

NOTICE TO THE BAR

IMPLEMENTATION OF NEW COURT RULE 1:21-11 –

CERTIFICATION OF QUALIFYING PRO BONO ORGANIZATIONS

On July 22, 2014, the Supreme Court adopted new Court Rule 1:21-11, “Definitions and Certifications Regarding Pro Bono Practice,” to be effective January 1, 2015. The rule, an additional copy of which is published with this notice, requires organizations providing pro bono service and that seek to take advantage of certain opportunities under the court rules to become certified. R. 1:21-11(b). This Notice outlines the steps the Judiciary will take to implement this new rule.

To begin this process, early in 2015 the Judiciary will publish a list of organizations currently approved as qualifying for pro bono, fee waiver, or law school clinic status. Organizations that appear on this list will not be required to file an initial certification, but will need to file an annual renewal certification beginning the following calendar year, by April 30, 2016. R. 1:21-11(b)(1). Legal Services of New Jersey and its associated regional programs shall be deemed certified without the need to file certifications. R. 1:21-11(b)(1).

Any organization that believes it has previously been approved but does not appear on the published list should send a cover letter and proof of prior approval to Pro Bono Organizations, PO Box 037, Trenton, NJ 08625-0037. Organizations will have two months after the date of publication of the list to provide this information.

Individual letters will be sent to each of the previously approved organizations explaining the certification process.

Entities not on the list but that wish to apply for approval can complete and submit an initial certification, the form or template for which will be posted on the Judiciary’s website. The completed certification form should be sent to Pro Bono Organizations, PO Box 037, Trenton, NJ 08625-0037. Certifications may be submitted at any time during the year. The on-line list will be periodically updated on at least a monthly basis.

Beginning in 2016, all approved entities will be required, by April 30 of each year, to submit a renewal certification, which must include a list of attorneys, law students, or law graduates who have provided qualifying pro bono services under the auspices of the organization or program during the preceding calendar year. The form or template for the renewal certification also will be posted on the Judiciary’s website.

Additionally, the Judiciary will create an on-line resource so that interested attorneys and law school students may more easily locate pro bono organizations and approved law school clinics. The website will list basic information about the

organizations, including what the organization does, contact information, and a link to the organization's web site.

Questions regarding Rule 1:21-11 or the certification process described in this notice may be directed by letter to Pro Bono Organizations, PO Box 037, Trenton, NJ 08625-0037.

/s/ Glenn A. Grant

Glenn A. Grant, J.A.D.
Acting Administrative Director

Dated: December 29, 2014

1:21-11. Definitions and Certifications Regarding Pro Bono Practice

(a) Definitions.

(1) Qualifying Pro Bono Service. Qualifying pro bono service consists of:

(i) legal assistance to low-income persons;

(ii) legal assistance to nonprofit charitable, religious, civic, community, or educational organizations or governmental entities in matters that are designed primarily to address the needs of low-income persons;

(iii) legal assistance to individuals, groups, or organizations seeking to secure, protect, or advance civil rights, civil liberties, or other rights of great public importance; or

(iv) legal assistance to nonprofit charitable, religious, civic, community, or educational organizations or governmental entities in matters in furtherance of their purposes, where payment of standard legal fees would significantly deplete the organization's or entity's economic resources or would otherwise be inappropriate.

Qualifying pro bono service does not include partisan political activity or service on a nonprofit board of directors or other service that is unrelated to the provision of legal representation or legal advice. It does include legal mentoring and training to prepare attorneys, or students in a law school clinical or pro bono program as defined in subsection (a)(3), to provide qualifying pro bono service.

Qualifying pro bono service is undertaken outside the course of ordinary commercial practice and is performed without a fee from the client. If a fee-shifting statute applies in a qualifying pro bono case, attorneys or firms in commercial practice

may seek fees and are strongly encouraged to donate them to a legal services or public interest organization or law school clinical or pro bono program as defined in subsections (a)(2) and (3). If an attorney or firm in commercial practice retains fees in a qualifying pro bono case, no attorney may claim an exemption from court-appointed pro bono service based on the hours expended on that case. See R. 1:21-12(b). Cases accepted on a contingency fee basis do not constitute qualifying pro bono service regardless of whether the attorney receives a fee.

(2) Legal Services or Public Interest Organization. Legal Services of New Jersey and the associated regional programs are legal services organizations. Other legal services or public interest organizations include any nonprofit organization incorporated in this or any state with a central purpose of providing qualifying pro bono service as defined in subsection (a)(1).

