SUPREME COURT OF NEW JERSEY

NOTICE TO THE BAR

Re: Request for Comment on Proposed Rule to Implement N.J.S.A. 2A:13-12 (Attorney License Suspensions for Failing to Repay Student Loans)

Effective June 8, 1999, Chapter 54 of the Laws of 1999, codified at N.J.S.A. 45:1-21.2 and N.J.S.A. 2A:13-12, ("the Act"), established procedures for the suspension of licenses, registrations, or certifications of any person who fails to repay a State or federal direct or guaranteed educational loan. The Act further provided that the Supreme Court "may adopt" Rules of Court establishing a process for the suspension of attorney licenses for defaulting on student loans. The responsibility for drafting a proposed rule to implement the Act in respect of attorney licenses was referred to the Supreme Court's Professional Responsibility Rules Committee ("PRRC") on July 25, 2000.

The PRRC has submitted a report and two alternative proposed rules to the Court. The first rule provides for the suspension of an attorney's license based on the lender or guarantor's certification that certain procedural requirements have been met, such as providing the attorney the opportunity for an administrative hearing on the default. The alternative rule provides that the same certification will be conclusive as to whether the attorney has defaulted on the loan, but will permit the attorney to argue to the Disciplinary Review Board mitigating circumstances relevant to the discipline to be imposed.

The Court is seeking comments from members of the bar. The text of the PRRC's report and the proposed rules follow this Notice. Appendices to the report are available for review in the Supreme Court Clerk's Office, Hughes Justice Complex, Market Street, Trenton. Anyone interested in reviewing the appendices should communicate with Carol Hucks, Esq., at (609) 292-4837. Those intending to comment should do so in writing to me by July 2, 2001, at the following address:

Clerk of the Supreme Court
Richard J. Hughes Justice Complex
P.O. Box 970
Trenton, N.J. 08625-0970

Stephen W. Townsend, Esq.
Clerk of the Supreme Court
Dated: May 2, 2001

RULE A

1:20-11B. Suspension of License to Practice Law for Failure to Repay Student Loans

(a) Certification by Lender or Guarantor; Contents. An entity seeking the suspension of an attorney's license pursuant to N.J.S.A. 2A:13-12 shall file with the Clerk of the Supreme Court and serve on the attorney a written certification attesting that (1) the loan is in default pursuant to State and federal law; (2) the entity fully complied with the State and federal laws governing servicing and collection activities on loans and, in particular, the procedures and limitations applicable to lender and guarantor servicing and collection activities on student loans prescribed by 34 CFR part 682 and Title 9A chapter 10 of the New Jersey Administrative Code regardless of the entity or type of loan; and (3) the entity provided the attorney with the opportunity for a hearing that conforms with the requirements of N.J.S.A. 52:14B-

11 on the issues of the status of the loan, whether there has been a default, and the appropriateness of suspending the attorney's license.

(b) Supreme Court Action. On review of the entity's certification, the Court shall enter an Order suspending the license of the attorney if the requirements of paragraph (a) of this Rule have been met.

(c) Dismissal. At any time before the entry of an Order of the Supreme Court suspending the license of an attorney pursuant to this Rule, if an attorney submits to the Supreme Court, on notice to the entity, a written release issued by that entity stating that the attorney has cured the default or is making payments on the loan in accordance with a repayment agreement approved by the entity, the certification seeking suspension of the attorney's license shall be dismissed.

(d) Reinstatement. An attorney suspended from the practice of law pursuant to this Rule may be reinstated on submitting to the Supreme Court, on notice to the entity, a written release issued by the entity stating that the attorney has cured the default or is making payments on the loan in accordance with a repayment agreement approved by the entity. If the attorney has continued to meet all other requirements for licensing during the suspension, the Court shall Order the reinstatement without a further hearing.

