

# **Supreme Court of New Jersey**



## **Administrative Determinations**

**in response to the**

**Report and Recommendation of the**

***Ad Hoc Committee on Bar Admissions***

**September 10, 2003**

In February 2001, the Supreme Court created the *Ad Hoc* Committee on Bar Admissions. Then Appellate Division Judge John E. Wallace, Jr., was designated as Chair and John J. Francis, Jr., Esquire, as Vice-Chair. The Court directed the Committee -- familiarly known as the Wallace Committee -- to undertake several specific tasks. These included:

1. Drafting a proposal to establish an appropriate mechanism to permit qualified foreign-educated attorneys to take the New Jersey bar examination. In addition, the Committee had to assess the impact of such a program on non-ABA approved law schools in the United States, the graduates of which are not currently allowed to sit for the bar examination;
2. Considering whether the Court should adopt Rules authorizing the admission of out-of-state attorneys by motion and, if so, articulating the standards that should govern those Rules;
3. Reviewing the status and oversight of in-house counsel (and transactional attorneys generally) who are not admitted to the bar of New Jersey and making recommendations in respect of those attorneys;
4. Reviewing and assessing the issues and proposals being made in connection with Multi-Jurisdictional Practice initiatives (including that of the American Bar Association and the New Jersey State Bar Association); and
5. Recommending how the current continuing legal education requirements might be restructured if the Court were to adopt substantive amendments generated by the previous issues.

In February 2002, the Court supplemented the Committee's charge by asking it to consider and make recommendations in respect of *Rule* 1:21-1(a)(the "*bona fide* office" portion of the Rule).

The Wallace Committee met in subcommittees and plenary sessions. It conducted public hearings. In November 2002, the Committee filed its comprehensive report with the Court. The report was published for comment. Given the importance of the issues addressed in the Committee's recommendations, the Court provided for an extended comment period, which closed on April 15, 2003. Responses were received from the New Jersey State Bar Association, the Philadelphia Bar Associations, the New Jersey Corporate Counsel Association, the Community Health Law Project, the Southern New England Law School, the New Jersey Lawyers' Fund for Client Protection, the Office of Attorney Ethics, and several individuals.

On April 23, 2003, the Supreme Court conducted a public hearing on the reports of the Wallace Committee and the Commission on the Rules of Professional Conduct (the "Pollock Commission").

In reviewing each recommendation of the Wallace Committee, the Court considered the proposal in the context of the language of and policies underlying affected Rules of Court and Rules of Professional Conduct, pertinent case law, and the comments that had been submitted. As with the Pollock Commission, the Court developed a deep appreciation for the amount of time and effort that the Committee and its staff devoted to their assignments. Although the Court did not adopt every recommendation of the Committee, it arrived at its decisions in the knowledge that the Wallace Committee had given all of the issues confronting it both thoughtful and detailed consideration.

The Court extends its sincere thanks to Justice Wallace, Vice-Chair Francis, and the other members of the Committee, as well as the staff to the Committee. The latter included Eugene Troche, Esquire, as primary counsel, with Martha K. Treese, Esquire, and Samuel J. Uberman, Esquire, serving as counsel to designated subcommittees. All of foregoing should be proud of their contributions to the production of the Committee's report and recommendations.

The Committee reported to the Court on five issues. It recommended the adoption of Rules authorizing admission by motion, access to the bar examination by qualifying foreign-educated attorneys and graduates of non-American Bar Association approved American law schools, licensing and regulation of in-house counsel, and a modification of the *bona fide* office requirements of *Rule 1:21-1(a)*. In addition, the Committee recommended that the Court adopt revisions to RPC 5.5, *Unauthorized Practice of Law*, that would address multijurisdictional issues.

