible for their own technology and equipment, and must become familiar with Zoom's controls well before the hearing. The parties have also been on notice to make sure that their witnesses will be able to appear on Zoom for the hearing. Since 1995, the Supreme Court has allowed the trier of fact to accept testimony of a witness in a disciplinary hearing to be taken by video conference or by telephone, and that is specified in the Court Rules.[1] The parties were required to take part in a Zoom Test moderated by the Office of Attorney Ethics, and they were provided with OAE print guides for using Zoom technology, to prepare themselves and their witnesses for this hearing.

IV. PROCEDURES FOR THIS ATTORNEY DISCIPLINARY HEARING

All participants in these proceedings must all bear in mind the directive of the Supreme Court as to attorney disciplinary cases: That they are intended to preserve public confidence in the attorney disciplinary system, the Courts, and the legal profession as a whole.

The ***Panel Chair is not permitted to rule on constitutional questions***,[2] and no such questions should be directed to the Panel Chair.

The parties had the opportunity, prior to the date of the hearing, to have submitted to the Panel Chair any motions, objections, and/or applications, so those issues could be addressed and resolved prior to the start of today's hearing.

All statements on the record need to be audible and understandable. All parties and witnesses must keep their voices up. If either cannot hear or understand what is said, either due to acoustics or pronunciation or any technical issue, that party must alert the Panel Chair immediately of that. The parties must make sure that all comments and requests are directed to the Panel Chair, only, who will then determine any appropriate response or action.

The video and/or phone technology being used for these proceedings, and the fact that this is a public hearing, make the risk of accidental or inadvertent disclosure of

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[1] R. 1:20-6(c)(2)(A).

[2] R. 1:20-4(e); R. 1:20-15(h); see R. 1:20-16(f)(1).

confidential or protected information all the more urgent to identify, to avert, and to remedy. ***The parties have been on notice, and they continue to be on notice, of the duty to be vigilant and to act, where needed, to make sure that no confidential or protected information will be disclosed during these public proceedings.***

The Court Rules specify that this hearing is formal,[3] and all of the hearing procedures must reflect the solemnity of these proceedings. The Hearing Panel will govern itself accordingly and the parties are expected and required to do so as well. That said, because it may be helpful or even necessary, the individual Hearing Panel members may speak at times and seek clarification.

Hearings such as this are conducted formally and publicly, as required by Court Rule.[4] The presider will follow, to the extent applicable here, the rules governing procedures in civil actions, starting with opening statements, offers of proof, presentation of witnesses, and closing arguments.

Formal charges of unethical conduct must be established by clear and convincing evidence.[5] The Presenter bears the burden of establishing by clear and convincing evidence that Respondent has committed the alleged ethical violations.[6] The burden of proof in proceedings seeking discipline or demonstrating aggravating factors relevant to unethical conduct charges is on the Presenter.[7] The burden of going forward regarding defenses or demonstrating mitigating factors relevant to charges of unethical conduct is on the Respondent.[8]

The Rules of Evidence may be relaxed in disciplinary proceedings, by Court Rule.[9] The Rules of Evidence are not suspended in these proceedings, however, and it is expected that the party seeking the relaxation of an evidence rule should be able to articulate the reason why the Rules of Evidence should be relaxed in the circumstances

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[3] R. 1:20-8(b).
[4] R. 1:20-6(b)(2)(F); R. 1:20-8(b).
[5] R. 1:20-6(c)(2)(C).
[6] R. 1:20-6(c)(2)(B)-(C).
[7] R. 1:20-6(c)(2)(C).
[8] R. 1:20-6(c)(2)(C).
[9] R. 1:20-7(b).

presented. The Court Rules further provide that the residuum evidence rule shall apply.[10]

During the hearing, any witness called to testify (including the Respondent) will be required by the Panel Chair, before they begin their testimony, to swear or to affirm the truth of their testimony.[11] Each witness should be asked to provide their name, spelling out their last name for the record. ***No home address or home phone information of any person should be made part of the public record, including on any exhibit.*** If an exhibit contains a home address or a home phone number, the party offering the exhibit is responsible to make sure that information will be redacted ***before*** the exhibit is admitted into evidence.

Applications for rulings should be directed to the Panel Chair. After an application is made, the Panel Chair may (but is not required to) consult, where appropriate, with members of the Hearing Panel and shall rule thereon, to the extent possible.

The Hearing Panel is ultimately here to make one of two findings. The Hearing Panel can either conclude:

---

[10] R. 1:20-7(b). On the residuum rule and the clear and convincing standard of evidence, see *OAE Hearings Manual*, Appendix D, at D28-D30.

[11] R. 1:20-6(c)(2). The witness should be given the choice of whether to swear or affirm. Following from that choice, the presider may administer the following as the oath or affirmation:

> ***Oath***:
>
> Do you solemnly swear that the testimony you shall give in this matter shall be the truth, the whole truth, and nothing but the truth, so help you God?
>
> ***Affirmation***:
>
> Do you solemnly declare and affirm, under penalty of perjury, that the testimony that you shall give in this matter shall be the truth, the whole truth, and nothing but the truth?

(a) that clear and convincing evidence supports the determination that the Respondent has committed unethical conduct, in which case the Hearing Panel would then make a recommendation of the discipline to be imposed, with that decision to be submitted thereafter to the Disciplinary Review Board for *de novo* review on the record of these proceedings;[12] or

(b) instead, that the evidence does not meet the clear and convincing standard to support the finding of any violation charged in the complaint, following which the Hearing Panel would issue a Panel Report recommending dismissal. The parties and the Office of Attorney Ethics would then be given notice of that dismissal recommendation, and of the right to appeal that decision to the Disciplinary Review Board.

The parties may request the opportunity to give oral closing arguments, and/or they may ask to submit summation briefs, at the conclusion of the hearing, setting forth the legal analyses of the issues presented. The parties may take such opportunity to set forth their case, based on the evidence presented at this hearing, so that the Hearing Panel may give full, fair, and deliberate attention to the issues presented. The Respondent would typically be expected to submit a summation brief first, with the Presenter (who bears the burden of proof on the issues of the violations and the discipline) to submit thereafter, in accord with the schedule to be set by the Panel Chair. The Hearing Panel will issue its written Hearing Report, on completion of its review of the record.

The Panel Chair is responsible for maintaining the original hearing record. At the end of the hearing, the Panel Chair will be required to make sure that the parties have accounted for all evidence, before the record can be closed, and that all exhibits in hard copy are in the possession of the Panel Chair. The Panel Chair will be responsible for making sure that the complete hearing record is delivered in hard copy, along with the Hearing Panel Report, to the District Ethics Committee Vice Chair, so that the

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[12] R. 1:20-15(f).

record may then be turned over to the Office of Attorney Ethics for transmittal to the Disciplinary Review Board, in accord with Court Rules.

Does either party seek to be heard at this time?

We will now proceed with opening statements. The presenter will address the Panel first, followed by Respondent' counsel.

REMEMBER (for Presider):

Before taking any break, state,

"CourtSmart Operator: Please stop the CourtSmart recording."

