

NEW JERSEY STATE BAR ASSOCIATION
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MTK FOOD SERVICES, INC., d/b/a
THE PALACE RESTAURANT

Plaintiff/Respondent,

v.

SIRIUS AMERICA INSURANCE
COMPANY; NORTH AMERICA RISK
SERVICES; SPENCER B. ROBBINS,
ESQ.; ROBBINS & ROBBINS, LLC;
JOHN AND JANE DOES 1-10
(fictitious names); COMPANIES 1-
10 (fictitious names); CRAWFORD
CLAIMS MANAGEMENT SERVICES; and
JOHN AND JANE DOES 11-20
(fictitious names); ALLIED WORLD
ASSURANCE COMPANY (U.S.), INC.;
DARWIN SELECT INSURANCE COMPANY;
ABC INSURANCE COMPANY (a
fictitiously names company that
may be responsible for all or
part of the judgment); ARCHER &
GREINER, P.C.; RICHARD GRUNGO,
JR., ESQ.; JAVERBAUM WURGAFT
HICKS KAHN WIKSTROM & SININS,
P.C. AND DAVID WIKSTROM, ESQ.

Defendant/Appellant.

: SUPERIOR COURT OF NEW JERSEY
: APPELLATE DIVISION
: Docket No.: A-001309-17T2

: Supreme Court of New Jersey
: Law Division Monmouth County
: Docket No.: L-1227-12

: CASE REMANDED FROM SUPREME
: COURT:

: INTERLOCUTORY APPEAL OF TRIAL
: COURT'S ORDERS ENTERED ON MAY 10
: AND JUNE 9, 2017

Civil Action

: Sat Below:
: Hon. Joseph P. Quinn, J.S.C.

BRIEF OF AMICUS CURIAE NEW JERSEY STATE BAR ASSOCIATION

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PRELIMINARY STATEMENT/STATEMENT OF INTEREST

The New Jersey State Bar Association (NJSBA) submits this brief in support of its motion for leave to appear as amicus curiae in this appeal. The NJSBA requests that the Appellate Division reverse the trial court's May 10, 2017 and June 9, 2017 Orders vacating its previous order dismissing plaintiff's complaint as barred by Pennsylvania's two-year statute of limitations. The sole issue on this appeal is whether Pennsylvania's two-year statute of limitations or New Jersey's six-year statute of limitations applies to plaintiff's legal malpractice claims.

In February 2015, the trial court initially held that pursuant to the Restatement (Second) of Conflicts of Laws §§ 145 and 6 (1988), Pennsylvania's two-year statute of limitations governed plaintiff's claim and dismissed the complaint against Defendants Archer & Greiner, P.C. and Richard Grungo ("Archer"). The trial court concluded that, because: (1) plaintiff was a Pennsylvania corporation; (2) plaintiff's claims arose out of the negligent handling of a Pennsylvania legal action by a Pennsylvania licensed attorney; and (3) plaintiff's alleged loss occurred in Pennsylvania, that state had the most significant relationship to the action and its two-year statute of limitations applied.

In January 2017, the Supreme Court issued its decision in McCarrell v. Hoffman-La Roche, 227 N.J. 569 (2017), adopting Restatement section 142 as the choice of law rule for statutes of

limitations. On plaintiff's subsequent motion for reconsideration, the trial court applied section 142 to the same facts previously considered, but this time found that New Jersey's six-year statute of limitations applied. Stating that maintenance of plaintiff's claim would serve a "substantial interest" of New Jersey, the court based its decision on the fact that Defendant Grungo has a New Jersey (in addition to his Pennsylvania) bar license, even though he represented plaintiff in Pennsylvania. In so doing, the trial court erred.

