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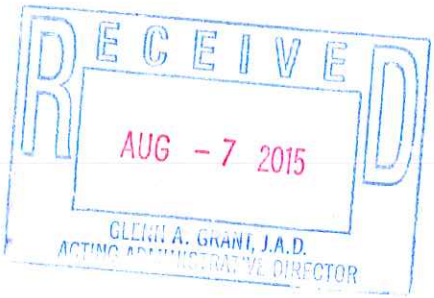

August 1, 2015

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments: Special Committee on Attorney Ethics and Admissions
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey, 08625-0037

Re: Special Committee Report and Recommendations on the ABA amendments to the Model Rules of Professional Conduct

Dear Judge Grant:

William Popjoy, III, Esquire, President of the Gloucester County Bar Association, appointed me as the chair of our Unauthorized Practice of Law Committee and charged me with reviewing the Special Ethics Committee's report and recommendations on the ABA amendments to the Model Rules of Professional Conduct and standards for admission to practice law. My committee is comprised of Luke Griffith, Esquire and Kristin Lis, Esquire; we met with Mr. Popjoy to review the report and make recommendations to the Gloucester County Bar Association for the purpose of submitting the Bar Association's position on the report.

After meeting with my committee, we identified four areas that we believed were of particular interest to our Bar Association and presented our position to the General Membership. We defer to the recommendation of the Special Committee on the balance of their report. With that in mind, the position of the Gloucester County Bar Association on these four issues is as follows:

IN HOUSE PRACTICE BY FOREIGN LAWYERS RPC 5.5 – The Special Ethics Committee recommends adopting a rule permitting in-house practice by foreign lawyers as proposed by the ABA with the following restrictions:

- A foreign lawyer not be permitted to provide advice on US law, even if they are associated with a US lawyer in the matter; the reasoning on this is that it would be too

difficult to evaluate the credentials of that attorney in their home jurisdiction.

Our Bar Association approved a motion to adopt the recommendation of the Special Ethics Committee with the proposed restriction.

PRO HACE VICE ADMISSION BY FOREIGN LAWYERS – The Special Ethics Committee supported the adoption of a rule permitting the admission of pro hace vice foreign lawyers which are licensed and in good standing in their jurisdiction, with restrictions as follows:

- Due to a concern about proper verification of the license and credentials of the attorney it was recommend that the local counsel be held responsible for verifying the credentials of the foreign lawyer and certifying those credentials to the court in the pro hace vice application; and
- The foreign lawyer admitted pro hace vice must not appear in any proceeding, in court or out, without being accompanied by the local counsel.

Our Bar Association approved a motion to adopt the recommendation of the Special Ethics Committee, with the proposed restrictions.

RESPONSIBILITIES OF OUTSOURCING LEGAL SERVICES: ADDED COMMENTS TO RPC 1.1 – The ABA proposed two comments be added to RPC 1.1, which are not supported by the Special Ethics Committee as follows:

- Before a lawyer retains or contacts with other lawyers outside the firm to provide legal services to a client that they obtain informed consent from the client and must believe that the services will contribute to the competent and ethical representation of the client.
- The second proposed comment would state that when lawyers from more than one firm provide services to a client, that they consult with each other and the client regarding the scope of their representation and allocation of responsibility between them.

The Special Ethics Committee did not support the addition of these comments due to existing Advisory Committee on Professional Ethics Opinions that already established these obligations.

Our Bar Association, upon recommendation of my Committee, moved to adopt the ABA's proposed comments; the reasoning behind our decision was based upon the fact that an attorney may not think to check the ACPEOs for more information after reading the Rule. There should either be a comment referencing the relevant ACPEOs on these issues or that the comments themselves, as proposed, should be adopted.

ADMISSION BY MOTION – The ABA recommends a proposed rule that would allow an attorney who is admitted to practice in another US jurisdiction, holds a law school degree, has practiced law in another state for three of the past five years, is in good standing, is not subject to discipline, possesses character and fitness and designates the Clerk of the Court for service of process to be admitted to practice in NJ on motion. The ABA urged jurisdictions to admit on motion to

eliminate restrictions such as reciprocity.

The Special Ethics Committee was evenly divided on whether or not to support this proposed rule and my Committee was as well. After discussing the issue, the Gloucester County Bar Association's recommendation is as follows:

- We feel that the reasoning behind the opposition, namely that a practitioner seeking to be admitted by motion would not have knowledge of New Jersey law, is not valid enough to overcome the benefits of allowing admission by motion. An attorney seeking to be admitted by motion and a newly admitted lawyer who took and passed the New Jersey Bar Exam are on an equal playing field when it comes to their knowledge of New Jersey practice and substantive law, the latter having received no educational advantage by way of taking the exam.
- The recommendation to require attorneys seeking to be admitted by motion to take and pass a course on New Jersey professionalism and ethics could easily be modified to include either a brief course on New Jersey law and practice prior to being admitted or make the admission subject to revocation unless the attorney completes the same CLE requirements of other newly admitted New Jersey attorneys.
- While our Association agrees with the recommended change for prior practice experience from three of the last five years to five of the last seven, we do not feel that "practice" is adequately defined. We would suggest that a special committee be formed to determine how the Board of Bar Examiners would define a year of practice for purposes of the rule, be it by number of cases handled or hours worked as certified to by another attorney in their jurisdiction or by reviewing how other states who admit on motion determined years of practice, we feel that parameters need to be established prior to placing the rule into effect.

With those changes, our Bar Association would support Admission by Motion as proposed, with the above-referenced modifications. The Gloucester County Bar Associations thanks the Court for its consideration of our position on these issues.

Respectfully,

TRACE JENKINS

AllynMarie Smedley
Chair, Unauthorized Practice of Law Committee

AMS
cc: Kristin Lis, Esquire
Luke Griffith, Esquire
William Popjoy, III, Esquire