After any break, before going back on the record:

Say the following:

"I direct this question to the OAE CourtSmart Operator: Please confirm that the CourtSmart recording system has been turned on. *[Wait for the CourtSmart Operator to state that CourtSmart is working.]*

"We are now on the record."

At the end of the questioning of any witness, and at the end of each day's session, the presider should ask the parties if

During any break, the presider may want to recommend to the participants that they keep their video and audio turned off, until it is time to rejoin the proceedings.

Before moving any persons to a Breakout Session, the Zoom Moderator will state that the CourtSmart recording will be paused, and the CourtSmart Operator will confirm that the recording is paused.

All participants should keep the login information nearby, so they can rejoin the proceedings speedily, should they disconnect or have technical problems during the proceedings.

Appendix J

Part 2

Templates for Use by the Hearing Panel Chair to Open and Close the Hearing:

Closing Remarks to Be Read into the Record by the Hearing Panel Chair

Case name: _____

Docket No.: _____

CLOSING REMARKS TO BE READ ON THE RECORD BY THE HEARING PANEL CHAIR (for CourtSmart Proceeding on Zoom)

The following should be read by the Hearing Panel Chair on the record at the conclusion of the Hearing. The Hearing Panel Chair should simultaneously complete the "Hearing Panel Chair's Checklist," sign it, and then admit it in evidence as an Exhibit. The signed Checklist must be included with the hearing report and the complete hearing record, to be delivered by the Panel Chair to the DEC Vice Chair or DEC Secretary. That officer would then be responsible for delivering the hearing report and the hearing record to the OAE so that it can be transmitted electronically to the Disciplinary Review Board, pursuant to R. 1:20-5(b)(5).

TEXT OF PANEL CHAIR'S CLOSING REMARKS:

Before closing the record for this hearing, I am reviewing and confirming with the parties the accuracy and completeness of the documents in my possession comprising the written hearing record.

Before we proceed, I want to remind the parties of their obligation already to have redacted or removed all information within the scope of R. 1:38-7(a), which protects information within the scope of "personal confidential identifiers" against disclosure.

Please confirm that you have redacted Social Security Nos.; Driver's License Nos.; License Plates; Insurance Policy Nos.; Credit Card Nos.; and Financial Accounts, including Tax IDs.

Let the record reflect that I have in front of me the full hardcopy set of the documents comprising the written hearing record. I have gone through the following in conference with the parties to confirm the accuracy of the information that I have filled out on the form bearing the following title:

"Hearing Panel Chair's Checklist for Completeness and Accuracy of the Documents in the Hearing Record, Following from Virtual Proceedings"

The Checklist will be included in the record as Exhibit ____.

The parties should be on notice that, if the Hearing Panel finds that there is clear and convincing evidence that the respondent has committed unethical conduct, I will then follow the procedure set forth in R. 1:20-7(n), and what I am about to say tracks the language of the Court Rule. I will request from the Office of Attorney Ethics a summary of any orders, letters, or opinions imposing temporary or final discipline or disability on the respondent. The parties would be provided with that information, and they would then have five days from their receipt of that information to submit written argument on the issue of the effect to be given thereto.

Keep in mind that any request for an extension for any post-hearing submissions must first be on notice to the other party. R. 1:20-7(k) provides that requests for extensions shall be made in writing, stating with specificity the facts on which the request is based. Any post-hearing brief submitted by the respondent should be received by the Hearing Panel by _____. The presenter's brief would be due on _____.

R. 1:20-5(b)(5) requires the filing of the Hearing Panel Report with the Secretary for transmittal to the Office of Attorney Ethics within sixty days from today. The Panel will make appropriate efforts to abide by the time goals set by the Supreme Court, and we expect the parties' cooperation in meeting the deadlines which we have set.

Does anyone wish to be heard?

If not, let the record reflect it is _____ A.M/P.M. and that I am closing the record, except for the post-hearing submissions which I have just detailed.

Thank you all for your cooperation in this matter. In all that we do, we must make sure that public confidence in the attorney disciplinary system, and in the courts, and in the legal profession will be maintained. We aspire to accomplish that goal in these proceedings.

[Please advise the OAE CourtSmart Administrator if you wish to go off the record.]

Appendix J

Part 3

Templates for Use by the Hearing Panel Chair to Open and Close the Hearing:

Hearing Panel Chair's **Checklist** to be completed at the end of the hearing (confirming the exhibits in evidence and what else constitutes the documents in the hearing record)

Case name: _____

Docket No.: _____

EXHIBIT

Hearing Panel Chair's Checklist for Completeness and Accuracy of the Documents in the Hearing Record, Following from Virtual Proceedings

[To be read out and completed by the Panel Chair while still on the record, at the conclusion of the Hearing. Any changes needed should be marked right on this form.]

I confirm the following to be true:

_____1. Presenter's Exhibits have been admitted into evidence as _____.

_____2. Respondent's Exhibits have been admitted into evidence as _____.

_____3. *[if any]* Stipulation of the parties is marked _____.

_____4. I confirm that the documents comprising the hearing record is in my possession in hard copy, and that I have a hard copy of all of the hearing exhibits that have been marked and admitted into evidence.

_____5. I confirm that the documentary hearing record includes the Complaint and Verified Answer, and any amended pleadings, as well as all Case Management Orders, and all of the additional motions or filings itemized on the hearing record at the conclusion of the hearing. These exhibits have been labeled as _____.

_____6. The parties have confirmed that the evidence and all parts of the hearing record have been redacted to remove or black-out personal identifiers, pursuant to R. 1:38-7(a), and that all issues relating to confidentiality or sealing of any part of the hearing record have already been addressed.

_____7. As Hearing Panel Chair, I have already reviewed with the parties on the record at the hearing the complete list of all evidence comprising the

hearing record, and the parties have confirmed their agreement and/or they have had the opportunity to state any objection or omission.

_____8. I have received all of the above and will safeguard the hearing record until it is delivered to the District Ethics Committee Vice Chair or the DEC Secretary, after the Hearing Panel Report will have been issued.

_____9. The parties were instructed on the record to file their post-hearing submissions by a date certain, and they were further advised that a Hearing Panel Report would be submitted within approximately 60 days of the closing of the proceedings (*i.e.*, report to be issued by the Hearing Panel on or before _____);

_____10. I have confirmed that the members of the Hearing Panel have all agreed that they will review the Hearing Panel Report in its entirety and make sure that they concur in its analysis, findings and conclusions. I have confirmed with the members of the panel that each will have the opportunity to review the Hearing Panel Report in its final form before it is issued to the parties, and that each may file a concurring or dissenting opinion, if any panelist so chooses.

_____11. The Hearing Panel Report will be submitted to the DEC Vice Chair for review prior to filing with the Secretary, to make sure that the report meets the requirements of R. 1:20-6(c)(2)(E).

I verify the accuracy and completeness of (a) the exhibits moved into evidence and made a part of the record of the hearing, and (b) the information set forth above. I have initialed or otherwise annotated each of the entries above, and I sign and date this document at the conclusion of the hearing, and this Checklist is now included as part of the record.