(3) Law School Clinical or Pro Bono Program. A law school clinical or pro bono program is one that operates under the auspices of a law school accredited in this state and has a central purpose of providing qualifying pro bono service as defined in subsection (a)(1).

(b) Certifications.

(1) Certification of Legal Services or Public Interest Organizations and Law School Clinical or Pro Bono Programs.

Legal Services of New Jersey and the associated regional programs shall be deemed certified under this Rule without the need to file certifications.

Except as provided in subsection (b)(3), any other legal services or public interest organization or law school clinical or pro bono program that provides legal assistance at least in part through the cooperation of pro bono volunteers and seeks to take advantage of the opportunities offered in Rules 1:21-12(a) (Madden-exemption based on pro bono service in conjunction with certified organization or program); 1:21-3(b), (c) (special practice rule for law students, recent graduates, and out-of-state attorneys); 1:21-10 (special practice rule following determination of major disaster); or 1:27-2(g) (special practice rule for limited license attorneys) shall:

(i) file with the Clerk of the Supreme Court an initial certification on a Judiciary-approved form, signed by the organization's or program's lead attorney who practices law in New Jersey, demonstrating that the organization or program meets the definition in subsection (a)(2) or (a)(3) of this rule, provided, however, that any organization or program that has already received Supreme Court approval as of the effective date of this rule, as reflected in a list to be made available by the Administrative Director of the Courts, shall not be required to provide such a certification; and

(ii) file with the Clerk of the Supreme Court, by April 30 of every year, a certification on a Judiciary-approved form signed by the organization's or program's lead attorney who practices law in New Jersey certifying

(a) that the organization or program continues to meet the definition in subsection (a)(2) or (3) of this rule; and

- (b) a list of attorneys who have provided qualifying pro bono service under the auspices of the organization or program in the preceding year;
- (iii) notify the Clerk of the Supreme Court at such time as the organization or program no longer meets the definition in subsection (a)(2) or (3) of this rule.

An organization or program that fails to timely file its yearly certification under R. 1:21-11(b)(1)(ii) will lose its status as a certified entity under subsection (b)(1).

(2) Approval and Certification for Waiver of Fees. Legal Services of New Jersey and the associated regional programs shall be deemed eligible, without the need to seek approval or file certifications, for a waiver of fees without the necessity of a court order as provided in R. 1:13-2(a).

Any other public interest or legal services organization or law school clinical or pro bono program may seek approval for such a waiver by filing a certification on a Judiciary- approved form with the Clerk of the Supreme Court, which may be included with an initial certification filed under subsection (b)(1)(i), demonstrating that the organization or program screens its clients to establish their low incomes, provided, however, that organizations and programs that have already received Supreme Court approval for a fee waiver as of the date of this Rule, and submit documentation of such prior approval to the Clerk of the Supreme Court, shall not be required to provide such a certification.

If approval is granted, the entity shall:

- (i) file with the Clerk of the Supreme Court by April 30 of every year a certification on a Judiciary-approved form, which may be included with the certifications filed annually under subsection (b)(1)(ii), demonstrating that the organization or program continues to screen its clients to establish their low incomes; and
 - (ii) notify the Clerk of the Supreme Court at such time as the organization or program, or any part thereof, no longer screens clients to establish their low incomes.

An organization or program that fails to timely file its yearly certification under R. 1:21-11(b)(2)(i) shall lose the ability to waive fees under R. 1:13-2.

(3) Certification of Governmental Entities.

Federal, state, or local governmental entities that provide legal assistance at least in part through the cooperation of pro bono volunteers and seek to take advantage of the opportunities offered in Rules 1:21-12(a) (*Madden*-exemption based on pro bono service in conjunction with certified organization or program); 1:21-3(b), (c) (special practice rule for law students, recent graduates, and out-of-state attorneys); 1:21-10 (special practice rule following determination of major disaster); or 1:27-2(g) (special practice rule for limited license attorneys) shall:

- (i) file with the Clerk of the Supreme Court an initial certification on a Judiciary-approved form, signed by the government entity's lead attorney who practices law in New Jersey, provided, however, that any government entity that already has received Supreme Court approval as of the effective date of this rule, as reflected in a list to be made available by the Administrative Director of the Courts, shall not be required to provide such a certification; and

(ii) file with the Clerk of the Supreme Court, by April 30 of every year, a certification on a Judiciary-approved form signed by the government entity's lead attorney who practices law in New Jersey certifying a list of attorneys who have provided qualifying pro bono service under the auspices of the government entity in the preceding year.

A government entity that fails to timely file its yearly certification under R. 1:21-11(b)(3) will lose its status as a certified entity.

Note: Adopted July 22, 2014 to be effective January 1, 2015.