

NOTICE TO THE BAR

RE: Proposed Amendment to Rule 1:20A-5 – Fee Arbitration Confidentiality

In response to an inquiry, the Supreme Court referred the question of the application of R.M. v. Supreme Court of New Jersey, 185 N.J. 208 (2005), to the attorney fee arbitration system to the Professional Responsibility Rules Committee (PRRC) for its expedited consideration and report. On November 9, 2006, the PRRC reported, as follows:

As requested by the Court, the PRRC has considered the issue of amending Rule 1:20A-5 in light of the Court's decision in R.M. v. Supreme Court of N.J., 185 N.J. 208 (2005).

The PRRC members recognized that in the absence of a formal record in fee arbitration proceedings, the confidentiality rule helps to protect attorneys' reputations from unfounded charges. Nonetheless, as the Court found in respect of disciplinary proceedings, a majority of the PRRC concluded that protecting attorneys' reputations does not rise to the level of a compelling interest that is constitutionally necessary to justify prohibiting a lay complainant in a fee arbitration proceeding from publicly stating that a fee arbitration request was filed, the contents of the request, and the results of the hearing and any appeal. Accordingly, the PRRC has proposed the amendment to Rule 1:20A-5 that follows.

The PRRC considered an effective date of October 19, 2005, which is the initial R.M. decision date and the effective date of the recent analogous amendment to Rule 1:20-9(b). The PRRC ultimately decided that because rule changes are generally applied prospectively, the extent of any retroactive application...is a determination more properly made by the Court.

The Supreme Court has directed that the PRRC's proposed amendment be published for comment by the Bar and the public. It is attached to this Notice. Written comments should be directed to me at the following:

Supreme Court of New Jersey
Hughes Justice Complex
POB 970
Trenton, NJ 08625-0970

or to our Internet address <Comments.Mailbox@judiciary.state.nj.us>. Comments must be delivered by March 15, 2007.

Stephen W. Townsend, Esq.
Clerk of the Supreme Court

Dated: December 14, 2006

Proposed Rule Amendment

1:20A-5. Records; Confidentiality; Immunity.

(a) Each Fee Committee shall maintain such records and file such reports as shall be required by the Director. Except as may be otherwise necessary for compliance with these rules or to take ancillary legal action in respect thereof, all records, documents, files, hearings, transcripts or recordings of hearings, if any, and proceedings made and conducted in accordance with these rules shall be confidential. Except as provided in paragraph (b) of this section, they shall not be disclosed to or attended by anyone unless (1) the Board so directs following written application to the Board with notice to the Director and the attorney whose fee was questioned; or on order of the Supreme Court. Fee Committee members, secretaries and their lawfully appointed designees and staff shall be entitled to the immunity as provided by Rule 1:20-7(e).

(b) Disclosure by persons requesting fee arbitration. The requesting party may make public statements regarding the fee arbitration process, the submission and content of the fee dispute, and the result, if any, of the arbitration. If a requester speaks publicly, a respondent may speak publicly regarding the fact that a request for fee arbitration was submitted, the content of the dispute, the result of the arbitration if a result has obtained at the point when the respondent speaks, and the fee arbitration process.