(e) Release of Attorney Information to Lenders or Guarantors. When a lender or guarantor requests information on an attorney who is in default on a State or federal direct or guaranteed educational loan, the Office of Attorney Ethics and the New Jersey Lawyers' Fund for Client Protection shall provide the lender or guarantor with an attorney's home address and primary law office address, if available. The information shall be provided solely for use in connection with an application pursuant to paragraph (a) of this Rule.

RULE B

1:20-11B. Discipline for Failure to Repay Educational Loans

(a) Certification by Lender or Guarantor; Contents. An entity seeking the suspension of an attorney's license pursuant to N.J.S.A. 2A:13-12 shall submit to the Clerk of the Supreme Court and serve on the attorney a written certification attesting that (1) the loan is in default pursuant to State and federal law; (2) the entity fully complied with the State and federal laws governing servicing and collection activities on loans and, in particular, the procedures and limitations applicable to lender and guarantor servicing and collection activities on student loans prescribed by 34 CFR part 682 and Title 9A chapter 10 of the New Jersey Administrative Code regardless of the entity or type of loan; and (3) the entity provided the attorney with the opportunity for a hearing that conforms with the requirements of N.J.S.A. 52:14B-11 on the issues of the status of the loan, whether there has been a default, and the appropriateness of suspending the attorney's license.

(b) Conclusive Evidence. In a disciplinary proceeding instituted pursuant to N.J.S.A. 2A:13-12 against an attorney for defaulting on a State or federal direct or guaranteed educational loan, or both, the default shall be deemed to be conclusively established by a certification meeting the requirements of paragraph (a).

(c) Supreme Court Action. On receipt of the entity's certification, the Court shall refer the certification to the Director of the Office of Attorney Ethics.

(d) Final Discipline.
(1) Procedure. The Director of the Office of Attorney Ethics, on receipt from the Supreme Court and on review of the entity's certification to ensure compliance with paragraph (a), may file directly with the Disciplinary Review Board and serve on the attorney or counsel, if any, a motion for final discipline specifying the sanction requested. Within 21 days after service of such motion the respondent shall file with the Board and serve on the Director a brief together with any other permissible filings. The Director may within 21 days thereafter file and serve any responding brief. If the respondent either fails timely to file a brief or timely files a brief that does not disagree with the sanction requested, no oral argument is required, and the Board may decide the matter on the record. In all other cases the Board shall notify

the parties of a date for oral argument. Following oral argument, the Board shall issue its decision and recommendation for final discipline to the Supreme Court.

The sole issue to be determined shall be the extent of final discipline to be imposed. The Board and Court may consider any relevant evidence in mitigation that is consistent with a determination of the default status of the loan made pursuant to paragraphs (a) and (b). The Board and the Court may consider written materials otherwise allowed by this rule that are submitted to it. No oral testimony shall be taken. Either the Board or the Court, on the showing of good cause or on its own motion, may remand a case to a trier of fact for a limited evidentiary hearing and report consistent with this subsection.

Nothing in this rule shall be construed to preclude the Office of Attorney Ethics from filing a complaint and proceeding by hearing when the Director determines that procedure to be appropriate.

(e) Dismissal. At any time before the entry of an Order of the Supreme Court imposing discipline pursuant to this Rule, if an attorney submits to the Director of the Office of Attorney Ethics, on notice to the entity that submitted the certification, a written release issued by the entity stating that the attorney has cured the default or is making payments on the loan in accordance with a repayment agreement approved by the entity, the Director shall dismiss the matter or notify the Board or the Court of the written release, as appropriate, which shall then dismiss the matter.

(f) Reinstatement. An attorney suspended from the practice of law pursuant to this Rule may be reinstated on submitting to the Supreme Court, on notice to the entity that submitted the certification, a written release issued by the entity stating that the attorney has cured the default or is making payments on the loan in accordance with a repayment agreement approved by the entity. If the attorney has continued to meet all other requirements for licensing during the suspension, the Court shall Order the reinstatement without a further hearing.