_____ _____

Date **Signature**

Appendix K

Templates for Use by the Special Ethics Master to Open and Close the Hearing:

1. Instructions for the Special Ethics Master to Open the Hearing (includes the **Opening** Statement which should be read into the record by the Special Ethics Master to start the hearing)

2. **Closing** Remarks to Be Read into the Record by the Special Ethics Master

3. Special Ethics Master's **Checklist** to be completed at the end of the hearing (confirming the exhibits in evidence and what else constitutes the documents in the hearing record)

Appendix K

Part 1

Templates for Use by the Special Ethics Master to Open and Close the Hearing:

Instructions for the Special Ethics Master to Open the Hearing (includes the **Opening** Statement which should be read into the record by the Special Ethics Master to start the hearing)

Case name: _____

Docket No.: _____

INSTRUCTIONS FOR THE SPECIAL ETHICS MASTER TO OPEN THE HEARING (for CourtSmart Proceeding on Zoom)

PART 1. STEPS TO TAKE BEFORE GOING ON THE RECORD

1. Make sure that CourtSmart and Zoom are working. **OAE staff members serving as moderators will confirm whether they are ready to proceed on CourtSmart and Zoom.**

2. The attendees need to be admitted from the waiting room. Once the Presenter and the Respondent's Counsel and Respondent are all present in the waiting room, the Special Master should direct the Zoom moderator to admit them as a group at the appropriate time.

3. Please confirm with the Presenter that the Grievant has been given notice of the hearing. The OAE Zoom Moderator will confirm whether the Zoom invitation to the hearing has been sent to any Grievant, and whether the Grievant is in the waiting room. If the Grievant has not been given notice of the hearing, the hearing cannot proceed.

4. Please address any issues relating to sequestration of witnesses before going on the record. The hearing is open to the public, and OAE staff will need specific direction on what should happen if other persons (including witnesses) seek entry to the proceedings, once the hearing starts. Any sequestration order should not include the Grievant, who has the right to attend the hearing.

5. Please remember to keep witnesses on camera only for the duration of their testimony. When the witness completes testimony, please direct the witness to turn off their camera. (Witness may remain off-camera, viewing the proceedings, unless sequestered.) OAE staff can assist in turning off witness' camera, if requested by presider.

6. Before you go on the record to start the hearing, you may want to determine the schedule for any breaks, including lunch.

7. Please remind all participants to keep the login information (Zoom invitation) nearby, in case they need to log off and log back in, or if their Zoom connection drops, for any reason. The fastest way to address technical difficulties of any sort is by logging off and logging back in. The underlying problem may simply resolve itself with no further action needed.

8. During any breaks, please remember to direct that CourtSmart be paused. You may want to alert the parties to turn off their microphones and cameras for the duration of the break. The presider should keep your microphone on at all times, so other participants can hear your directions, and so they will know when to return to the proceedings.

9. At the end of the testimony of each witness, and at the end of each day of the hearing, please make sure the parties have the opportunity to memorialize on the hearing record any specific information relating to the virtual nature of the proceedings and relating to any inability or difficulty in seeing or hearing the proceedings, and also addressing why the party did not raise the issue immediately when it happened.

10. Make sure that the exhibits have been circulated to the parties, and that you, as presider, have the full set of exhibits, since you will be responsible for maintaining that record when the hearing ends.

11. After the parties rest their cases, make sure you conduct a conference with the parties to identify all that is part of the hearing record, and to go over all of the exhibits that have been formally admitted into evidence.

12. Before the hearing ends, confirm for the parties whether they will give oral closing arguments, or whether they request to submit written summations, or whether they seek to do both. If there will be written summations, please set the schedule.

13. Please remember to **read into the record** the presider's opening statement at the start of the hearing (**Appendix K, Part 1**, which is this document).

14. Please remember to **read into the record** the presider's closing statement at the end of the hearing (**Appendix K, Part 2**).

15. Please remember to **fill out** the presider's Checklist, on the record at the end of the hearing (**Appendix K, Part 3**).

PART 2. THE START OF THE HEARING RECORD.

THE FOLLOWING INSTRUCTIONS SHOULD BE READ INTO THE RECORD BY THE SPECIAL ETHICS MASTER TO OPEN THE HEARING:

Please say the following:

I direct this question to the OAE CourtSmart Operator: Please confirm that the CourtSmart recording system has been turned on. *[Wait for the CourtSmart Operator to state that CourtSmart is working.]*

We are now on the record.

We are convening the matter of **Office of Attorney Ethics v. [Respondent's name], Docket No. XIV-####-####E.**

I am [*name*], the Special Ethics Master, appointed by the New Jersey Supreme Court to preside at this hearing. We will begin by having the parties place their appearances on the record, starting with the Presenter, and then followed by Respondent's counsel, and then the Respondent:

[PARTIES ENTER APPEARANCES]

I. CASE MANAGEMENT ORDERS ISSUED IN THESE PROCEEDINGS ARE BINDING ON THIS HEARING

[Include this introduction where the presider has issued the Case Management Orders [templates for the Case Management Orders are at Appendix H, Parts 1 and 2:]

The procedures to be followed for this proceeding have been spelled out in detail in the Case Management Orders issued by the presider in this matter. The parties are on continuing notice of the contents and directives of those Orders, and the information contained in those Orders.

II. USE OF REMOTE TECHNOLOGY DURING THIS HEARING

This hearing will be conducted remotely, by Zoom and/or, if needed, phone technology. The official record of these proceedings is the audio recording, which is being captured through the CourtSmart recording system. Office of Attorney Ethics staff are assisting off-camera as monitors to make sure that the Zoom and CourtSmart technologies operate as intended during these proceedings.

The only persons at the hearing who should have their ***cameras turned on*** at any time during the hearing would be the following:

- the Presenter,
- the Respondent and Respondent's counsel,
- any witness (but only during the period of the witness's testimony).

The parties (Presenter, Respondent's counsel, and Respondent) should keep their ***microphones muted*** at all times, unless they are addressing the Presider, to minimize background noise.

All others who are viewing the proceeding would need to keep their ***camera*** turned ***off***, with their ***microphone muted***. The Grievant has the right to observe all of the hearing, if the Grievant so chooses. But the Grievant would need to keep microphone on mute and video turned off, unless called as a witness by either of the parties.

The Special Ethics Master, as the presider, will be responsible for keeping order at all times during the proceedings, and no party or attendee may speak unless recognized and allowed by the presider.

The parties must remain on notice that the ***CourtSmart recording system will continue recording all that is said during the proceedings, with live microphones at all times***, in a manner similar to how the recording system works in a live courtroom. The parties are on notice that, if they seek to consult privately with any witnesses or third parties, or to conduct any off-the-record communications, they would need to ask to be placed in a Zoom breakout room, or otherwise to use another method of communication for conversations to remain private and not recorded on CourtSmart (e.g., phone, text, email).

At all times during these proceedings, all participants must treat the proceedings as formal, court events, where the ***standard rules for court appearances apply and will be enforced by the Presider.***

The parties are on notice that the Supreme Court has given express and specific warning of the penalties (including pursuant to criminal law) for unauthorized recording or transmission of the proceedings.

