



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

Dear Ms. Johnston:

Thank you once again for the opportunity to allow the New Jersey State Bar Association to submit comments in connection with arbitration provisions in an attorney's retainer agreement, and in particular the scope of an attorney's disclosure requirements in connection with such a provision.

Following up on my earlier correspondence, in an effort to dispel confusion about what is required, the NJSBA has developed proposed model language for inclusion in any retainer agreement that contains an arbitration clause. The language is based upon the disclosure requirements referenced in the Court's opinion in *Delaney v. Dickey*, ___ N.J. ___ (A-30-19, Dec. 21, 2020) and the NJSBA's earlier recommendations tracking that language.

The proposed model language is:

By agreeing to submit these matters to arbitration, you understand that (1) you are giving up your right to have a trial before a jury in a courtroom open to the public; (2) you are agreeing to have your dispute decided by an arbitrator, instead of a judge or jury; (3) the proceeding is known as "binding arbitration," which is different from non-binding arbitration proceedings that occur in the Superior Court; (4) the right to appeal the arbitrator's decision or have it reviewed is severely limited; in most instances, the arbitrator's decision will be final and all parties will be bound by it, although there may be very limited circumstances under which the arbitrator's decision can be appealed or reviewed; (5) the decision of the arbitrator may be confidential and you may be prohibited from revealing it or discussing it with anyone; (6) you may be fully or partially responsible for the costs associated with an arbitration proceeding, including payments to the arbitrator; and (7) the information that is required to be shared between the parties, and the evidence that can be presented, in arbitration may be more limited than in a judicial forum.

Again, thank you for the opportunity to provide comments for the Advisory Committee on Professional Ethics' consideration. The NJSBA stands ready to assist the ACPE in any further way it can.

Very truly yours.

A handwritten signature in black ink, reading "Kimberly A. Yonta". The signature is written in a cursive, flowing style.

Kimberly A. Yonta, Esq.
President

/sab

cc: Domenick Carmagnola, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director