If affirmed on appeal, the trial court's ruling will have wide-ranging consequences and unfairly prejudice New Jersey attorneys and firms with licenses and practices in other jurisdictions. Specifically, attorneys holding New Jersey licenses who also practice in other states will be placed in an unfair position relative to their colleagues who are not barred in New Jersey. Based on the trial court's rationale, New Jersey licensed attorneys representing clients in other jurisdictions that have less than six-year statutes of limitations will be subject to malpractice actions in New Jersey for at least six years. This is true despite the fact that the representation, allegedly negligent conduct, and harm did not occur in New Jersey. Their non-New Jersey co-counsel and colleagues involved in the same representation will be protected from liability under a shorter limitations period.

New Jersey licensed attorneys practicing in other states will effectively become insurers of these other attorneys.

Furthermore, the trial court's rationale and holding frustrate the public policies of other jurisdictions that have enacted shorter statutes of limitations to regulate legal representation occurring within their borders. The decision could also have a negative impact on the ability of the public to seek the representation they want because it could result in attorneys choosing not to renew their New Jersey bar licenses, attorneys choosing never to become barred in New Jersey, law firms choosing not to open New Jersey offices, and New Jersey law firms choosing to forego opportunities of opening out-of-state offices in order to better service their clients.

Accordingly, the NJSBA requests that this Court reverse the trial court's decision and hold that maintaining a New Jersey bar license alone is insufficient to provide the "substantial interest" to have the New Jersey statute of limitations apply to a claim.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

The NJSBA hereby adopts the procedural history and statement of facts as presented in the brief of the Archer Defendants.

LEGAL ARGUMENT

I. THE TRIAL COURT MISAPPLIED THE SUPREME COURT'S DECISION IN McCARRELL, UNFAIRLY PREJUDICING NEW JERSEY LICENSED ATTORNEYS

The trial court's erroneous ruling must be reversed because it was incorrectly decided under McCarrell v. Hoffman-La Roche, 227 N.J. 569 (2017), and it unfairly prejudices New Jersey law firms and attorneys who practice in other jurisdictions.

In this case, the trial court acknowledged that plaintiff's cause of action arises out of an allegedly negligent legal representation that occurred in Pennsylvania in connection with the partial destruction of plaintiff's diner in Pennsylvania. (Da5).¹ It also acknowledged that the limited connection to New Jersey was defendant Richard Grungo being "an attorney barred in both New Jersey and Pennsylvania" and associated with the law firm of Archer & Greiner. (Da12).

Nevertheless, the court relied on its previous Statement of Reasons (in which it dismissed plaintiff's claims) to note that "'in the field of legal malpractice both states have an interest in applying [their own laws] regulating malpractice to resident attorneys practicing within their borders.'" (Da12). Based on this general interest -- and without any discussion of the defendant not representing plaintiff in connection with a New Jersey action -- it found that maintenance of plaintiff's claim served a

¹ "Da" refers to the Appendix submitted by Archer.

substantial interest of New Jersey. (Da13). Finding no exceptional circumstances, the court applied New Jersey's statute of limitations to reinstate the complaint against Archer. (Da13).

The trial court's ruling is incorrect under McCarrell and the other Supreme Court cases it cited. Its rationale, if adopted, will have far-ranging consequences that the Supreme Court could never have intended. Specifically, the trial court's decision unfairly prejudices New Jersey law firms and attorneys who represent clients in other jurisdictions.

By way of example, consider a Rutgers Law School graduate who took and passed the bar exams in California and New Jersey, became licensed in both states, and is now practicing law as a solo practitioner in California. While practicing in California, the attorney is engaged by a large California law firm to serve as co-counsel to prosecute a modest breach of contract claim arising in California for a restaurant chain in California that also has locations in New Jersey. Due to oversight on the part of both the attorney and her California co-counsel, the complaint never gets filed.

Although the restaurant client soon learns that the complaint was never filed, it opts not to pursue a malpractice claim against the attorney or the California firm. Under the trial court's ruling, however, if the restaurant owner changes his mind five years later, he would be barred from pursuing a claim against the

California law firm, as California has a one-year statute of limitations for legal malpractice. The small, solo practitioner, however, would still be on the hook for a legal malpractice claim in New Jersey that cannot be maintained against the California law firm.