If, at any time during these proceedings, a party experiences any technical problems that affects their ability to hear and/or observe the proceedings, that party should state on the record the issue presented ***immediately***. The Presider will determine at that time what, if any, corrective or other action should be taken to address the issue. Please keep in mind that there is no way to rewind CourtSmart or to replay testimony on the CourtSmart recording system.

The parties have been on notice that they are each responsible for their own technology and equipment, and must become familiar with Zoom's controls well before the hearing. The parties have also been on notice to make sure that their witnesses will be able to appear on Zoom for the hearing. Since 1995, the Supreme Court has allowed the trier of fact to accept testimony of a witness in a disciplinary hearing to be taken by video conference or by telephone, and that is specified in the Court Rules.[1] The parties were required to take part in a Zoom Test moderated by the Office of

[1] R. 1:20-6(c)(2)(A).

Attorney Ethics, and they were provided with OAE print guides for using Zoom technology, to prepare themselves and their witnesses for this hearing.

III. PROCEDURES FOR THIS ATTORNEY DISCIPLINARY HEARING

All participants in these proceedings must all bear in mind the directive of the Supreme Court as to attorney disciplinary cases: That they are intended to preserve public confidence in the attorney disciplinary system, the Courts, and the legal profession as a whole.

The ***Presider is not permitted to rule on constitutional questions***,[2] and no such questions should be directed to the Presider.

The parties had the opportunity, prior to the date of the hearing, to have submitted to the Presider any motions, objections, and/or applications, so those issues could be addressed and resolved prior to the start of today's hearing.

All statements on the record need to be audible and understandable. All parties and witnesses must keep their voices up. If either cannot hear or understand what is said, either due to acoustics or pronunciation or any technical issue, that party must alert the Presider immediately of that. The parties must make sure that all comments and requests are directed to the Presider, only, who will then determine any appropriate response or action.

The video and/or phone technology being used for these proceedings, and the fact that this is a public hearing, make the risk of accidental or inadvertent disclosure of confidential or protected information all the more urgent to identify, to avert, and to remedy. ***The parties have been on notice, and they continue to be on notice, of the duty to be vigilant and to act, where needed, to make sure that no confidential or protected information will be disclosed during these public proceedings.***

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[2] R. 1:20-4(e); R. 1:20-15(h); see R. 1:20-16(f)(1).

The Court Rules specify that this hearing is formal,[3] and all of the hearing procedures must reflect the solemnity of these proceedings.

Hearings such as this are conducted formally and publicly, as required by Court Rule.[4] The presider will follow, to the extent applicable here, the rules governing procedures in civil actions, starting with opening statements, offers of proof, presentation of witnesses, and closing arguments.

Formal charges of unethical conduct must be established by clear and convincing evidence.[5] The Presenter bears the burden of establishing by clear and convincing evidence that Respondent has committed the alleged ethical violations.[6] The burden of proof in proceedings seeking discipline or demonstrating aggravating factors relevant to unethical conduct charges is on the Presenter.[7] The burden of going forward regarding defenses or demonstrating mitigating factors relevant to charges of unethical conduct is on the Respondent.[8]

The Rules of Evidence may be relaxed in disciplinary proceedings, by Court Rule.[9] The Rules of Evidence are not suspended in these proceedings, however, and it is expected that the party seeking the relaxation of an evidence rule should be able to articulate the reason why the Rules of Evidence should be relaxed in the circumstances presented. The Court Rules further provide that the residuum evidence rule shall apply.[10]

During the hearing, any witness called to testify (including the Respondent) will be required by the Presider, before they begin their testimony, to swear or to affirm the

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[3] R. 1:20-8(b).
[4] R. 1:20-6(b)(2)(F); R. 1:20-8(b).
[5] R. 1:20-6(c)(2)(C).
[6] R. 1:20-6(c)(2)(B)-(C).
[7] R. 1:20-6(c)(2)(C).
[8] R. 1:20-6(c)(2)(C).
[9] R. 1:20-7(b).
[10] R. 1:20-7(b). On the residuum rule and the clear and convincing standard of evidence, see *OAE Hearings Manual*, Appendix D, at D28-D30.

truth of their testimony.[11] Each witness should be asked to provide their name, spelling out their last name for the record. ***No home address or home phone information of any person should be made part of the public record, including on any exhibit.*** If an exhibit contains a home address or a home phone number, the party offering the exhibit is responsible to make sure that information will be redacted ***before*** the exhibit is admitted into evidence.

Applications for rulings should be directed to the Presider.

Following from this hearing, the presider may make one of two findings. The presider can either conclude:

(a) that clear and convincing evidence supports the determination that the Respondent has committed unethical conduct, in which case the Presider would then make a recommendation of the discipline to be imposed, with that decision to be submitted thereafter to the Disciplinary Review Board for *de novo* review on the record of these proceedings;[12] or

(b) instead, that the evidence does not meet the clear and convincing standard to support the finding of any violation charged in the complaint, following which the Presider would issue a Hearing Report recommending dismissal. The parties

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[11] R. 1:20-6(c)(2). The witness should be given the choice of whether to swear or affirm. Following from that choice, the presider may administer the following as the oath or affirmation:

> ***Oath***:
>
> Do you solemnly swear that the testimony you shall give in this matter shall be the truth, the whole truth, and nothing but the truth, so help you God?
>
> ***Affirmation***:
>
> Do you solemnly declare and affirm, under penalty of perjury, that the testimony that you shall give in this matter shall be the truth, the whole truth, and nothing but the truth?

[12] R. 1:20-15(f).

and the Office of Attorney Ethics would then be given notice of that dismissal recommendation, and of the right to appeal that decision to the Disciplinary Review Board.

The parties may request the opportunity to give oral closing arguments, and/or they may ask to submit summation briefs, at the conclusion of the hearing, setting forth the legal analyses of the issues presented. The parties may take such opportunity to set forth their case, based on the evidence presented at this hearing, so that the Presider may give full, fair, and deliberate attention to the issues presented. The Respondent would typically be expected to submit a summation brief first, with the Presenter (who bears the burden of proof on the issues of the violations and the discipline) to submit thereafter, in accord with the schedule to be set by the Presider. The Presider will issue the written Hearing Report, on completion of its review of the record.

The Presider is responsible for maintaining the original hearing record. At the end of the hearing, the Presider will be required to make sure that the parties have accounted for all evidence, before the record can be closed, and that all exhibits in hard copy are in the possession of the Presider. The Presider will be responsible for making sure that the complete hearing record is delivered in hard copy, along with the Hearing Report, to the Office of Attorney Ethics for transmittal to the Disciplinary Review Board, in accord with Court Rules.

Does either party seek to be heard at this time?

We will now proceed with opening statements. The presenter will proceed first, followed by Respondent's counsel.

REMEMBER (for Presider):

Before taking any break, state,

> **"CourtSmart Operator: Please stop the CourtSmart recording."**

After any break, before going back on the record:

> *Say the following:*
>
> **"I direct this question to the OAE CourtSmart Operator: Please confirm that the CourtSmart recording system has been turned on.** *[Wait for the CourtSmart Operator to state that CourtSmart is working.]*
>
> **"We are now on the record."**

During any break, the presider may want to recommend to the participants that they keep their video and audio turned off, until it is time to rejoin the proceedings.

