



NEW JERSEY STATE BAR ASSOCIATION

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Advisory Committee on Professional Ethics
Attention: Carol Johnston, Committee Secretary
Richard J. Hughes Justice Complex
P.O. Box 970
Trenton, NJ 08625-0970

Re: Advisory Committee on Professional Ethics
Request for Comments on Revisiting of Opinion 685

Dear Ms. Johnston:

Thank you for the opportunity to comment on the intention of the Advisory Committee on Professional Ethics to revisit Opinion 685, which concluded that lawyers should not face disciplinary action under Rule of Professional 8.4(g) in connection with their use of peremptory challenges.

The New Jersey State Bar Association discussed and debated the original ACPE Opinion extensively, and recommends that the Committee not revisit it. The NJSBA believes the opinion contains a thorough and comprehensive analysis of the issues involved and the conclusion is sound. The NJSBA agrees with the ACPE rationale that lawyers who exercise peremptory challenges in the interests of their clients should not have to face the possibility of disciplinary action under Rule of Professional Conduct 8.4(g). Introducing a potential ethics violation in the midst of the jury selection process would almost certainly influence the raising and review of a challenge to a peremptory challenge. That, in turn, could have a substantial impact on the entire trial. As Opinion 685 notes, the Supreme Court has already established a procedure for determining and remedying the inappropriate use of peremptory challenges.

In addition, the NJSBA notes the extensive analysis that is currently being undertaken in connection with bias in the jury selection process by the Supreme Court and the legal community as a whole as a result of the recent Judicial Conference on Jury Selection. Among the many reforms that have been suggested are changes to the analysis of whether a peremptory challenge has been used in a biased fashion. Even if the ACPE were to revisit Opinion 685, the NJSBA suggests that the Committee await the final outcome of what are likely to be changes to the jury selection process, as those changes may influence the Committee's review.

Again, thank you for the opportunity to provide comments for consideration by the Advisory Committee on Professional Ethics.

Sincerely,



Domenick Carmagnola, Esq.
President

cc: Jeralyn L. Lawrence, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director