Similarly, consider an attorney who practiced at a law firm in New Jersey for 30 years, but also is licensed to practice in Florida. The attorney decides to move to the New Jersey law firm's satellite office in Florida and practice law there. He maintains his New Jersey law license and handles some minor real estate transactions in New Jersey, but the primary focus of his practice is now in Florida.

The attorney represents a real estate client in the purchase of land in Florida who experiences title issues after closing. The client decides not to pursue a malpractice action initially, but four years later concludes that he should. Under Florida law, the client's claim is barred by the state's two-year statute of limitations. Under the trial court's rationale, however, the client could file a timely action in New Jersey. The attorney, who may have been practicing in Florida for many years at this point, will have to defend against the malpractice claim in New Jersey and explain why his actions were proper under Florida law. This result defies all concepts of logic, fairness and reason.

These hypothetical scenarios illustrate how the trial court's expressed rationale improperly expands the Supreme Court's holding in McCarrell to unjustly prejudice attorneys with New Jersey bar licenses. Indeed, under this erroneous ruling anyone could take advantage of the longer statute of limitations and file a legal malpractice claim in New Jersey against any New Jersey-licensed lawyer wherever located, regardless of where the representation occurred or that state's limitations period. It is important to the NJSBA and its members that this broad pronouncement and expansion of McCarrell be corrected, and that New Jersey-licensed attorneys and firms are not unfairly prejudiced for their properly authorized practice of law in other jurisdictions.

II. THE COURT SHOULD APPLY PENNSYLVANIA'S TWO-YEAR STATUTE OF LIMITATIONS TO PLAINTIFF'S CLAIM BECAUSE MAINTENANCE OF THE CLAIM UNDER NEW JERSEY LAW WOULD SERVE NO SUBSTANTIAL INTEREST OF NEW JERSEY

The Supreme Court's decision in McCarrell instructs that courts must apply section 142 of the Restatement (Second) of Conflicts of Laws in their choice of law analysis for statute of limitations issues. As discussed below, the facts in this matter are vastly different than those in McCarrell, and the trial court's conclusion that New Jersey has a "substantial interest" in the maintenance of the claim based solely on the defendant having maintained a New Jersey law license in addition to his Pennsylvania law license is contrary to the result dictated by the Restatement.

A. The Supreme Court's Decision in McCarrell and Rationale for Adopting Section 142 of the Restatement (Second)

In McCarrell, the New Jersey Supreme Court revisited choice of law principles applicable to statutes of limitations. McCarrell, supra, 227 N.J. at 592. The Court adopted section 142 of the Restatement (Second) of Conflicts of Laws (the "Restatement") as the choice of law rule for statutes of limitations. Id. at 596.

The plaintiff in McCarrell was a resident of Alabama who filed a products liability action in New Jersey against two New Jersey corporations, Hoffman-La Roche and Roche Laboratories, Inc. Id. at 573. The plaintiff claimed that the prescription drug Accutane,

which was designed, manufactured, labeled and distributed by defendants in New Jersey, was defective and caused him injuries. Id. The plaintiff filed his product liability action after the Alabama statute of limitations had expired, but not that of New Jersey. Id. at 574. The question before the Court was "which state's statute of limitations applies under New Jersey's choice-of-law jurisprudence." Id.

The Court first provided an overview of the progression and development of New Jersey's choice-of-law jurisprudence. Id. at 583-91. At common law, the forum state would simply apply its own statute of limitations because statutes of limitations were perceived as procedural in nature. Id. at 585.