Before moving any persons to a Breakout Session, the Zoom Moderator will state that the CourtSmart recording will be paused, and the CourtSmart Operator will confirm that the recording is paused.

All participants should keep the login information nearby, *so they can rejoin the proceedings speedily, should they disconnect or have technical problems during the proceedings.*

Appendix K

Part 2

Templates for Use by the Special Ethics Master to Open and Close the Hearing:

Closing Remarks to Be Read into the Record by the Special Ethics Master

Case name: _____

Docket No.: _____

CLOSING REMARKS TO BE READ ON THE RECORD BY THE SPECIAL ETHICS MASTER (for CourtSmart Proceeding on Zoom)

Before closing the hearing, the Special Ethics Master should go over the hearing record in detail with the parties, to make sure the Special Master has the complete hard copy set of the entire hearing record. The Special Master will be responsible for maintaining that record. The following should be read by the Special Master on the record before concluding the Hearing. The Special Master should simultaneously complete the "Special Ethics Master's Checklist," sign it, and then admit it in evidence as an Exhibit. The signed Checklist must be included with the hearing report and the complete hearing record, to be forwarded by the Special Master to the OAE so that it can be transmitted electronically to the Disciplinary Review Board, pursuant to R. 1:20-5(b)(5).

TEXT OF SPECIAL MASTER'S CLOSING REMARKS:

Before closing the record for this hearing, I am reviewing and confirming with the parties the accuracy and completeness of the documents in my possession comprising the written hearing record.

Before we proceed, I want to remind the parties of their obligation already to have redacted or removed all information within the scope of R. 1:38-7(a), which protects information within the scope of "personal confidential identifiers" against disclosure.

Please confirm that you have redacted Social Security Nos.; Driver's License Nos.; License Plates; Insurance Policy Nos.; Credit Card Nos.; and Financial Accounts, including Tax IDs.

Let the record reflect that I have in front of me the full hardcopy set of the documents comprising the written hearing record. I have gone through the

following in conference with the parties to confirm the accuracy of the information that I have filled out on the form bearing the following title:

"Special Ethics Master's Checklist
for Completeness and Accuracy
of the Documents in the Hearing Record,
Following from Virtual Proceedings"

The Checklist will be included in the record as Exhibit ____.

The parties should be on notice that, if the Special Master finds that there is clear and convincing evidence that the respondent has committed unethical conduct, I will then follow the procedure set forth in R. 1:20-7(n), and what I am about to say tracks the language of the Court Rule. I will request from the Office of Attorney Ethics a summary of any orders, letters, or opinions imposing temporary or final discipline or disability on the respondent. The parties would be provided with that information, and they would then have five days from their receipt of that information to submit written argument on the issue of the effect to be given thereto.

Keep in mind that any request for an extension for any post-hearing submissions must first be on notice to the other party. R. 1:20-7(k) provides that requests for extensions shall be made in writing, stating with specificity the facts on which the request is based. Any post-hearing brief submitted by the respondent should be received by the Special Master by _____. The presenter's brief would be due on _____.

R. 1:20-5(b)(5) requires the filing of the Hearing Report for transmittal to the Office of Attorney Ethics within sixty days from today. As Special Master, I will make appropriate efforts to abide by the time goals set by the Supreme Court, and I expect the parties' cooperation in meeting the deadlines which I have set.

Does anyone wish to be heard?

If not, let the record reflect it is _____ A.M/P.M. and that I am closing the record, except for the post-hearing submissions which I have just detailed.

Thank you all for your cooperation in this matter. In all that we do, we must make sure that public confidence in the attorney disciplinary system, and in the courts, and in the legal profession will be maintained. We aspire to accomplish that goal in these proceedings.

[Please advise the OAE CourtSmart Administrator if you wish to go off the record.]

Appendix K

Part 3

Templates for Use by the Special Ethics Master to Open and Close the Hearing:

Special Ethics Master's Checklist to be completed at the end of the hearing (confirming the exhibits in evidence and what else constitutes the documents in the hearing record)

Case name: _____

Docket No.: _____

EXHIBIT

Special Ethics Master's Checklist for Completeness and Accuracy of the Documents in the Hearing Record, Following from Virtual Proceedings

[To be read out and completed by the Special Master while still on the record, at the conclusion of the Hearing. Any changes needed should be marked right on this form.]

I confirm the following to be true:

_____1. Presenter's Exhibits have been admitted into evidence as _____.

_____2. Respondent's Exhibits have been admitted into evidence as _____.

_____3. *[if any]* Stipulation of the parties is marked _____.

_____4. I confirm that the documents comprising the hearing record is in my possession in hard copy, and that I have a hard copy of all of the hearing exhibits that have been marked and admitted into evidence.

_____5. I confirm that the documentary hearing record includes the Complaint and Verified Answer, and any amended pleadings, as well as all Case Management Orders, and all of the additional motions or filings itemized on the hearing record at the conclusion of the hearing. These exhibits have been labeled as _____.

_____6. The parties have confirmed that the evidence and all parts of the hearing record have been redacted to remove or black-out personal identifiers, pursuant to R. 1:38-7(a), and that all issues relating to confidentiality or sealing of any part of the hearing record have already been addressed.

_____7. As Special Master, I have already reviewed with the parties on the record at the hearing the complete list of all evidence comprising the hearing record, and the parties have confirmed their agreement and/or they have had the opportunity to state any objection or omission.

_____8. I have received all of the above and will safeguard the hearing record until it is delivered to the Office of Attorney Ethics, after the Hearing Panel Report will have been issued.

_____9. The parties were instructed on the record to file their post-hearing submissions by a date certain, and they were further advised that a Hearing Report would be submitted within approximately 60 days of the closing of the proceedings (*i.e.*, report to be issued by the Special Master on or before _____).

I verify the accuracy and completeness of (a) the exhibits moved into evidence and made a part of the record of the hearing, and (b) the information set forth above. I have initialed or otherwise annotated each of the entries above, and I sign and date this document at the conclusion of the hearing, and this Checklist is now included as part of the record.

_____ _____

Date **Signature**

The Zoom Connection Test:

Making Sure the Participants Will Be Ready to Go Forward on Zoom on the Day of the Hearing

a. BASIC INFORMATION:

Using Zoom	***Please Do This Step <u>Before</u> the Zoom Connection Test***	***Make sure you have downloaded the latest version of Zoom*** from the Zoom website before the Zoom Connection Test. The Zoom website is at https://zoom.us/.
Who Must Attend	**1. Every Member of the Hearing Panel, or Special Ethics Master** **2. Presenter** **3. BOTH Respondent AND Respondent's Counsel**	Attendance is mandatory for Zoom Connection Test. Participants are required to appear onscreen with camera and microphone on, and to stay on the session until the moderator announces that all topics have been covered. Hearing cannot proceed if any member of the Hearing Panel has not attended the Zoom Connection Test. Where a party fails to attend: see next note.
What if a Party Doesn't Attend	**Objections May Be Deemed Waived by Presider if That Party Encounters Technical Issues at Hearing**	Any party who fails to attend the mandatory Zoom Connection Test has been put on continuing notice that such absence would be deemed to be a waiver, at the time of the hearing, of any objection (not already raised by formal motion before the hearing) to the virtual nature of the hearing that could and/or should have been addressed prior to the hearing, and/or any issue that could have been identified and/or addressed at the Zoom Connection Test. Court Omnibus Orders authorize use of Zoom for attorney disciplinary hearings (<u>see</u> Court Orders in *OAE Hearings Manual*, Appendix A); Court Rules for 25 years have allowed use of telephone for attorney disciplinary hearings. <u>See</u> R. 1:20-6(c)(2)(A).