(g) Release of Attorney Information to Lenders or Guarantors. When a lender or guarantor requests information on an attorney who is in default on a State or federal direct or guaranteed educational loan, the Office of Attorney Ethics and the New Jersey Lawyers' Fund for Client Protection shall provide the lender or guarantor with, if available, an attorney's home address and primary law office address. The information shall be provided solely for use in connection with an application pursuant to paragraph (a) of this Rule.

PREFACE

Effective June 8, 1999, Chapter 54 of the Laws of 1999 ("the Act") established procedures for the suspension of licenses, registrations, or certifications of any person who fails to repay a State or federal direct or guaranteed educational loan. The Act further provided that the Supreme Court "may adopt" Rules of Court establishing a process for the suspension of attorney licenses for defaulting on student loans. The responsibility for drafting a proposed rule to implement the Act in respect of attorney licenses was referred to the Professional Responsibility Rules Committee ("PRRC" or "Committee") on July 25, 2000. Appendix A.

THE LEGISLATION AND ITS HISTORY

Section 1 of the Act governs non-attorney licenses. This provision, codified at N.J.S.A. 45:1-21.2, instructs the director of any professional or occupational licensing board encompassed by Title 45, or the Director of the Division of Consumer Affairs, to "suspend, as appropriate, after a hearing, the license, registration or certification of any person" that the lender or guarantor certifies is currently in "nonpayment or default of a State or federal direct or guaranteed educational loan." Section 2 of the Act, codified at N.J.S.A. 2A:13-12, permits the Court to adopt a rule establishing its own procedure to suspend the licenses of attorneys who fail to repay their student loans. Unlike the procedure outlined for other professionals in N.J.S.A. 45:1-21.2, the Legislature did not suggest particular procedures for attorney suspensions in N.J.S.A. 2A:13-12. Appendix B.

The PRRC began its consideration by examining the express language of the Act. That examination led the Committee

to conclude that the provision for non-attorney occupational licensees, N.J.S.A. 45:1-21.2, which directs that the suspension occur "as appropriate, after a hearing," should apply to attorney suspensions under N.J.S.A. 2A:13-12. Accordingly, the Committee determined that, at a minimum, a proposed rule to implement N.J.S.A. 2A:13-12 should include a "hearing" on the default and on the appropriateness of suspension.

The Committee also considered the legislative history of the Act. The Committee found particularly relevant Governor Whitman's recommendations in her January 12, 1999 conditional veto of the original legislation. As originally sent to the Governor, the bill stated that "the director or board, as appropriate, shall suspend, after a hearing, the license" of a defaulting party. Governor Whitman recommended the bill be amended:

> While I support this bill, I must recommend an amendment to ensure that the due process rights of debtors are protected. As drafted, the bill states that the director or board "shall" suspend a license when a debtor is in default after a hearing. This language nullifies the purpose of a hearing because it leaves the director or board without discretion to allow a debtor to retain his or her license if the circumstances warrant. I therefore recommend that the bill be amended to ensure that the debtor is afforded a proper due process hearing by stating that the director or a board shall suspend a professional license as appropriate.

Appendix C.

The Legislature acquiesced and limited suspensions "as appropriate." The Committee thus considered that a default on a student loan does not necessarily lead to a suspension. Facts developed through a hearing could result in a lesser sanction, "as appropriate."

Finally, the Committee considered the Governor's acknowledgment of the Court's sole authority to regulate attorney licenses in her suggestion that the Court may "establish its own due process procedures for suspension of attorneys' licenses."

THE PRRC'S INVESTIGATION AND ANALYSIS

1. The Committee's Preliminary Discussions.

At its first meeting on this referral, the Committee expressed two concerns. The first concern was suspending an attorney's license before the lender or guarantor obtains a judgment on the debt. For this reason, the Committee determined that a rule should provide due process protections to the licensee. Second, the Committee believed that the procedural mechanism for implementing the Act should fall within the Court's current disciplinary structure. Failure to repay student loans will constitute conduct that the Court finds worthy of sanction. Any rule adopting the Court's existing disciplinary process alleviates due process concerns. With these considerations in mind, the Committee examined several different formats for a rule conforming with the existing attorney disciplinary process. At the request of the Court, the Committee presented two possible approaches to David P. Anderson, Jr., Director, Office of Professional and Governmental Services. Mr. Anderson expressed concern about providing too much process through a rule tracking the existing disciplinary procedures of the Court. He suggested that attorneys should be treated in the same manner that the Division of Consumer Affairs ("DCA") plans to treat other licensed professionals.

