

## NOTICE TO THE BAR

### **RETAINER FEE AGREEMENTS -- FORECLOSING SETTLEMENT WHEN THE TERMS OF THE SETTLEMENT WAIVE THE LAWYERS' FEES OR COSTS -- REQUEST FOR PUBLIC COMMENT**

The Supreme Court seeks comments on the propriety of including provisions in attorney retainer agreements that prohibit the client from settling the case if the settlement waives the lawyers' fees or costs. The Court is continuing to examine this issue following earlier outreach for input on various ethics issues relating to retainer fee agreements in statutorily based discrimination cases, in furtherance of the Court's decision in Balducci v. Cige, 240 N.J. 574 (2020).

A [November 19, 2021 notice](#) previously raised this issue and related issues for public review and comment. The topics highlighted in that notice focused on considerations surrounding plaintiffs and plaintiffs' attorneys. Having considered the comments submitted by attorneys, including those involved in special education litigation, the Court is requesting additional feedback on the specific issue from members of the bar and other interested persons. The Court seeks input from attorneys, in particular attorneys for defendants in cases, including special education disputes, in which private counsel (in addition to public interest law firms) litigate matters frequently resolved through provision of services without monetary compensation. The Court requests comments as to the potential consequences -- for both plaintiffs and defendants -- if retainer agreements foreclose settlement when the terms of the settlement waive the lawyers' fees or costs.


Comments should be submitted by October 17, 2022 to:

Glenn A. Grant, Administrative Director of the Courts  
Attention: Settlement Conditioned on Waiver of Lawyers' Fees or Costs  
(Balducci)  
Hughes Justice Complex  
P.O. Box 037  
Trenton, New Jersey 08625-0037

Comments may also be submitted by e-mail to the following address:  
[Comments.Mailbox@njcourts.gov](mailto:Comments.Mailbox@njcourts.gov).

The Court will not consider comments submitted anonymously. Thus,

those submitting comments by mail should include their name and address and those submitting comments by e-mail should include their name and e-mail address. Comments submitted in response to this notice are subject to public disclosure.



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Glenn A. Grant  
Administrative Director

Dated: September 12, 2022