The Court explained that Heavner v. Uniroyal, Inc., 63 N.J. 130 (1973) rejected this simple rule, and "adopted a new rule that weighed the contacts that each state had to the matter in determining the applicable statute of limitations." Id. (footnote omitted). The Court emphasized that Heavner involved a North Carolina plaintiff driving a truck purchased in North Carolina that instituted a products liability action in New Jersey after the truck blew a tire and caused an accident in North Carolina. Id. (citing Heavner, supra, 63 N.J. at 133). Importantly, the Court noted that "[w]e found that the only connection between New Jersey and the products-liability action was [the defendant's] incorporation in this State." Id. (citing Heavner, supra, 63 N.J.

at 133). Noting that Heavner concluded that “New Jersey ha[d] no substantial interest in the matter,” the Court explained that Heavner properly applied North Carolina’s statute of limitations because “that was where all the parties were located, where the cause of action arose, and where all relevant incidents occurred.” Id. (citing Heavner, supra, 63 N.J. at 141-42).

Next, McCarrell noted that in Gantes v. Kason Corp., 145 N.J. 478 (1996), it “refined” New Jersey’s choice-of-law rules for selecting the appropriate statutes of limitations among states with interests in the litigation. Gantes involved a Georgia resident who died from a defective moving part in a Georgia processing plant, which was manufactured and sold by a New Jersey company. The Gantes Court had to resolve a conflict between Georgia’s 10-year statute of repose and New Jersey’s discovery rule and two-year statute of limitations. Id. (citing Gantes, supra, 145 N.J. at 481-82).

Gantes, the Court explained, adopted a “flexible governmental interest standard” that applied the law of the state with the “greatest interest in resolving the particular issue that is raised in the underlying litigation.” Id. (citing Gantes, supra, 145 N.J. at 484). To determine the state with the greatest interest, Gantes instructed courts to “identify the governmental policies underlying the law of each state and how those policies are

affected by each state's contacts to the litigation and to the parties.'" Id. at 587 (quoting Gantes, supra, 145 N.J. at 485).

Pursuant to these principles Gantes concluded that New Jersey's "strong interest" in encouraging the manufacture and distribution of safe products within the state outweighed Georgia's interest in "shielding Georgia manufacturers from claims based on product defects long after the product had been marketed." See id. at 587-88. McCarrell highlighted that, in Gantes, "the plaintiffs invoked the New Jersey court system to litigate a claim that had a material link to this State." Id. at 588 (citing Gantes, supra, 145 N.J. at 492). For that matter, the Gantes Court applied the New Jersey discovery rule and statute of limitations. Id.

McCarrell continued that the governmental interest test remained the operative analytical tool for deciding choice-of-law issues related to substantive law and statute of limitations until P.V. v. Camp Jaycee, 197 N.J. 132 (2008). Id. at 589. The Court noted that Camp Jaycee "formally adopted the Second Restatement's most-significant-relationship test in sections 146, 145, and 6 for deciding the choice of substantive law in tort cases involving more than one state." Id. (citing Camp Jaycee, supra, 197 N.J. at 142-43) (emphasis added). The Court explained that, in a personal-injury action, "the substantive law of the place of injury is presumed to be the governing law under section 146." Id. (citing Camp Jaycee, supra, 197 N.J. at 142-43). McCarrell, however, noted

that in Camp Jaycee, "choosing between this State's and another state's statute of limitations was not an issue." Id. at 590. If it were at issue, the Court indicated that it would have adopted section 142 of the Second Restatement. Id.

The McCarrell Court then officially adopted section 142 of the Restatement (Second) of Conflicts of Laws as the choice of law rule for statutes of limitations. Id. at 596. The court explained that, under section 142, the statute of limitations of the forum state "generally applies" whenever that state has a "substantial interest" in the maintenance of the claim. Id. at 593. However, when the forum state has "no substantial interest" in the maintenance of the claim, a court will consider "whether the claim would be barred under the statute of limitations of the state having a more significant relationship to the parties and the occurrence." Id. at 593.