In acting on the Committee's recommendations, the Court has decided not to approve an admission by motion Rule or to relax the current educational prerequisites for admission to the bar examination. The Court has, however, adopted the Committee's recommendations in respect of the licensing and regulation of in-house counsel, the regulation of multijurisdictional practice, and the amendment of the *bona fide* office requirement. All of the Court's actions, including the resulting Rule and RPC amendments, are appended to this summary.

The amendments to the *bona fide* office Rule and the multijurisdictional practice RPC will be evaluated at the end of three years. At that time, the Court will have its Professional Responsibility Rules Committee prepare a report and recommendations. Ultimately, the Court will decide whether to retain or modify the current amended language.

The Court notes that it also has adopted an amendment to *Rule 1:20-1* to make clear the obligations to the Lawyers Fund for Client Protection, the New Jersey Lawyers Assistance Program, and the funding of the attorney disciplinary system by attorneys who avail themselves of the opportunities covered by this RPC. Similarly, the Court has amended several other Rules of Court to address other obligations of those attorneys and the responsibilities of the Office of Attorney Ethics in respect of multijurisdictional practice attorneys. Additional Rule amendments may follow, if they become necessary.

## **RECOMMENDATION 1: ADMISSION ON MOTION OF OUT-OF-STATE ATTORNEYS**

### **Committee Comment:**

The proposed rule is designed to provide an alternative to the requirement that an applicant for admission to the New Jersey Bar take the New Jersey bar examination. It does not replace any of the other requirements for admission, including presentation of evidence of good character and of satisfactory knowledge of professional ethics. Additionally, it does not affect any of the existing requirements for the practice of law in the State, including successful passage of a skills and methods course. The proposed rule is consistent with the American Bar Association's proposed Model Rule on Admission on Motion. It is also consistent with the recommendations of the Advisory Committee on Bar Admissions as set forth in its 1983 report. (Report of the Supreme Court Advisory Committee on Bar Admissions, N.J. Law Journal, May 26, 1983.)

**SUPREME COURT ACTION:** After due consideration of the points raised by the Committee in support of its proposal, the Court has declined to adopt an admission by motion rule. Given the significant actions the Court is taking in respect of multijurisdictional practice, the regulation of in-house counsel, and the *bona fide* office Rule, favorable action on this recommendation of the Committee is neither necessary nor desirable at this time.

## **RECOMMENDATION 2: FOREIGN-EDUCATED ATTORNEYS OR GRADUATES FROM NON-ABA APPROVED LAW SCHOOLS TAKING THE NEW JERSEY BAR EXAMINATION**

### **Committee Comment:**

Under the Court's present Rules, a candidate for admission to the bar of this State may not sit for the bar examination unless the applicant has graduated from an American Bar Association-approved law school. Prior Supreme Court committees, including the Jacobs Committee and the Advisory Committee on Bar Admissions, studied the fairness of such a Rule and whether a pool of talented people are unfairly being denied the right to sit for the exam. Although both Committees recommended relaxation, the Court did not adopt any Rule changes. At different times, the Court has also considered, but denied petitions from foreign-educated attorneys seeking waiver of the requirement for graduation from an ABA approved law school.

The task of this Committee was to reconcile 1) the desire to admit talented, competent, ethical attorneys who have been educated at foreign or non-ABA approved law schools, and 2) the need to protect the public by ensuring that an applicant who has not met the traditional educational requirements has nonetheless demonstrated, in an alternative way, the prerequisites to sit for the New Jersey bar examination.

The Committee found that: 1) requiring a foreign-educated attorney to obtain an LL.M. does not sufficiently protect the public; 2) the administrative burden of reviewing applications such as those filed in New York and Pennsylvania, of applicants who, until recently, lived and were educated abroad, is severe; and 3) imposing a 30-credit requirement in named courses (as Pennsylvania requires) is impractical.