Who Schedules the Zoom Connection Test with OAE, and the How and When of Scheduling	**Presider Should Take the Lead, Following from Dates Agreed to by Participants at Pre-Hearing Conference** **Panel Chair Should Schedule Zoom Connection Test for Full Hearing Panel**	The presider, other members of Hearing Panel, and the parties (Presenter, Respondent, and Respondent's Counsel) should all attend the same Zoom Connection Test, if schedules allow. The Panel Chair should require the participants to agree on the Zoom Connection Test date at the Pre-Hearing Conference. The presider should then submit the request to schedule the Zoom Connection Test to Jan Vinegar at the OAE by email. Any participant who cannot attend the Zoom Connection Test on the date when other participants agree to attend will be responsible for contacting Jan Vinegar separately at the OAE to arrange for their own Zoom Connection Test. No presider should accept as an excuse that a party or Hearing Panel Member did not participate in the Zoom Connection Test because they were confused about how to schedule their separate Zoom Connection Test. If, after a Zoom Connection Test is scheduled, a participant finds out about a scheduling conflict, ***the Zoom Connection Test should nonetheless proceed for all other participants.*** The participant who did not attend will be responsible for making a new Zoom Connection Test appointment with the OAE. ***How to Schedule***: email Janice Vinegar, at oae.mbx@njcourts.gov and Janice.Vinegar@NJCourts.gov. Subject line: ZOOM CONNECTION TEST SCHEDULING. ***When to Schedule***: In time for all participants to have completed the Zoom Connection Test at least 14 days before date of hearing
What if a Participant Cannot Attend the Zoom Connection Test on the Date Scheduled for Other Participants	**Not a Problem, as Long as Every Party, Presider, and Panel Member in Every Hearing Makes Sure that They Attend a Zoom Connection Test at Least 14 Days Before the Scheduled Hearing Date**	The Zoom Connection Test will ***not*** address any substantive issues relating to any hearing. The Zoom Connection Test is ***not*** a Pre-Hearing Conference. The participants are on notice that they should ***not*** bring up any substantive issues specific to their particular hearing at the Zoom Connection Test. The presider must make sure that there are no *ex parte* conversations in connection with any hearing, and that includes at the Zoom Connection Test. The participants in particular hearings are encouraged to attend the same Zoom Connection Test as a matter of convenience, and to contain the burden on the OAE staff, since every party and every hearing panel in every hearing will be seeking to schedule Zoom Connection Tests with the OAE prior to their hearing dates.

Witnesses May Be Included in, or Sent the Invitation to, the Zoom Connection Test, if Presider Authorizes	**Any Specific Issues Relating to Witnesses' Training on Zoom Must Be Raised with the Presider, Before the Hearing, by the Party Who Seeks to Call that Witness**	Each party is responsible for their own witnesses, and for taking the necessary steps before the date of the hearing so their witnesses will be able to log in and participate in the hearing on Zoom. Any application by a party to have a witness included in a Zoom Connection Test must be filed with the presider in writing for the presider to decide, prior to the hearing. The presider then must communicate with the OAE (Attention: Janice Vinegar at oae.mbx@njcourts.gov and Janice.Vinegar@NJCourts.gov) in order to address whether a Zoom Connection Test for additional participants should or could be scheduled. ***NOTE***: *The Zoom Connection Test for Grievants and witnesses would typically be scheduled as a separate session from the Zoom Connection Test for the parties and presiders*.
What Each Party Must Do for their Witnesses to Be Sent Zoom Login Information for the Hearing	**Procedure to Be Completed Before the OAE Can Send any Zoom Invitation to any Other Recipient (Including any Witness or Grievant)**	Each participant is prohibited from forwarding the Zoom invitation to any other recipient. The parties are on notice that they must follow these procedures in order to get authorization from the presider to have the OAE send the Zoom invitation for the particular proceedings to the witness or the grievant: 1. Each party must send a written request to the presider, if they seek to send the Zoom invitation to any witness or the grievant or anyone else. The request must include the reason that the party is asking the presider to direct the OAE to send the Zoom invitation to the specific recipient, and the request must include the email address of the specific recipient to be sent the Zoom invitation; and 2. the presider must then authorize the OAE support staff to send the Zoom invitation to that recipient. ***The parties are on notice that they are specifically prohibited from forwarding any Zoom invitation to any witness, or any other person or entity of any sort, and that only the OAE can do that. Zoom invitations are specific to the individual recipient identified with the particular email address. This notice applies to any technical or IT assistants whom any party may seek to have present during the hearing.***
Who Conducts the Zoom Connection Test	**OAE Technical Support Staff**	But the parties and the Hearing Panel must all attend.

b. TOPICS COVERED IN THE ZOOM CONNECTION TEST SESSION:

How the Hearing Will Look on Zoom on the Hearing Day	You will log into Zoom and OAE staff will make sure they can see and hear you, and you can see and hear them. We expect that you will be able to log in the same way, and be connected through audio and video the same way, on the day of the hearing.
Specific Zoom Features to Be Used During the Hearing	The Zoom Connection Test will address how to use the following features of Zoom: 1. "mute" and "stop video" features, when needed, or when required by presider during the hearing;
	2. "Hide Non Video Participants," so only the parties, the hearing panel, and/or a witness (during the period that the witness is giving testimony) will appear onscreen during the Zoom hearing; The names of attendees whose cameras are turned off will appear in black boxes. Click on the upper right blue box beside any of the black boxed-names, so that the "Hide Non-Video Participants" selection appears, and then click on that selection: 
	3. viewing options, such as gallery or full-screen view; When you click on these boxes (which should appear in the upper right of your viewing screen), your screen view will change.  
	4. the breakout room, and waiting room feature, and how each works, in very broad summary;

	5. do not use the "Raise Hand" or any "Reactions" features on Zoom. If a party seeks to speak, use the same methods that you would use if you were in a courtroom;
	6. ScreenShare feature of Zoom: If either of the parties seeks to use ScreenShare to display exhibits on Zoom during the hearing, they may do so. The OAE Zoom Moderator will activate ScreenShare at the start of questioning by counsel. OAE technical support staff would not otherwise be involved in how counsel uses ScreenShare, beyond activating the feature. ***WARNING: Any party using the ScreenShare feature is on notice that they must turn off other apps before using ScreenShare. If they fail to do so, incoming emails and/or other messages may be displayed for all to see. Please also take steps so your desktop computer screen will not be publicly displayed.*** ***Since attorney-client communications may be at issue, you must be vigilant to heed this warning.***

c. ADDITIONAL IMPORTANT INFORMATION TO KEEP AT HAND AS YOU PREPARE FOR THE HEARING:

