

NOTICE TO THE BAR

FEE SHIFTING IN PUBLIC INTEREST LITIGATION - PUBLIC HEARING

At the direction of the Supreme Court, the Civil Practice Committee will hold a public hearing on a proposed rule amendment that would permit claimants who prevail in actions asserting rights under the New Jersey Constitution to recover reasonable counsel fees, subject to certain limitations. A copy of the proposed rule amendment accompanies this notice.

The Committee's hearing will be at the New Jersey Law Center, One Constitution Square, New Brunswick (Room 220) on Tuesday, May 13, 2003 from 4:00 to 6:00 p.m. Written comments on the proposed rule amendment may be submitted in advance of or at the meeting. Anyone wishing to speak at the hearing must so request in writing by May 5, 2003 to:

Jane F. Castner, Assistant Director
Civil Practice Division
Administrative Office of the Courts
P.O.Box 981
Trenton, NJ 08625-0981

Subsequent to the hearing the Civil Practice Committee will consider the comments submitted in writing and orally and will thereafter provide the Court with its recommendations regarding the proposed rule amendment.

Sylvia B. Pressler
Hon. Sylvia B. Pressler, P.J.A.D.
Chair, Civil Practice Committee
Dated: April 7, 2003

DRAFT RULE PROPOSAL

- a. In a civil proceeding that results in the establishment, protection or enforcement of a right under the New Jersey Constitution, the court shall award, subject to subsections (b) through (e) below, reasonable counsel fees and reasonable litigation expenses to a claimant who, as plaintiff, counterclaimant, cross-claimant or third-party plaintiff in the proceeding, has prevailed in asserting such a right.
- b. The court, in its discretion, may abate in full or in part an award of fees and expenses otherwise payable under this Rule from the claimant's party-opponent if it finds, based upon sworn proofs, that the full imposition of such an award would inflict a substantial and undue financial hardship upon the party-opponent or, if a public entity, upon its taxpaying constituents.
- c. In calculating an award of reasonable fees and expenses under this Rule:
 1. The court shall include in the award only that portion of the services of claimant's counsel and associated litigation expenses, that were devoted to claims under the New Jersey Constitution upon which the claimant ultimately prevailed. Services and expenses devoted to claims not arising under the New Jersey Constitution or to matters upon which claimant did not prevail shall be non-compensable under this Rule.
 2. All compensable services by claimant's counsel shall be calculated at a reasonable hourly rate not to exceed \$150. All compensable services provided to claimant by any paralegals, law clerks or other comparable support staff shall be calculated at a reasonable hourly rate not to exceed \$50. All compensable services provided to claimant by any expert witnesses shall be calculated at a reasonable hourly rate not to exceed \$150.
 3. No enhancement of the award based upon the novelty or complexity of the claim shall be permitted.

4. In assessing the reasonableness of the time expended by claimant's counsel in the litigation and of the associated litigation expenses incurred on claimant's behalf, the court shall consider the extent, if any, to which claimant or claimant's representatives undertook reasonable efforts to attempt to resolve the matter with the opposing party or its representatives before filing suit and during the progress of the litigation.
- d. This Rule shall not apply to cases in which the award of counsel fees and litigation expenses is otherwise provided by statute or by another court rule.
- e. This rule shall not apply to eminent domain proceedings.