The Committee also considered the circumstances of graduates from non-ABA approved American schools. The American Bar Association has developed expertise and criteria for oversight of American law schools. The present Rule requires a degree from an ABA approved law school in order to take the New Jersey bar exam. Although applicants from non-ABA approved law schools present a sympathetic case, we do not question the wisdom of the present Rule. This Committee, however, wants to provide the same opportunity for both graduates of non-ABA approved law schools and foreign law schools to sit for the New Jersey bar. Consequently, the Committee has proposed rules to apply to both [categories]. Further, the Committee [has] proposed that non-ABA accredited American law schools be required to be licensed by the state where the school functions.

**SUPREME COURT ACTION:** After due consideration of the Committee's proposals and the comments received in respect of foreign-educated attorneys and the graduates of non-ABA approved law schools, the Court has concluded that the current educational requirements should be retained. Although the Court asked the Committee to develop a proposal that would enable foreign-educated attorneys to apply for and take our bar examination, the Committee's report makes it clear that adopting the Rule would have the effect of passing along the obligation to set admissions criteria to other jurisdictions, a step the Court is not prepared to take at this time. Therefore, Court has declined to adopt the Committee's recommendations.

## **RECOMMENDATION 3: PROPOSED IN-HOUSE COUNSEL RULE**

### **RULE 1:21. PRACTICE OF LAW**

#### **1:21-1. Who May Practice; Appearance in Court**

a) Qualifications. Except as provided below, no person shall practice law in this State unless that person is an attorney holding a plenary license to practice in this State, has complied with the Rule 1:26 skills and methods course requirement in effect on the date of the attorney's admission, is in good standing, and, except as provided in paragraph (d) of this Rule, maintains a bona fide office for the practice of law. For the purpose of this section, a bona fide office is a place where clients are met, files are kept, the telephone is answered, mail is received and the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours to answer questions posed by the courts, clients or adversaries and to ensure that competent advice from the attorney can be obtained within a reasonable period of time. An attorney who practices law in this State and fails to maintain a bona fide office shall be deemed to be in violation of RPC 5.5(a). An attorney who is not domiciled and does not have a *bona fide* office in this State, but who meets all the qualifications for the practice of law set forth herein must designate the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions, including disciplinary actions, that may arise out of the practice of law and activities related thereto, in the event that service cannot otherwise be effectuated pursuant to the appropriate Rules of Court. The designation of the Clerk as agent shall be made on a form approved by the Supreme Court.

A person not qualifying to practice pursuant to the first paragraph of this rule shall nonetheless be permitted to appear and prosecute or defend an action in any court of this State if the person (1) is a real party in interest to this action or the guardian of the party; or (2) has been admitted to speak pro hac vice pursuant to R. 1:21-2; [or] (3) is a law student or law graduate practicing within the limits of R. 1:21-3; or (4) is an in-house counsel licensed and practicing within the limitations of R. 1:27-2.

No attorney authorized to practice in this State shall permit another person to practice in this State in the attorney's name or as the attorney's partner, employee or associate unless such other person satisfies the requirements of this rule.

(b) through (g) ... [no change]

## **RULE 1:27. ADMISSION TO PRACTICE**

**1:27-1. Plenary Admission.** ...[No change]

**1:27-2. Limited License; In-House Counsel.** ~~Scope.~~ To be eligible to practice law in New Jersey as an in-house counsel, a lawyer must comply with the provisions of this Rule. A limited license ~~granted~~ issued by the Supreme Court pursuant to this Rule shall authorize the lawyer to practice solely for the designated employer in New Jersey. Except as specifically limited herein, the rules, rights and privileges governing the practice of law in this State shall be applicable to a lawyer admitted under this Rule.

**(a) In-House Counsel Defined.** In-House Counsel is ~~defined~~ as a lawyer who is employed in New Jersey for a corporation, a partnership, association, or other legal entity (taken together with its respective parents, subsidiaries, and affiliates) authorized to transact business in this State that is not itself engaged in the practice of law or the rendering of legal services outside such organization, whether for a fee or otherwise, and does not charge or collect a fee for the representation or advice other than to entities comprising such organization.