1. The Presider Must Control the Hearing at All Times	The parties are attending the proceedings through virtual technology, but the Court Rules are the same. The presider must preside and maintain the order of the proceedings at all times. The parties must abide by the rules of procedure for court proceedings at all times during the hearing.
2. CourtSmart: Official Record	An OAE non-attorney staff member will be assigned to coordinate the CourtSmart recording during the hearing. The Supreme Court has directed that the official record of the hearing is the CourtSmart audio recording (***not*** the Zoom recording).
3. OAE Staff Provide Technical Assistance for the Presider	OAE staff will be available to provide technical assistance to moderate the Zoom session. OAE staff may assist the presider during the hearing – if requested or needed by the presider – solely as to technical, non-substantive issues arising out of the virtual technology. An OAE non-attorney staff member serves off-camera as Zoom moderator during the hearing, and provides limited technical assistance, at the Zoom Connection Test and at the hearing, in making sure the hearing goes forward on the Zoom platform.

	All questions or requests from the parties must be directed to the presider. No participant in the proceedings should speak while on the record with an OAE staff member. The OAE staff members are specifically directed to speak only with the presider, and to answer only those questions asked by the presider during the hearing.
4. Login Information for the Hearing	OAE staff will confirm at the time of the Zoom Connection Test that each participant is able to log in, with the link included in the Zoom invitation sent to the participant by OAE support staff prior to the Zoom Connection Test. (The Zoom invitation to join the hearing will be sent to the parties in the same manner.)
5. Zoom Invitations Must Not Be Shared or Forwarded	The procedures with which the participants must comply for having anyone other than themselves allowed to log in on Zoom for the hearing are spelled out in this document. The participants are required to comply with these procedures. No Zoom invitation issued by the OAE may be forwarded or shared with anyone other than the intended recipient (parties and hearing panel members, or other specifically authorized identified recipient only).
6. When Should a Participant Log in on the Hearing Date	Each participant must log into Zoom for the hearing at least 20 minutes before the hearing is scheduled to begin. The OAE Zoom monitor will admit the participants when the OAE Zoom monitor is specifically authorized to do so by the presider. Until that point, the participant will be held in the waiting room, and the Zoom screen will state that information.
7. What a Participant Should See and Hear on Zoom	OAE staff will make sure during the Zoom Connection Test that each participant can see the Zoom video feed on their computer screen, and that they can hear the proceedings, and that the Zoom moderator at the OAE can see and hear the participant at the time of the Zoom Connection Test.
8. Participant's Contact Information for the Hearing	Each participant must confirm, prior to the hearing, the email address and cellphone number that the participant will use and be reachable at on the day of the hearing, and for the duration of the hearing.
9. Confirmation that Each Participant Must Be Identified by Full Name on Zoom Screen	Each participant must identify themselves by correct name (written out in full) and true identity (not by nickname or email address, or a different Zoom account holder's identity) when they accept the Zoom invitation and attempt to log in to Zoom at the time of the hearing.
10. Notification System for Participant to Use	Each participant must remain on notice that it is the individual responsibility of the participant to inform the presider should the participant encounter a technical issue that interferes with their ability to see or hear the proceedings on Zoom during the hearing. The presider may not be able to pause the hearing and/or to address

During the Hearing (Where Technical Issue Is Presented)	the issue for any participant who declines or fails to give notice of the particular issue to the presider as the issue arises. Each party-attorney is responsible for bringing to the presider's attention any information warranting the presider's action (including Zoom connection problems or interruptions) encountered by that party's witness, or by the respondent (if represented by counsel).
11. Resources for the Participants	The participants are referred to the Court Rules on hearings (R. 1:20-4 to -9), and the resources that the OAE has made available for attorney disciplinary hearings – in particular, the *OAE Hearings Manual* ("OAE Manual on Conducting Virtual Remote Proceeding"), and the appendix materials included therein.
12. Specific OAE Resource Guides that the Parties Should Provide to Their Witnesses	The OAE's Guides for Zoom hearings include: • "How to Join and Participate in a Zoom Virtual Courtroom" (*OAE Hearings Manual,* Appendix C); • "Witness Instructions for Remote Disciplinary Proceedings" (*OAE Hearings Manual,* Appendix E). The parties should make sure that they provide these resources in advance to anyone who may be called as a witness during the hearing. The presenter should provide these resources to the Grievant before the hearing.
13. The Parties Are Expected to Use Their Own Resources (Without OAE Staff Involvement) in the Presentation of their Case, the Evidence, or the Exhibits on Zoom	The only training given by the OAE consists of the Zoom Connection Test, which is provided to all participants in the Zoom Connection Test equally. The OAE also provides the parties and the Hearing Panel (or Special Ethics Master) with the *OAE Hearings Manual.* OAE staff are not able to provide to any participant specialized, individual training in how to use Zoom, or any features or capabilities of Zoom. Each participant in the hearing who seeks to display or to use an exhibit in any way during the proceedings must take the necessary steps of self-education -- independently, in advance, and without relying on OAE staff during the proceedings -- to determine how to do that, so that the participant will be able to take that action, if they choose, during the hearing. Please pay attention to the ***WARNING*** on page 6 about making sure you only display the intended information on ScreenShare.
14. Zoom and the OAE (or Judiciary) Are Wholly Separate Entities. For Information About How Zoom Works or How to	The participants are responsible for educating themselves on how to use Zoom during the hearing. The Judiciary is not connected in any way with Zoom, and simply uses the Zoom platform to conduct hearings through remote technology. The Zoom website lists information available there about Zoom, such as: i. Sharing Your Screen (how to)

Use Zoom, Please Contact Zoom.	ii. Live Training Webinars iii. Getting Started Guide for New Users iv. Zoom Video Tutorials v. Live interactive support features, including ability to send questions to "Bold the Zoom Virtual Assistant" [interactive pop-up feature on the Zoom website] for immediate response vi. Top 20 Zoom Resources tips and information. There are additional resources and training videos available on the internet on how to use Zoom, including YouTube videos.
15. Technical Assistance During the Hearing: Only if Authorized in Advance by the Presider, and the Technical Assistants Must Not Speak on the Record or Have Camera on at Any Time	If authorized by the presider, the parties may be assisted during the proceedings by their own technical assistants, provided that the assistant remains off camera and with microphone turned off at all times. The party must seek and obtain the presider's permission in advance to have the assistant sent the Zoom invitation by the OAE to be able to log in through Zoom for the hearing. The parties cannot share a Zoom invitation with a technical assistant; only the OAE can issue Zoom invitations for the hearing or the Zoom Connection Test. During the hearing, the party's technical assistant must communicate with the party through text or phone call or email. The staff assistant must not speak on the record during the proceedings, which are conducted in the same manner as court proceedings.
16. Penalties for Unauthorized Transmittal or Recording of Hearing	The Supreme Court has given notice of the penalties, including criminal sanctions, that may be imposed for violation of the Court's procedures, with regard to the unauthorized broadcasting, transmittal, or recording of attorney disciplinary hearings. See OAE Director's Memorandum, June 19, 2020.
17. Parties and Presider Must be On-Camera During Hearing	During the hearing, the parties (respondent and respondent's counsel, and the presenter) and the presider (including all members of the hearing panel) must remain visible on camera, unless the presider determines otherwise (e.g., for attorney-client private consultations, which may occur in breakout rooms). If respondent appears in the same room with counsel and shares a computer screen, ***both*** must appear on camera at all times. Court Rules require the respondent to be present at all times during the hearing.
18. When a Non-Party Will Appear on Camera	Only the parties and the Hearing Panel or Special Ethics Master may appear on camera during the hearing. Any witness should appear on camera only for the duration of that witness' testimony. No other person (including