2. The DCA's Process.

From David Anderson and other sources, the Committee learned that the DCA will not establish an internal review and hearing process for this law. Instead, DCA intends to adopt the existing administrative hearing processes currently mandated by State and federal regulations for some of the collection activities (such as administrative wage garnishment) used by guarantors of some types of student loans. These regulations apply to the two entities from which DCA expects to receive frequent suspension requests: 1) New Jersey Higher Education Student Assistance Authority (HESAA), an independent State authority that guarantees many of the student loans made in this State; and 2) University of Medicine and Dentistry of New Jersey ("UMDNJ"), which is a lender in its own right. Interestingly, the original version of the bill addressed only health care professions, which have a high default rate. The bill was amended to include other licensees. DCA anticipates that HESAA or UMDNJ will hold a hearing and then submit to DCA an appropriate certification requesting the suspension of the license. Based on this certification, DCA will automatically issue the suspension. The licensee will have no opportunity to argue his or her circumstances to the DCA.

3. The Regulatory Law Governing Collections on Student Loans.

The Committee investigated the administrative and regulatory process to which DCA intends to defer. Because attorneys are unlikely to have student loans with UMDNJ, the Committee's investigation focused primarily on the HESAA loans and similar lenders and guarantors. In discussions with financial aid representatives from New Jersey law schools and HESAA, the PRRC learned the following. Nationally, all secondary education loans are obtained through two major programs. First, seventy percent of all secondary education loans are under a federal program entitled the "Federal Family Education Loan Program" ("FFEL" or "FFELP"). See 20 U.S.C.A. s. 1071, et seq. Under this program, the student applies directly to a lending institution for a loan. The lender submits the student's application to a guarantor for approval. In New Jersey, this guarantor is HESAA. Before 1994, all law schools in New Jersey used the FFEL program. Second, thirty percent of all secondary education loans are through the federal Direct Loan Program, which began in 1994. See 20 U.S.C.A. s. 1087a. In this program, the federal government gives money directly to the colleges. Students deal directly with the colleges in obtaining their loans. At this time, all New Jersey law schools use the Direct Loan program. Seton Hall, however, may consider returning to the FFEL program in the near future. A small number of students use additional loan programs if they need more funds than they can obtain from the primary programs. These programs include the Perkins loans, Plus loans, Sallie Mae, all of which are federally funded, and New Jersey Class, which is funded by State bonds.

a. FFEL Loans Collection activities on FFEL loans are governed by state and federal regulations. The regulations define "default" as failure to make payments for 270 days for a loan repayable in monthly installments, or 330 days for a loan repayable in less frequent installments. 34 C.F.R. s. 682.200; N.J.A.C. 9A:10-1.3. Long before a FFEL loan achieves "default" status, while the loan is merely "delinquent," the private lender that originated the loan must comply with the "due diligence" requirements of federal law. 34 C.F.R. s. 682.411. These regulations impose a strict framework of letters, phone calls, and skip tracing (computer data-base searches to locate missing borrowers). The regulations further dictate the timing of these activities. If these collection efforts fail and the loan has been delinquent long enough to meet the legal definition of "default," the guarantor (HESAA for most New Jersey loans) purchases the loan from the lender and begins its own collection attempts. N.J.A.C. 9A:10-1.4.

The guarantor's collection activities are also governed by federal regulations. See 34 C.F.R. s. 682.410. When HESAA is the guarantor, State regulations also apply. See N.J.A.C. 9A:10-1.2. Briefly, these federal and State regulations mandate collection activities that begin with letters and telephone calls, and expand over time to remedies including the withholding of income tax refunds, the administrative garnishment of wages, and/or filing suit to obtain a judgment. If the guarantor decides to seek wage garnishment against a defaulted borrower, the State and federal regulations permit the borrower to request a hearing.