**(b) Requirements.** All applications under this Rule are to be submitted to the ~~Clerk of the Supreme Court~~ Secretary to the Board of Bar Examiners. An in-house counsel who is admitted to practice law before the highest court of any other state, territory of the United States, Puerto Rico, or the District of Columbia (hereinafter a United States jurisdiction) may receive a limited license to practice law in this State under the following conditions:

(i) The applicant certifies that he or she is a member in good standing of the bar of the highest court of ~~the~~ each United States jurisdiction in which the applicant is licensed to practice law and provides a certificate of good standing from ~~the highest court of the United States jurisdiction of admission or from the disciplinary authority of~~ each United States jurisdiction in which the applicant is admitted;



(ii) The applicant certifies that: (a) no disciplinary proceedings are pending against the applicant and that no discipline has previously been imposed on the applicant in any jurisdiction; or (b) if discipline has been previously imposed, the certification shall state the date, jurisdiction, nature of the violation, and the ~~penalty~~ sanction imposed. If proceedings are pending, the certification shall specify the jurisdiction, the charges, and the likely time of their disposition. A lawyer admitted under this Rule shall have the continuing obligation during the period of such admission promptly to ~~advise~~ inform the ~~Court~~ Director of the Office of Attorney Ethics pursuant to R. 1:20-14(b) of a disposition made of ~~pending charges or of the institution of new disciplinary proceedings~~. Any questions concerning the character or fitness of a lawyer may be referred to the Supreme Court Committee on Character for review and recommendation (R. 1:25). The submission of an application for an In-House Limited License shall be a consent to such investigation as the Committee on Character deems appropriate;

(iii) The applicant certifies that he or she performs legal services in this State solely for the identified employer; and

(iv) The employer certifies through an officer, director or general counsel that the applicant is employed as a lawyer for said employer, that the applicant is of good moral character, and that the nature of the employment conforms to the requirements of this Rule.

(c) **Compliance.** A lawyer admitted pursuant to this Rule shall comply with the annual assessments pursuant to R. 1:20-1(b) (Disciplinary Oversight Committee), R. 1:28-2 (New Jersey Lawyers' Fund for Client Protection), and R. 1:28B-1(e) (Lawyers Assistance Program).

(d) **Limitation.** In-house counsel shall not appear as Attorney of Record for his or her employer, its parent, subsidiary, or affiliated entities in any case or matter pending before the courts of this State, except pursuant to R. 1:21-1(c) and R. 1:21-2.

**(e) Duration.** The limited license to practice law in this State shall expire if such lawyer is admitted to the Bar of this State under any other rule of this Court, or if such lawyer ceases to be an employee for the employer or its parent, subsidiary, or affiliated entities, listed on such lawyer's application, whichever shall first occur; provided, however, that if such lawyer, within thirty days of ceasing to be an employee for the employer or its parent, subsidiary, or affiliated entities listed on such lawyer's application, becomes employed by another employer for which such lawyer shall perform legal services as in-house counsel, such lawyer may maintain his or her admission under this Rule by promptly filing with the ~~Clerk of the Supreme Court~~ Secretary to the Board of Bar Examiners a certification to such effect, stating the date on which his or her prior employment ceased and his/her new employment commenced, identifying his or her new employer and reaffirming that he or she shall not provide legal services, in this State, to any other individual or entity. The lawyer shall also file a certification of the new employer as described in (b)(iv). In the event that the employment of a lawyer admitted under this Rule shall cease with no subsequent employment by a successor employer within thirty days, such lawyer shall promptly file with the ~~Clerk of the Supreme Court~~ Secretary to the Board of Bar Examiners a statement to such effect, stating the date that such employment ceased.

**(f) Fee.** Each applicant for a limited license shall pay the required fees as established by the Board of Bar Examiners and approved by the Supreme Court.