	grievant, any OAE staff member [other than the presenter] who may have been involved in the investigation or who may be providing technical support during the hearing, and any observer of any sort) may appear on camera during the hearing, except during the period that the specific person is testifying as a witness in the hearing. Such observers may watch the proceedings with camera off and microphone muted. The presider should excuse each witness on the completion of their testimony. If the witness is unable to turn off their camera, the presider should ask the OAE Zoom Moderator to do so.
19. Hearings Are Public	Attorney disciplinary hearings are open to the public. Should a member of the public ask to attend, the presider should direct the person to send the request to the OAE Director. See OAE Director's June 19, 2020 Memo, para. 17.
20. Public Observers and Grievants Must Take Appropriate Steps Before the Hearing to Be Admitted to View the Hearing on Zoom	Any member of the public who seeks to attend the hearing must provide the OAE with the name and the email address of the person who seeks to attend the hearing, at least three days prior to the hearing, for security purposes. The OAE will send the Zoom invitation to that identified recipient prior to the hearing date. The recipient must make sure to be identified by name when seeking to log into the hearing, because the OAE Zoom moderator will not admit to the hearing anyone other than the recipients who were sent the invitation by the OAE. The following applies to any viewer of the hearing other than the hearing panel and the parties. That means that this applies to any public observers, as well as to any grievant: You will be able to view only those parts of the proceedings that are on the record (i.e., only when the CourtSmart recording is activated). You will not be admitted to attend any non-public bench conferences or any breaks in the proceedings. When the record is paused for any reason, you will be moved to the Waiting Room. You must make sure that, whenever you are admitted to the hearing on Zoom, your camera is kept off and your microphone is muted. You will not be able to speak to the hearing panel or to the parties, unless you are called to testify as a witness by a party. The OAE will not be able to provide any technical assistance to any grievant or public observer at the hearing.
21. Presider Must Confirm that all of the Following Has Occurred Before the Hearing Can Start	The presider must confirm that all of the following has happened, before the hearing should begin. ***If any step has not been completed, the presider would need to address the specific circumstances before the hearing could proceed:*** 1. The participants required to complete this **Zoom Connection Test** have done so.

	2. The Presenter has confirmed that the **Grievant** has been notified of the hearing. If Grievant has not been given notice, the hearing cannot proceed. 3. All prehearing applications, objections and **motions** have been submitted in writing by the parties, with the **decisions already issued** by the presider as to all issues presented, and the presider has made sure the record is complete as to all such matters. 4. Any **protective order**, if needed, is already in place. 5. The parties have properly **redacted** all exhibits and have taken all necessary steps to preserve confidentiality as to all exhibits and the hearing record. 6. The parties have each provided **copies of all exhibits** in either hard copy or electronic format (as determined at the Pre-Hearing Conference) to each member of the Hearing Panel, and to each other, prior to the hearing. 7. The parties have each provided a **hard-copy set of all exhibits to the presider**, for the presider to maintain that set of exhibits as the **original hearing record**. 8. The parties have each provided their **Exhibit List** in the proper form to each member of the Hearing Panel, and to each other, and to the OAE CourtSmart monitor, prior to the hearing. 9. All requests for **translators, interpreters, or any accommodation** have been arranged through the OAE. 10. The OAE staff member has confirmed that the **CourtSmart line** is operational and ready to record. 11. The OAE staff member has confirmed that the **Judiciary's Zoom account** is operational, and that there is no impediment to starting the hearing on Zoom. 12. If presider has authorized such assistance in advance: The parties have confirmed that they have instructed any person providing them with **technical assistance** during the hearing to remain off camera and with microphone muted at all times during the hearing. 13. The OAE will admit from the **Waiting Room** only persons who identify themselves by full name at login. Any grievant or member of the public admitted from the Waiting Room must keep camera off and microphone muted for the duration of time that they may observe the proceedings on Zoom.

INSTRUCTIONS
FOR ANY GRIEVANTS AND/OR MEMBERS OF THE PUBLIC WHO SEEK TO VIEW AN ATTORNEY DISCIPLINARY HEARING ON ZOOM

1. At least three days prior to the hearing, you must send an email to the Office of Attorney Ethics, and it must contain the following information:
    a. the specific hearing that you wish to attend,
    b. your full name (referred to below as "***your full name***"), and
    c. the email address to which you want the OAE to send you the Zoom login information for the hearing.
2. On the day of the hearing, you would need to login using ***your full name***, in order for the OAE Zoom Moderator to admit you from the Waiting Room. If the Zoom Moderator cannot identify you, and/or the OAE did not send the Zoom login information specifically to you as the intended and identified recipient (e.g., if your laptop identifies you with the full name of some other person), you will not be admitted to view the hearing.
3. You will need to use ***your full name*** so the OAE Zoom Moderator can keep track of who is viewing the proceedings at all times, for security reasons, and because any participant's Zoom connection may be interrupted and viewers may need to be admitted and then readmitted from the Waiting Room as the hearing is underway.
4. If the device you use to seek entry to the proceedings does not display ***your full name***, the OAE will not be able to admit you to view the proceedings. For example, if your computer identifies you as "J's laptop," you will ***first*** need to change that, to identify yourself by ***your full name, before*** the Zoom Moderator will admit you from the Waiting Room to view the hearing.
5. You must keep your camera turned off and your microphone muted at all times during the hearing. You will not be able to speak with, or to be seen by, any of the participants in the hearing at any time during the proceedings, unless a party calls you to testify as a witness during the hearing.
6. The OAE and the participants in the hearing have no capacity or ability to address any technical issue that an observer of the proceedings may have, including:

a. in logging into the Zoom hearing, or

b. in naming or renaming how a person is identified on any device, or

c. in addressing any audio or video issues during the proceedings for non-party observers.

7. Only the OAE can send out the Zoom login information for any hearing. The invitation is specific to the particular recipient. No recipient of the Zoom login information for any hearing may forward that email, or the information contained therein, to any other recipient.

8. Only persons who have been sent the Zoom invitation by the OAE will be admitted from the Waiting Room to view the hearing on Zoom.

9. For any part of the proceedings on Zoom that are not on the record (e.g., bench conferences or breaks), you will be placed back in the Waiting Room by the Zoom Moderator until the presider is ready to go back on the hearing record.

10. All who attend the hearing on Zoom must remain on notice of – and must abide by – the policies and procedures set in place by the New Jersey Supreme Court, regulating or restricting the transmittal or recording of court events.