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Via Regular Mail and Email: Comments.Mailbox@njcourts.gov.

Glenn A. Grant, J.A.D., Acting Administrative Director of the Courts
 Hughes Justice Complex
 P.O. Box 037
 Trenton, New Jersey 08625-0037

Re: Comments on Proposed Amendments to R. 1:21-3(b) – Proposal to Permit Supervised Law Students to Provide Pro Bono Legal Services in State Tax Matters

Dear Judge Grant:

As you know, Legal Services of New Jersey (LSNJ) coordinates and supports the statewide system of legal services programs providing civil legal assistance to people of low-income in all 21 counties. LSNJ embraces the vision of full access to essential civil legal aid for all economically disadvantaged people who cannot secure a lawyer on their own. Please accept these comments in regard to the proposed amendments to R. 1:21-3(b) (“Appearance by Law Students and Graduates”) to allow for 2nd and 3rd year law students to assist clients on a pro-bono basis in state tax court. While we agree that the rule should be expanded to include state tax court, it should not be amended to alter the manner in which pro bono is delivered, that is, through legal services providers, law schools and non-profit organizations certified by the NJ Supreme Court under R. 1:21-11(b).

As a general matter, the proposed amendments to the rule will afford more opportunities for low-income clients to get the help they need in light of a recognized “justice gap,” and also to engage willing and eager law students in this work. We routinely encourage law students to get involved in opportunities to serve our clients through our various projects, summer internship program and other volunteer opportunities at LSNJ, but the proposed amendments also directly impact two specific LSNJ projects: LSNJ’s Pro Bono Initiative (“PBI”) and the Tax Legal Assistance Project (“TLAP”).

Through our efforts to obtain representation for our clients and with the help of participating pro bono attorneys, we have referred thousands of cases to participating pro bono attorneys who represent our clients in a range of civil legal matters statewide. Additionally, through our Low Income Taxpayer Clinic

(“LITC”), administered through the Taxpayer Advocate Service¹ or “TLAP”, we have assisted thousands of NJ taxpayers in audits, appeals, collection disputes and in the U.S. Tax Court. TLAP’s mission is to ensure fairness and integrity of the tax system through (1) pro bono representation (2) education on taxpayer issues and (3) identifying and advocating for issues that impact taxpayers.

TLAP has extensive experience assisting low-income taxpayers in federal tax disputes and related state tax matters, but we are unable to provide representation to clients in all cases. Individuals with tax disputes, including those with low income, ESL and of other vulnerable populations, often express their confusion, anxiety, and fear when facing a state tax debt – particularly when they must do so unassisted by counsel. Unrepresented litigants are often unable to adequately represent themselves in such matters, and in particular, in navigating the tax court system and its myriad of technical rules and procedures and asserting substantive defenses which might otherwise be available. If those individuals should then find themselves unnecessarily subject to adverse judgments, they potentially face the devastating consequences of collection enforcement on their low-income household.

Similarly, at the federal level, low-income and ESL taxpayers may receive representation through academic LITC’s such as Rutgers School of Law Federal Tax Clinic, but, as referenced in the Notice to the Bar, there is currently no such program for low income residents with state tax matters.

Notably, the proposed rule amendment also satisfies dual goals of the Tax Court, namely to “provide expeditious, convenient, equitable and effective judicial review of state and local tax assessments” and to “promote the development of a qualified and informed state and local tax bar.”² The proposed rule amendment will encourage an increased ability of the bar, through pro bono service, to provide assistance to more individuals with disputes before the states’ tax court. Additionally, enabling soon to be members of our bar to gain competence and experience, as soon as possible, benefits the profession and the courts. In fact, the ABA Standing Committee on Pro Bono & Public Service found that pro bono engagement as a law student may increase pro bono service after graduation. In its April 2018 report, it found that, “. . . engagement in pro bono as a law student may lead to increased pro bono services provided after graduation. . .”³

The fact that this proposed amendment includes the necessary requirement of supervision furthers the ability for students to learn and members to increase their skills of advocacy. It is important, however, for those intended to directly provide pro bono services under this proposed rule amendment – here, 2nd and 3rd year law students – to have access to the expertise, training and other supports they may need to navigate tax claims on behalf of low-income claimants. Such pro bono service should be coordinated through a legal services provider, law school or other non-profit public interest organization certified by the New Jersey Supreme Court pursuant to R. 1:21-11(b). We also observe the potential for a labor violation under the Fair Labor Standards Act if a firm or “for profit” employer is using unpaid students to perform pro bono work that attorneys in the firm would otherwise perform.⁴

¹ <https://www.irs.gov/taxpayer-advocate>

² <https://www.njcourts.gov/courts/tax.html?lang=eng>

³ *Supporting Justice: A Fourth Report on the Pro Bono Work of America’s Lawyers*, (April, 2018) (finding that of the 57% of respondents who indicated that they had provided pro bono legal service as a law student, around 60% noted that doing so made them ‘more’ or ‘far more’ likely to provide pro bono services after graduating from law school).

⁴ <https://www.dol.gov/agencies/whd/fact-sheets/71-flsa-internships>

LSNJ's vision of seeking equal substantive and procedural justice for all economically disadvantaged residents of New Jersey is furthered by this amendment and we look forward to welcoming those students and supervising attorneys affected by this amendment into pro bono service. We commend and thank the court in taking steps to address a recognized access to justice issue in providing assistance for clients in need, providing opportunities for more pro bono service, and helping ensure the fairness and integrity of the state tax court and the system of justice in New Jersey.

Respectfully submitted,
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