Law Offices of
Leo B. Dubler, III
A Limited Liability Company
20000 Horizon Way
Suite 300
Mount Laurel, New Jersey 08054

Leo B. Dubler, III
(Certified by the Supreme Court of
New Jersey as a Civil Trial Attorney)

Telephone: 856-235-7075
Fax: 856-439-6931
Email: LDubler@Dublerlaw.com

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VIA EMAIL comments.Mailbox@njcourts.gov
And Regular Mail

The Honorable Glenn A. Grant
Acting Administrative Director the Courts
ATTN: Retainer Fee Agreements In Fee-Shifting Cases
Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625-0037

Comments Mailbox

Re: Balducci v. Cige

Dear Judge Grant:

I am writing with regard to Balducci v. Cige, 240 N.J. 574 (2020), and I would like to submit my comments.

I am a Certified Civil Trial Attorney with over 27 years of experience. For a while now, the majority of my practice has been representing plaintiffs in employment cases involving New Jersey's Law Against Discrimination and New Jersey's Conscientious Employee Protection Act.

The Committee's comments do not reflect the reality of the practice today.

I have had completely contingent cases where I have put in thousands of dollars in out-of-pocket costs and sometimes tens of thousands or hundreds of thousands of my time and there is no recovery. There could be no recovery because the company went bankrupt or there could be no recovery because the matter is tried and the plaintiff does not get a verdict. There are times clients turn down reasonable settlement offers against their attorney's advice and go no caused. The lawyer, needless to say, gets nothing for sometimes years of work.

There are other cases where the lawyer puts in a substantial amount of out-of-pocket costs and thousands and thousands of dollars of their time and it turns out the case was not as the client advertised. In those cases, the lawyer has to cut his fee, sometimes very dramatically, in order to get the case resolved and to hopefully get the plaintiff some money. In some cases like that there's no recovery and no fee.

Sometimes lawyers take cases that are not very economically rewarding, but they feel that they are righteous or important cases. I have done this many times.

The reason I am able to stay in business is because in other cases I am hopefully more successful.

If I settle a case for $100,000.00 and my fees and costs are $55,000.00 and the client nets $45,000.00, the Committee would assume on its face that it is an unreasonable fee. I can tell you have had situations like that where other lawyers would have settled the client's case for $20,000.00 or $30,000.00 and fees would be 33% or 40% netting the client much less than I would have. A lot of times the client is not going to get much of anything unless the attorney does a substantial amount of work to get to the truth.

The reality of the situation is in many cases the lawyer has to compromise his or her fees in order to get the case settled. In every case when there is a settlement offer, the clients are appraised of what the fees and costs are and what they would net afterwards. Depending on a variety of factors, lawyers frequently agree to reduce or compromise their fees in order to get the case settled. There are times where the client does horribly at their deposition and their chance of getting a verdict drops dramatically. Witnesses that told the client one thing say another thing when they are deposed. Documents could come out that undermine the plaintiff's claims and bolster the defense or it could be a company about to go out of business and does not have insurance and you have to compromise the claim.

Saying that we have to give client's advice and guidance on the fees and costs in the beginning of the relationship makes no sense. Cases that I think are going to be hard fought for the next couple of years are settled before or right after suit is filed. Other cases I think are going to settle right away and 2 years later we are picking a jury. What a case is worth and how much work is going to be involved is very difficult to say in the beginning of a case. There are many factors that determine the value of a case and how much work is going to be involved. Many times these factors change. Most of the time, early on, you really do not know the value of a case and how much the fees and costs will be. It's like trying to predict the weather months from now.

In almost every case right from the start there is always the potential for the fees and costs to be substantially more than the value of the case. Keep in mind, *employment cases are very difficult and challenging cases.* Lawyers taking these cases on a contingency are always taking a big risk. In many cases, you are trying to prove that a defendant acted intentionally. You have to prove *a state of mind.* That's hard to do. Most companies do not admit to the wrongdoing, but rather they fight the claims tooth and nail. They have access to the company records and better access to most of the witnesses. Most companies have a lot of resources to fight these cases. The defense attorneys in these cases know what they are doing. Many times they will bombard you with thousands of pages of nonsensical documents, but make it extremely difficult for you to get the documents that are really relevant in the case. That happens a lot.

Most of the people I know that do this work believe in it. They want to help people. They think that enforcing these laws help everyone and make our society better. I tell my clients I cannot change hearts or minds, but I can change behavior. Multiple companies against whom I have had claims made very positive changes in how they enforce their policies to make sure that there is not another statutory violation. That helps my client and that it helps all of us.

The Committee's proposed rules ignore the reality of the practice and would make it more difficult for the lawyers who work on these cases. That would make it more difficult for victims of harassment, discrimination and retaliation to find competent attorneys to help them.

The bad exception (the Balducci case) should not be the basis for the rule.

Thank you for your most kind attention to this matter.

Respectfully submitted,

Leo B. Dubler, III

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