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April 17, 2017

Glenn A. Grant, JAD  
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Dear Mr. Grant:

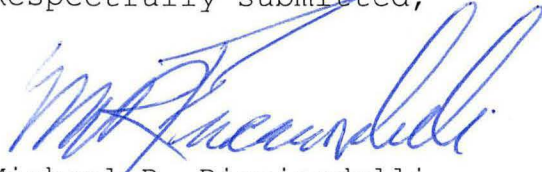
On behalf of the Trial Attorneys of New Jersey ("TANJ"), we have reviewed the proposed changes to the Rules of Evidence in the 2017-2019 Report of the Supreme Court Committee on the Rules of Evidence. We request that you give consideration to our collective input with regard to NJRE 530 and NJRE 608. A Position Statement with TANJ's recommendations are attached. These recommendations were a result of much discussion, contemplation, and input from the many members of our Board of Trustees, which are comprised of trial attorneys from across the state as well as retired Superior Court judges.

## ADVISORY BOARD

Hon. Frank M. Ciuffani, Hon. James D. Clyne, Hon. C. Judson Hamlin,  
Hon. John E. Keefe, Sr., Hon. Jack L. Lintner, Hon. Nicholas J. Stroumtsos, Jr.

Thank you for your time and consideration.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael R. Ricciardulli". The signature is fluid and cursive, with a large, stylized initial "M".

Michael R. Ricciardulli,  
President of Trial Attorneys of  
New Jersey

**TRIAL ATTORNEYS OF NEW JERSEY**  
**Position Statement**

**RECOMMENDED CHANGES TO N.J.R.E. 530 - Waiver of Privilege by Contract or Previous Disclosure; Limitations**

*Amends Rule to clarify the issue of inadvertent disclosures of privileged materials*

The Trial Attorneys of New Jersey ("TANJ") strongly supports the recommended changes to N.J.R.E. 530, which will provide further clarification where there are instances of inadvertent disclosures of privileged materials. The proposed change also aligns the state court procedures with the federal court procedures and, thus, there is an established body of case law to which attorneys may review for guidance when implementing the rule. Many of the current cases which are cited to in *Biunno, Weissbard & Zegas, Current N.J. Rules of Evidence (Gann)*, align well with the recommended changes to N.J.R.E. 530 and, thus, attorneys may continue to use these cases as guidance when implementing the rule.

The recommended changes to N.J.R.E. 530 were reviewed by the Board of Trustees and the Advisory Board Members of TANJ in order to set forth their position on these recommendations. After thorough review of the recommended changes and further discussion held on March 26, 2019, the recommendations of the Supreme Court Committee on the Rules of Evidence dated January 15, 2019 were unanimously approved.

Accordingly, TANJ agrees with the referenced recommended changes to N.J.R.E. 530 and supports their adoption.

**RECOMMENDED CHANGES TO N.J.R.E. 608 - Evidence of Character for Truthfulness or Untruthfulness and Evidence of a Prior False Accusation**

*Amendments would permit the use of specific instances of conduct to attack or support a witness's credibility*

**TANJ does not support the recommended changes to N.J.R.E. 608.**

**The recommended changes to N.J.R.E. 608 were reviewed by the Board of Trustees and the Advisory Board Members in order to set forth their position on these recommendations. After thorough review of the recommended changes and further discussion held on March 26, 2019, the recommendations of the Supreme Court Committee on the Rules of Evidence dated January 15, 2019 were disapproved by more than a two-thirds majority.**

**TANJ disagrees with the recommended changes to N.J.R.E. 608 primarily for the reasons set forth by the minority of the Supreme Court's Subcommittee which are contained in the "Minority Report" and which raised the specific risks of jury confusion, distraction, and undue prejudice creating "fertile ground for reversible error." The Minority Report also referenced New Jersey's long-standing history disfavoring the use of prior bad acts and the concern that the proposed amendment would deter witnesses from testifying, would encourage attorneys to engage in wide-ranging inquiries of witnesses, and would broadly expand pre-trial discovery without "meaningfully advancing" the jury's search for truth.**

**The Trial Attorneys of New Jersey had additional concerns that the allowance of inquiry into past dishonest conduct could contribute to more delay as well as inconsistency in the handling of such issues amongst the different counties. Trial management issues would also arise in determining the proper expansion of discovery to identify and obtain information to substantiate or**

contradict specific conduct, or to obtain records from third parties to substantiate or rebut the inference to be drawn from specific conduct. For example, TANJ acknowledges that the proposed rule aligns the state court procedure to be more similar to the federal court procedures, however, the federal court has funding for heightened case management opportunities, including detailed case management orders and Magistrate Judge oversight for all cases, which differs from the state court which has varying case management opportunities for different cases. Additional issues would also include concerns of admissibility, remoteness, and timing of further evidential hearings. Lastly, it was also noted that many parties simply do not have sufficient means for such additional detailed discovery.

Accordingly, TANJ disagrees with the recommended changes to N.J.R.E. 608.