### **Committee Comment:**

The Committee recommends amending R. 1:21-1 to include an in-house counsel component. This recommendation addresses the concern of the Supreme Court in regulating the practice of law by in-house counsel, while at the same time recognizing and legitimizing a prevalent practice. Currently, the only guidelines for in-house counsel wishing to practice in New Jersey are contained in Opinion 14 of the Committee on the Unauthorized Practice of Law.

Following a review of corporate counsel rules in other states, the Committee recommended the adoption of a comprehensive scheme by which in-house counsel may practice in New Jersey without going afoul of unauthorized practice of law (UPL) restrictions. The proposed rule is consistent with Opinion 14 and expands on the elements contained therein.

In addition to specified conditions, lawyers licensed under this rule must comply with the same type of requirements imposed under New Jersey's pro hac vice rule (R. 1:21-2). In particular, a lawyer licensed under this rule must be in good standing and must pay the annual assessments required of every New Jersey lawyer. A license granted under this rule is by definition limited: Section [b(5)] (e) explains the circumstances under which the license is terminated.

**SUPREME COURT ACTION:** Substantively, the Court has adopted the report and recommendations of the Committee in respect of the licensing of in-house counsel. In making technical modifications to the proposal, the Court relocated the main portion of the Rule from R. 1:21 (Practice of Law) to R. 1:27 (Admission to Practice). Please note that the version of R. 1:21-1(a), as amended herein, contains the *bona fide* office modifications approved as part of the Court's action in respect of Recommendation 5 of the Committee.

**RECOMMENDATION 4: LAWYERS NOT ADMITTED TO THE BAR OF THIS STATE AND THE LAWFUL PRACTICE OF LAW (Multijurisdictional Practice)**

RPC 5.5 [Unauthorized Practice of Law] Lawyers Not Admitted to the Bar of this State and the Lawful Practice of Law

(a) A lawyer shall not:

[(a)] (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

[(b)] (2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

(b) A lawyer not admitted to the Bar of this State who is admitted to practice law before the highest court of any other state, territory of the United States, Puerto Rico, or the District of Columbia

(hereinafter a United States jurisdiction) may engage in the lawful practice of law in New Jersey only if:

(1) the lawyer is admitted to practice *pro hac vice* pursuant to R. 1:21-2 or is preparing for a proceeding in which the lawyer reasonably expects to be so admitted and is associated in that preparation with a lawyer admitted to practice in this jurisdiction; or

(2) the lawyer is an in-house counsel and complies with R. ~~1:21-1(b)~~ 1:27-2; or

(3) under any of the following circumstances:

(i) the lawyer engages in the negotiation of the terms of a transaction in furtherance of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice and the transaction originates in or is otherwise related to a jurisdiction in which the lawyer is admitted to practice;

(ii) the lawyer engages in representation of a party to a dispute by participating in arbitration, mediation or other alternate or complementary dispute resolution program, the representation is on behalf of an existing client in a jurisdiction in which the lawyer is

admitted to practice, and the dispute originates in or is otherwise related to a jurisdiction in which the lawyer is admitted to practice;

(iii) the lawyer investigates, engages in discovery, interviews witnesses or deposes witnesses in this jurisdiction for a proceeding pending or anticipated to be instituted in a jurisdiction in which the lawyer is admitted to practice; or

(iv) the lawyer practices under circumstances other than (i) through (iii) above, with respect to a matter where the practice activity arises directly out of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, provided that such practice in this jurisdiction is occasional and is undertaken only when the lawyer's disengagement would result in substantial inefficiency, impracticality or detriment to the client.

(c) A lawyer admitted to practice in another jurisdiction who acts in this jurisdiction pursuant to subparagraph (b) above shall:

(1) be licensed and in good standing in all jurisdictions of admission and not be the subject of any pending disciplinary proceedings, nor a current or pending license suspension or disbarment;

(2) be subject to the Rules of Professional Conduct and the disciplinary authority of the Supreme Court of this jurisdiction;

(3) consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against the lawyer or the lawyer's firm that may arise out of the lawyer's participation in legal matters in this jurisdiction; and

(4) not hold himself or herself out as being admitted to practice in this jurisdiction.