Federal regulations offer a basic hearing prior to garnishing wages, see 34 C.F.R. s. 682.411 (hearing by an individual not under the control of the guarantee agency only on the existence and amount of debt and terms of repayment schedule). If the loan is guaranteed by HESAA, however, the borrower is entitled to all of the procedural protections afforded by this State's Administrative Code. According to HESAA's former counsel, David Powers, these include a full Title 52 administrative hearing before an administrative law judge who makes a final decision on wage garnishment. See N.J.S.A. 52:14B-11. It is this hearing that HESAA intends to offer the licensee before it certifies to DCA that the N.J.S.A. 45:1-21.2 requirements for suspension have been met.

If the guarantor's collection efforts fail, the United States Department of Education ("DOE") purchases the loan from the State and begins its own collection efforts through the use of private collection agencies. No regulations dictate the conduct of DOE or the private collection agencies in respect of this stage of student loan collections. Collection agencies, however, are subject to the state and federal laws that govern activities relating to all consumer loans, such as the Fair Debt Collections Practices Act, 15 U.S.C.A. s. 1692, et. seq. (regulating conduct such as misrepresentation and harassment by debt collectors).

b. Direct Loans Unlike the FFEL program's system of staged funding by lenders, guarantors, and finally the federal government, the Direct Loan program involves only federal funds. The DOE contracts with Direct Loan Servicing Centers to service the loans. If the loan achieves default status (270 days of delinquency for loans with a monthly repayment obligation, and 330 days for loans repayable in less frequent installments; see 64 Fed. Reg. 58974, 58978),

the DOE contracts with private collection agencies for their services. Again, the conduct of these collection agencies in respect of student loan debt is not the subject of specific regulations and is restricted only by the statutes governing collection of generic consumer debts.

Furthermore, because neither a private lender nor a guarantor is involved in Direct Loans, the regulations that restrict collection efforts on FFEL loans by a guarantor such as HESAA do not apply. Instead, the regulations applicable to Direct Loans state that the Secretary may take any action authorized by law to collect a defaulted Direct Loan. 34 C.F.R. s. 685.211. In 1994, the DOE expressly rejected a request by educational institutions that it adopt regulations similar to those for FFEL that detail the types and timing of its due diligence and collection efforts. 59 Fed. Reg. 61664, 61667; Appendix D, page 2, Regulating Internal Procedures. Although the DOE stated in 2000 that the collection activities for Direct Loans are generally the same as required by law for FFEL loans, nothing compels it to apply these standards. 65 Fed. Reg. 65616, 65618; Appendix E, page 2, first paragraph.

The result of the DOE's decision not to adopt regulations governing collection conduct for Direct Loans is that a borrower of federal money through this program may experience collection actions different from those experienced by a FFEL borrower dealing with the lender or guarantor. These differences may include the type, number, and timing of telephone calls and letters to the borrower attempting to induce resumed payments, and the procedural protections offered to the borrower both before a determination of default and after default status is achieved.

Although HESAA provides a full Title 52 administrative hearing before garnishing the wages of a FFEL borrower, DOE's collection hearing may not afford similar protection. As reported by the National Consumer Law Center, collection agencies and even guarantors may ignore requests for hearings, deny hearings on inadequate grounds, and ignore valid defenses. Moreover, when a hearing is offered, it may be arranged thousands of miles from the borrower's residence at a location convenient only to the Department or hearing officer. Because of the due process implications of such an arrangement, telephone hearings are offered to the borrower. Telephone hearings, however, effectively deny the right to present defenses in person. National Consumer Law Center, Unfair and Deceptive Acts and Practices, s. 11.2.4.4.2 (4th ed. 1997); see also 34 C.F.R. s. 682.410 (9)(J) (FFEL regulations require a hearing on garnishment of wages, but it may be by telephone).