In determining whether another state has a more significant relationship to the parties and the occurrence, under section 142 a court must consider overarching choice-of-law principles contained in section 6:

- (a) the needs of the interstate and international systems,
- (b) the relevant policies of the forum,
- (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,

- (d) the protection of justified expectations,
- (e) the basic policies underlying the particular field of law,
- (f) certainty, predictability and uniformity of result, and
- (g) ease in the determination and application of the law to be applied.

[Id. citing Restatement (Second), supra, § 6(2).]

It follows that a claim should not be maintained if it is barred by the statute of limitations of another state without consideration under section 6 of that state's significant relationship to the occurrence and the parties, as the trial court failed to do.

The McCarrell Court noted this approach places everyone on an equal playing field, and advances predictability and uniformity in decision-making. McCarrell, supra, 227 N.J. at 593. In addition, the Court explained that "when New Jersey has no substantial interest in the litigation, under section 142, our courts will not apply our state's statute of limitations to save a claim when another state has a more significant relationship to that case." Id. at 594.

Importantly, the Court noted that "the results in Heavner and Gantes would be no different under a Second Restatement section 142 analysis than the actual results reached by the Court in those cases using the governmental-interest test." Id. at 595-96

(emphasis added). It warned that New Jersey courts should not entertain actions in which this State has no substantial interest, and that "[E]gregious examples of forum shopping will be discouraged when a forum state that has no interest in the litigation declines to apply its favorable statute of limitations.'" Id. at 596 (citing Restatement (Second), supra, § 142, cmt. g).

Applying these principles to the facts before it, the McCarrell Court reiterated the ties to New Jersey that were present in the case: defendants were New Jersey corporations with corporate officers in the state and the prescription drug that allegedly caused the harm was designed, manufactured, distributed, and labeled in the state. Id. at 596-97. Coupling these factors with the oft-cited principle that "New Jersey has a substantial interest in deterring its manufacturers from developing, making, and distributing unsafe products, including inadequately labeled prescription drugs," the Court concluded that New Jersey had a "substantial interest" in the litigation, and that New Jersey's statute of limitations applied under section 142. Id. at 597-98.

All of the above principles and cases analyzed and discussed by McCarrell are critical to understanding its rationale for adopting section 142, and its application in future cases. In this case, the trial court erred in failing to properly apply the principles of section 142 to the circumstances before it; the court

simply articulated a broad, general interest that New Jersey has in regulating the practice of law within its boundaries and deemed it sufficient to revive a cause of action arising from the practice of law in a sister state.

B. Maintenance of a New Jersey Law License By an Attorney, Without More, is Insufficient to Provide New Jersey with a Substantial Interest in a Legal Malpractice Action

The trial court's decision should be reversed because, under McCarrell and section 142, the mere New Jersey licensure of an attorney alone does not provide New Jersey with a "substantial interest" in a legal malpractice action filed against that attorney for legal representation that occurred in another state.

The trial court's holding stands in direct conflict with Pitcock v. Kasowitz, Benson, Torres & Friedman, LLP, 426 N.J. Super. 582 (App. Div. 2012), which involved strikingly similar facts and which McCarrell cited with approval as illustrative of a situation in which New Jersey has "no substantial interest" in a litigation. See McCarrell, supra, 227 N.J. at 595. In Pitcock, the plaintiff was a former partner of the defendant New York City law firm who filed a complaint against the firm for malicious prosecution in New Jersey. Pitcock, supra, 426 N.J. Super. at 588. The New York law firm had a satellite office in Newark, and the plaintiff resided in New Jersey. Id. at 587-88. At the time the plaintiff filed his complaint, the claim was barred by New York's

one-year statute of limitations, yet it would have been timely under New Jersey's limitations period. Id.

The Appellate Division accurately predicted that, after Camp Jaycee, the Supreme Court would adopt the most significant relationship test in section 142 to resolve choice of law issues related to statute of limitations. Id. at 589. Applying section 142 to plaintiff's claim, the court held that "allowing plaintiff to maintain this claim in New Jersey 'would serve no substantial interest of the forum.'" Id. at 589 (citing Restatement (Second) of Conflicts of Laws, § 142(2)(a)).