Official Comment: Three years from the effective date of this rule, the Supreme Court will have its Professional Responsibility Rules Committee undertake a comprehensive evaluation of the experience gained in multijurisdictional practice to determine whether any modifications to the RPC as adopted are necessary or desirable.

**Committee Comment:**

In addition to in-house counsel, the Committee considered the many faces of the practice of law by lawyers not admitted to the New Jersey bar, and approved a rule that comprehensively addresses the issues. The proposal is largely consistent with the NJSBA Report; is responsive to the concerns and comments expressed at the public hearings; and recognizes that the nature of the practice of law is changing. The proposal provides a number of categories, avoiding the danger of having only illustrative examples.

**SUPREME COURT ACTION:** The Commission on the Rules of Professional Conduct recommended amendments to RPC 5.5 that tracked the language adopted by the American Bar Association. As noted above, the *Ad Hoc* Committee on Bar Admissions opted to base its recommendation, in part, on the multijurisdictional practice language proposed by NJSBA. The Court duly considered the proposed amendments as drafted by the Commission and the Committee in the light of the comments received and the source material. In making its decision, the Court's intent was to establish a multijurisdictional practice rule that is both realistic and enforceable. It viewed the more conservative NJSBA approach as the preferable method of formally introducing the concept of multijurisdictional practice into our Rules of Professional Conduct. Further, it is hoped that the more specific categories contained in the adopted version will aid the Court in evaluating the effects of the RPC's operations. The Court has, therefore, adopted the version of RPC 5.5 recommended by the Committee.

As with the amendment to the *bona fide* office Rule (R. 1:21-1(a)), the Court has decided that there should be an evaluation of the experience gained under the RPC after a reasonable period of time has elapsed. To that end, the Court is directing its Professional Responsibility Rules Committee, with the assistance of the Clerk of the Supreme Court, the attorney disciplinary system, the Lawyers' Fund for Client Protection, and the Administrative Office of the Courts, to monitor RPC 5.5 over the next three years. At the end of the three-year period, the PRRC will coordinate an evaluation of the rule's effects based on collected data, as supplemented by the comments of the bench, the bar, and the public. The amended rule will remain in place until the Court acts on the report presented by the PRRC. At that time, the Court will decide whether the RPC should be retained permanently, modified, or rescinded.

The Court also is directing the same entities to identify practical and reasonable means of tracking attorneys who avail themselves of the opportunities provided by RPC 5.5. Those attorneys should, for example, pay the annual attorney assessments required of those who are eligible to practice in this jurisdiction. That analysis and report should be made as soon as may be practicable.

## **RECOMMENDATION 5: BONA FIDE OFFICE RULE**

### **RULE 1:21. PRACTICE OF LAW**

#### **1:21-1. Who May Practice; Appearance in Court**

a) Qualifications. Except as provided below, no person shall practice law in this State unless that person is an attorney holding a plenary license to practice in this State, has complied with the Rule 1:26 skills and methods course requirement in effect on the date of the attorney's admission, is in good standing, and, except as provided in paragraph (d) of this Rule, maintains a bona fide office for the practice of law. [in this State regardless of where the attorney is domiciled. A bona fide office is more than a mail drop, a summer home that is unattended during a substantial portion of the year, an answering service unrelated to a place where business is conducted or a place where an on-site agent of the attorney receives and transmits messages only.] For the purpose of this section, a bona fide office is a place where clients are met, files are kept, the telephone is answered, mail is received and the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours to answer questions posed by the courts, clients or adversaries and to ensure that competent advice from the attorney can be obtained within a reasonable period of time. An attorney who practices law in this [s]State and fails to maintain a bona fide office [in this State] shall be deemed to be in violation of RPC 5.5(a). An attorney who is not domiciled and does not have a bona fide office in this State, but who meets all the qualifications for the practice of law set forth herein must designate the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions, including disciplinary actions, that may arise out of the practice of law and activities related thereto, in the event that service cannot otherwise be effectuated pursuant to the appropriate Rules of Court. The designation of the Clerk as agent shall be made on a form approved by the Supreme Court.