4. The Committee's Analysis of the Regulatory Structure and Its Applicability to the Act. Based on the above information, the Committee agreed that a rule should incorporate the procedural protections of the applicable State and federal regulatory law. The Committee recognized, however, the problem created by the different requirements imposed on the federal government, guarantors of loans in other states, and HESAA. Further complicating the analysis was the Committee's consideration of the specific wording of the Act in respect of its use of the terms "lender or guarantor" and "nonpayment or default." Although HESAA may be the entity most likely to use the rule, the Act does not identify specific "lender[s] or guarantor[s.]" The Court may receive certifications from private lending banks, other states' guarantors, and collection agencies that contract with the federal government.

Moreover, in respect of the terms Anonpayment or default, "default" is defined by federal and State regulations, but "nonpayment" is not. This statutory language generated concern that the Court's rule should not provide an avenue for private banking "lender[s]" to seek suspension for "nonpayment," thereby permitting them to circumvent the State and federal requirements for collection activities on defaulted loans. To ensure that the same procedures were applied to attorneys' loans, regardless of the entity or the type of loan, the Committee determined that the rule should permit suspension of an attorney's license only when the FFEL regulatory requirements have been met for loans that are in default. The Committee also determined that all attorneys whose licenses are at risk of suspension must be afforded the protections embodied in a Title 52 hearing on the issues of the status of the loan, whether there has been a default, and the appropriateness of suspending the license. This will avoid the potential inequalities presented by the federal government's "hearing" procedures, as opposed to the hearing that HESAA intends to provide.

5. Applying the Results of Its Investigation to Draft a Rule to Implement the Act. The Committee drafted two rules for the Court's consideration. The first rule is based on the process that DCA intends to implement. It is attached for the Court's consideration as "Rule A." Appendix F.

To address the problem created by the different regulations or lack of regulations dictating specific collection

procedures for the two primary types of loans, Rule A requires all entities to comply with the same regulations that bind HESAA. Rule A provides that the entity seeking the suspension shall file with the Court a certification stating that the loan is in default, and that the entity has fully complied with the State and federal laws governing servicing and collection efforts on loans. The rule also specifically cites the body of regulations governing lender and guarantor collection activities for FFEL loans. Significantly, the rule further requires certification that the entity provided a hearing before an impartial adjudicator that comports with the requirements of N.J.S.A. 52:14B-11. If the certification meets those requirements, the Court will immediately enter an Order suspending the attorney's license.

Rule A also provides for dismissal if the attorney obtains a written release from the entity attesting that the default has been cured and submits that release to the Court prior to the entry of the suspension Order. Finally, Rule A provides for reinstatement of the attorney's suspended license if the default is cured after entry of the Order of suspension. In both the dismissal and reinstatement provisions, the Committee mirrored the Act's requirement that the licensee provide a "written release issued by the entity" stating that the default has been cured or the licensee is making payments in accordance with a new payment agreement. It is the Committee's understanding that a "written release" includes any writing by the entity evidencing that the attorney is meeting his or her loan obligations.

The Committee, however, does not recommend the Court's adoption of Rule A. Troubling the Committee is the proposed idea that the Court would not apply its usual standards for imposing attorney discipline. Although the Legislature has characterized defaults on student loans as warranting suspension, so severe a sanction without the opportunity for the attorney to present mitigating factors is unprecedented. Sensitive to that concern, the PRRC believes that Rule A treads on the Court's right to regulate the profession.

Consequently, the Committee favors an approach that, while recognizing defaults on student loans as warranting suspension of the attorney's license, provides some limited opportunity for a hearing to present mitigating circumstances to the Court. This approach is supported by the Governor's conditional veto and her explanation that there must be "discretion to allow a debtor to retain his or her license if the circumstances warrant."