The court reiterated that:

The primary office of the Firm was in New York; plaintiff was a partner in that office; the sexual harassment occurred in New York; both plaintiff's defamation action and the Firm's breach of contract action upon which plaintiff's malicious use of process claim was based were filed in New York; and those actions arose out of the parties' business relationship in New York. Therefore, this action is barred by the one-year limitations period upon actions for malicious use of process enacted in New York, which clearly has 'a more significant relationship to the parties and the occurrence' than New Jersey.

[Id. at 589-90.]

Accordingly, the Appellate Division affirmed the dismissal of the complaint. Id.

Similarly, Washburn v. Soper, 319 F.3d 338 (8th Cir.), cert. denied 540 U.S. 875 (2003), considered Restatement section 142 in

nearly identical factual circumstances as those here, and correctly applied the statute of limitations of the state where the legal representation occurred.

In Washburn, the plaintiffs were Illinois residents who hired the defendant, an attorney licensed in Illinois and Iowa with an office in Iowa, to represent them in a claim against a former business partner involving a laundromat company in Illinois. Id. at 340. The plaintiffs, claiming that the attorney coerced them into settling their case, subsequently instituted a malpractice action against the defendant in Iowa. Id. The District Court in Iowa dismissed the claim as barred by Illinois's two-year statute of limitations.

The U.S. Eighth Circuit Court of Appeals affirmed the district court's application of section 142 as the proper choice of law analysis for statute of limitations purposes. Id. at 342. The Eighth Circuit emphasized that the comments to the rule pointed to the "emerging trend" that under section 142 "'a claim will not be maintained if it is barred by the statute of limitations which, with respect to the issue of limitations, is the state of most significant relationship to the occurrence and the parties under the principles stated in § 6.'" Id. (quoting Restatement, supra, cmt. e (1988) (emphasis added)).

After recognizing that "Iowa undoubtedly has an interest in maintaining the integrity of its bar," id. at 343, the Eighth Circuit explained that:

we are not persuaded that [Iowa's] interests are "substantial" in circumstances such as this, where the plaintiffs are Illinois residents, the defendant attorney is licensed in both Iowa and Illinois, the defendant attorney was retained to represent the plaintiffs in Illinois state court proceedings, and these proceedings concerned Illinois residents, Illinois businesses, Illinois trust agreements, and Illinois contracts. In short, we agree with the Firm that Illinois has a "more significant relationship to the parties and the occurrence."

[Id. (citing Restatement, supra, § 142(2) (b) (1988).]

Accordingly, the Eighth Circuit affirmed the district court's conclusion that Illinois's two-year statute of limitations applied and dismissed the plaintiff's complaint. Id.

Notably, in addition to highlighting the "emerging trend" in courts interpreting section 142, the comments to the Restatement by the American Law Institute provide additional guidance for interpreting the Restatement under these circumstances. The comments make clear that:

The forum will entertain a claim that is not barred by its statute of limitations, but is barred by the statute of limitations of one or more other states in situations where allowing the claim would advance a substantial forum interest and would not seriously impinge upon the interests of other states. This will be so when the state of the forum

is the one of most significant relationship to other important issues in the case.

[see Restatement (Second) of Conflict of Laws § 142 comment g, at ¶ 4 (1988) (emphasis added).]

The comments further explain that "the forum should not entertain a claim when doing so would not advance any local interest and would frustrate the policy of a state with a closer connection with the case and whose statute of limitations would bar the claim." See id. at ¶ 6.

Moreover, the New Jersey Supreme Court has already implicitly acknowledged in the Rules of Professional Conduct that New Jersey does not have a "substantial interest" in grievances brought against an attorney holding a New Jersey bar license when the legal representation and conduct does not occur in this state. Specifically, RPC 8.5(b), the rule for choice of law in attorney disciplinary actions, provides:

In the exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be:

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

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct.