A person not qualifying to practice pursuant to the first paragraph of this rule shall nonetheless be permitted to appear and prosecute or defend an action in any court of this State if the person (1) is a real party in interest to this action or the guardian of the party; or (2) has been admitted to speak pro hac vice pursuant to R. 1:21-2; or (3) is a law student or law graduate practicing within the limits of R. 1:21-3.

No attorney authorized to practice in this State shall permit another person to practice in this State in the attorney's name or as the attorney's partner, employee or associate unless such other person satisfies the requirements of this rule.

(b) through (g) ... [no change]

**Committee Comment:**

Although not in the original charge, on February 15, 2002, the Supreme Court asked the Committee and the Supreme Court Commission on the Rules of Professional Conduct (the "Pollock Commission") to consider issues surrounding New Jersey's bona fide office rule. This referral followed an administrative hearing on the Philadelphia Bar Association's proposal to the Court authorizing New Jersey-admitted PBA members to share an office in this state.

The Committee recommends that the bona fide office rule be substantially modified to eliminate altogether the requirement that such an office be located within New Jersey. The [Committee's] reasons for making this recommendation are as follows:

1. The requirement that a lawyer maintain a bona fide office in New Jersey does not recognize that technology, when used effectively, can substitute for proximity, and that a lawyer's office in Delaware, Pennsylvania or New York may be just as accessible by such means as an office in New Jersey. Additionally, the existing rule does not recognize the proximity of New York City and Philadelphia to many New Jersey courts and clients, or reconcile the differential in treatment between attorneys with offices located in those cities and attorneys whose New Jersey offices are located at a considerable distance from their clients and from courts in which litigation is pending.
2. New Jersey has exhibited a gradual relaxation of residency and office requirements, the history of which is set forth in Tolchin v. Supreme Ct. of the State of N.J., 111 F. 3d 1099, 1103-04 (3d Cir. 1997). Nonetheless, the Tolchin court upheld the present bona fide office rule against constitutional challenge only because it found a rational relationship to exist between the benefit of attorney accessibility and the bona fide office requirement. Id. at 1108. [In the Committee's view, its] observations in the preceding paragraph render even this justification constitutionally suspect and suggest that a further rule relaxation may now be warranted.
3. The research, summarized previously, discloses that the rule as currently written does not fall within the mainstream of other states' supervisory schemes. In fact, it is practically unique.
4. The proposal of the Philadelphia Bar Association that has been designed as a means of compliance with the present bona fide office rule envisions the creation of an artificial, shared satellite office. That proposal was



not adopted by the Court; but was instead referred to this Committee and the Pollock Commission for further study. If our recommendation is approved, the PBA proposal should become moot.

**SUPREME COURT ACTION:** Although not commenting on the Committee's concerns regarding the constitutionality of the existing *bona fide* office Rule and subject to an important caveat, the Court adopts the proposal of the Committee. The Court has concluded that the impact of the amendment needs to be assessed before it can be made permanent. For that reason, the Court is ordering the Clerk of the Supreme Court, the attorney disciplinary system, the Lawyers' Fund for Client Protection, and the Administrative Office of the Courts to monitor the experience gained under the amended Rule. Three years from the effective date of the amended Rule, the AOC will coordinate an evaluation of its effects based on the collected data, as supplemented by the comments of the bench, the bar, and the public. The amended Rule will remain in place until the Court acts on the report presented by the AOC. At that time, the Court will decide whether the Rule should be retained permanently, modified, or rescinded.