Although the DCA would leave that discretion to an administrative judge as part of an agency determination, the disciplining of attorneys is constitutionally vested in the Supreme Court. Although the Court need not be bound by N.J.S.A. 45:1-21.2, the legislative determination may inform any rule that the Court adopts. See McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546 (1993); Knight v. City of Margate, 86 N.J. 374 (1981). The Committee, therefore, drafted a second proposed rule for the Court's consideration. This rule, designated "Rule B," is attached at Appendix G.

Rule B is a reformulation of the expedited process currently provided by R. 1:20-13 for the disciplining of attorneys who have been convicted of criminal offenses. Unlike the disciplinary process normally used for grievances arising from ethical violations, the R. 1:20-13 procedure does not include a hearing before the District Ethics Committee. Instead, the only hearing within the traditional disciplinary process is the oral argument conducted by the Disciplinary Review Board. The attorney is not permitted to challenge the underlying elements of the conviction, but may present mitigating factors for the Board's consideration.

Following this format, Rule B provides that the lender or guarantor will submit to the Court the same certification contemplated by Rule A. The Court will forward the certification to the Office of Attorney Ethics, which will review the certification to ensure conformity with the rule. If the certification is proper, the element of the attorney's "default" on the loan will be conclusively established and may not be relitigated. In this way, the Court will not be faced with adjudicating the issue of whether the loan is in default and whether proper due diligence and collection procedures were followed pursuant to State and federal regulations, and may instead consider only the attorney's mitigating circumstances. The attorney will provide these mitigating circumstances in a brief submitted to the OAE, to which the Director of the OAE may respond. The parties will be notified of a date for oral argument before the Disciplinary Review Board. In discussing circumstances that the Board and Court might consider "mitigating," the Committee noted the Act's failure to state whether it applies only to the principal borrower. In any matter in which a co-signor's license is at issue, the Committee believes that the Board should consider co-signor status as a mitigating factor.

The sole issue before the Board will be the determination of the final discipline that the Board finds appropriate. The

Board will issue a decision and recommendation for final discipline to the Supreme Court. The dismissal and reinstatement provisions of Rule B correspond to those suggested in Rule A.

The PRRC submitted Rule B to the OAE for comment. David E. Johnson, Jr., Esquire, Director of the OAE, suggested that instead of following the process provided by R. 1:20-13 (attorney convicted of criminal offense), the PRRC should adopt the process used in R. 1:20-15(k)(temporary suspension for failure to pay a fee arbitration award). That rule provides a streamlined process. There is no briefing requirement. A hearing is noticed, at which the Board will consider an attorney's request for a payment schedule as an alternative to suspension.

The PRRC disagrees that this streamlined process is superior to Rule B, however, for several reasons. First, the hearing provided by R. 1:20-15(k) is not public. The PRRC believes that the process to determine whether to suspend an attorney's license for failure to repay a student loan should be open to scrutiny. For the same reason, the Committee believes that formal briefs containing the attorney's mitigating circumstances should be required. Finally, the Committee notes that although the DRB has the authority to implement a payment plan for fee arbitration awards, it will not have the authority to restructure the payments an attorney owes to a lender or guarantor.

Unlike the R. 1:20-15(k) procedure, Rule B provides a highly visible process along with the consideration of mitigating factors in determining whether suspension is appropriate. The Committee resolved, therefore, to recommend Rule B for the Court's consideration.

CONCLUSION

Because the Committee believes that a license suspension should not occur unless the attorney was given the opportunity to present mitigating circumstances, the Committee respectfully requests that the Court give consideration to Rule B as the preferred alternative to Rule A.

Respectfully submitted,
Joseph A. Bottitta, Esq.
Roberta A. DeAngelis, Esq.
Hon. Alan B. Handler
George J. Kenny, Esq.
Melville D. Miller, Jr., Esq.
Rocky L. Peterson, Esq.
Robert G. Rose, Esq.
Luis R. Sanchez, Esq.
Michael S. Stein, Esq.
Brenda J. Stewart, Esq.
Hon. Stewart G. Pollock, Chair
April 26, 2001

Notices to the Bar