[See RPC 8.5(b).]

Given the choice reflected in this rule, it does not follow that the trial court could properly hold that New Jersey's interest in the conduct of an attorney with its bar license dictates the application of New Jersey's statute of limitations when the legal representation and related conduct occurs in a different jurisdiction. Under RPC 8.5, however, when the attorney practices before a New Jersey tribunal, the representation occurs in New Jersey, or the predominant effect of the attorney's conduct is felt in New Jersey, this state will have a substantial interest regulating the conduct of that attorney. Although consideration of attorney conduct under the Rules of Professional Conduct and under tort law are not necessarily the same, RPC 8.5 indicates that despite New Jersey's interest in the conduct of its licensed attorneys, its policy is not that this interest trumps that of another state.

Applying all of these principles to the facts of this case leads one to the conclusion that, contrary to the trial court's determination, Pennsylvania's statute of limitations should apply. As noted, this action involves a claim by a Pennsylvania corporation arising out of the handling of Pennsylvania legal action by a Pennsylvania attorney. Plaintiff's alleged loss occurred in Pennsylvania. The legal representation was provided in Pennsylvania and was governed by Pennsylvania's rules, statutes

and case law. The trial court's choice of law decision was based solely on the fact that the attorney was licensed in New Jersey, as well as in Pennsylvania, not on any conduct that implicates New Jersey or provides New Jersey with a substantial interest in the litigation, as there was with the New Jersey manufacturer in McCarrell. The trial court should have acknowledged these key differences and taken them into consideration when applying the section 6 factors and section 142 analysis.

A proper evaluation of the section 6 factors confirms that Pennsylvania's statute of limitations should apply. Statutes of limitations are intended to protect defendants and courts from stale claims. Applying New Jersey's statute of limitations ignores Pennsylvania's ability and interest to regulate attorney conduct in its own way, on behalf of its residents, within its borders. New Jersey's general interest in regulating New Jersey-licensed attorneys is lessened when the attorney is not practicing or representing clients in this state. The parties would have anticipated that a Pennsylvania attorney representing a Pennsylvania resident in an action in that state would apply Pennsylvania law to any dispute with respect to the legal representation. Failing to apply Pennsylvania law will upend the predictability of judicial administration. In addition, although the court correctly noted that Pennsylvania has a significant interest in regulating attorney conduct within its state and has

the exclusive power to supervise the practice of law within its boundaries, on reconsideration it failed to give this interest appropriate deference. (Da12-Da13). A full and proper application of the section 6 factors to the circumstances here establish that Pennsylvania is the state with the "most significant relationship" to this action.

Turning to section 142, because all of the relevant conduct, representation, and alleged damage occurred outside of this state, in Pennsylvania, maintenance of the claim here would serve "no substantial interest" of New Jersey. Further, under section 142(2)(b) plaintiff's legal malpractice claims are barred under the two-year statute of limitations in Pennsylvania - the state with the more significant relationship to the parties and occurrence here. This conclusion is in line with the principles of McCarrell, the comments to the Restatement, and the choice of law principles related to attorney conduct articulated in the Rules of Professional Conduct. This conclusion, unlike that of the trial court, would not unfairly prejudice New Jersey attorneys and New Jersey firms practicing in other states and would not open the door to "egregious forum shopping."

CONCLUSION

For the foregoing reasons, proposed amicus curiae, New Jersey State Bar Association, respectfully requests that this Court grant it leave to appear as amicus curiae, and reverse the trial court's May 10, 2017 and June 9, 2017 Orders, which misconstrue the Supreme Court's holding in McCarrell and fundamentally prejudice New Jersey attorneys and firms that practice in other jurisdictions.

Respectfully submitted,
New Jersey State Bar Association

By Robert B. Hille / sab
Robert B. Hille
President, New Jersey State Bar Association
Attorney No. 018811983

Dated: March 22, 2018