



NEW JERSEY STATE BAR ASSOCIATION

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January 23, 2017

Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Comments – Rule 1:20
Hughes Justice Complex
Box 037
Trenton, NJ 08625-0037

Re: Comments to Proposed Rule Amendments to Rule 1:20

Dear Judge Grant:

Thank you for the opportunity to provide comments on behalf of the New Jersey State Bar Association in connection with proposed amendments to Rule 1:20 regarding discipline of members of the bar. The proposal addresses important issues that will widely affect the NJSBA's members, and I thank the Court for considering the NJSBA's views.

The NJSBA supports and agrees with the first two proposed amendments to provide for the payment of special masters for opinion preparation work (Rule 1:20-6) and to clarify that the District Ethics Committee and District Fee Arbitration Manuals are public documents that are available from the Judiciary as any other public document (Rule 1:20-9(d)(5)). The NJSBA believes the first proposal rightfully recognizes the work of special masters that extends beyond conferences and hearings, and the second adds transparency to the ethics and fee arbitration processes that will inure to greater public understanding.

The third proposed amendment, however, which would add a provision to Rule 1:20-9(f) to permit the release of disciplinary information to law enforcement agencies under certain circumstances, raises concerns. The NJSBA respectfully opposes it.

Under the proposal, disciplinary information could be released to law enforcement agencies in the Supreme Court's sole discretion without any due process afforded to respondent. There is no standard in the proposal by which any request for such information would need to be measured. Information about a respondent could be released without any showing that the information is needed for or in any way related to an ongoing investigation or other pending criminal charges. And, once released to a law enforcement agency, such information could then become the subject of a request under the Open Public Records Act, leading to even further dissemination. Again, all of this could occur without respondent even knowing, and without respondent having any opportunity to present reasons why the information should not be released.

The NJSBA questions the need for this measure, as any relevant information needed by law enforcement is already available through the well-established subpoena process referenced in the rule,

which requires a showing of good cause and provides due process protections for all relevant parties. If the Court is inclined to adopt an alternative procedure for the release of disciplinary records, however, the NJSBA urges the Court to address the concerns noted above, as the NJSBA believes that due process is a fundamental right that should not be forsaken under any circumstance. The NJSBA, therefore, recommends inclusion of additional language in any rule adoption that requires respondent to be provided with notice of any request for release of information, and be afforded an opportunity to be heard before any final determination is made by the Court.

Again, the NJSBA thanks the Supreme Court for the opportunity to submit comments and recommendations. We appreciate and value the opportunity to participate in all aspects of the rule-making process, which has a significant impact on the practice of law in New Jersey.

If you have any questions or require any further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Prol', written in a cursive style.

Thomas H. Prol, Esq.
President

/dms

cc: Robert B. Hille, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director