



NEW JERSEY STATE BAR ASSOCIATION

DOMENICK CARMAGNOLA, PRESIDENT
Carmagnola & Ritardi, LLC
60 Washington Street, Suite 300
Morristown, NJ 07960-6859
973-267-4445 • FAX: 973-267-4456
dcarmagnola@cr-law.net

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Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Proposed Amendments to Rule 1:21-3 (Out of State Attorneys)
Hughes Justice Complex, P.O. Box 037
Trenton, NJ 08625-0037

Re: Comments on Proposal to Permit Out of State Attorneys to Provide
Pro Bono Services Under Individual Supervision (Rule 1:21-3)

Dear Judge Grant:

The New Jersey State Bar Association (NJSBA) thanks the Court for the opportunity to provide comments on a proposal to permit attorneys not licensed in New Jersey to provide pro bono legal services to qualifying individuals and businesses under the supervision of a New Jersey licensed attorney rather than under the auspices of a clinical program or pro bono program. We share the Court's goal of expanding access to pro bono legal representation for litigants who cannot afford private counsel; however, we have significant questions, which are noted below, about how this proposal will be structured and whether it will provide the anticipated benefit to litigants. The NJSBA, therefore, recommends that the proposal be further developed to address these issues and another opportunity for comment be provided before a final Rule is adopted.

Chief among our concerns is that the proposal does not address several important aspects of the privately supervised pro bono representation by out-of-state attorneys it would allow. Among those areas are: what clients will be served; how they will be screened for eligibility for pro bono service; what standard for eligibility will apply; how out-of-state pro bono volunteer lawyers will be effectively supervised; and how the Rule will coordinate with other Court Rules, including the Rules for *Madden* credit, pro hac vice admission, and attorney registration.

The term "qualifying individuals" is not defined in the proposed amendments to the Rule. Organizations certified under R.1:21-11 have policies and procedures in place to screen prospective clients for eligibility under the standard for Qualifying Pro Bono Service as defined in R.1:21-11(a)(1). That definition is not incorporated into the proposed amendments nor has one for out of state organizations been proposed. The NJSBA in no way means to suggest that the definition should be rigidly interpreted, as certified organizations use a range of income thresholds depending on the target client population, the kind of pro bono service involved, and the funding streams that underwrite the work. In all circumstances, however, certified organizations vet prospective clients for qualification for pro bono service under established and relevant standards to ensure compliance with the Court Rule. There does not appear to be any requirement that the representation provided under this proposal be subject to the same review.

Moreover, private supervising attorneys, unless they are working in a firm or corporate legal department with a structured pro bono program, will not have mechanisms in place or other standards to apply in determining whether an individual or small business qualifies for pro bono service. Without standards or screening procedures, it is unclear whether or how the clients benefiting from this expansion in the practice Rule will qualify for pro bono assistance.

Further, certified organizations typically provide training, sample materials, and mentorship to enable pro bono volunteers to offer high-quality service to their clients. These organizations employ experts in the fields in which they practice, and these experts guide pro bono volunteers. While we would expect that most attorneys who individually supervise pro bono representation will oversee matters to the best of their ability, we also recognize that many will not have the infrastructure in place to offer training, supervision, and mentorship to the extent provided by certified organizations.

Legal services and pro bono organizations routinely provide professional liability coverage to their volunteers, as well as staff. We note that the professional liability coverage maintained by private attorneys may not extend to the out-of-state lawyers they supervise and, if so, consideration should be given to such a scenario.

New Jersey-licensed attorneys are entitled to *Madden* credit when they work under the auspices of a certified organization to provide pro bono representation or to mentor and train other attorneys and law students in pro bono practice. The proposed amendments make no reference to *Madden* credit and, therefore, do not appear to authorize New Jersey-licensed lawyers who individually supervise out-of-state attorneys to claim such credit.

It is unclear whether the proposed Rule amendments are meant to permit out-of-state legal services or public interest organizations, or out-of-state law school clinical or pro bono programs (as defined in R. 1:21-11(a)(2), (3)), to place pro bono matters for New Jersey clients under the supervision of New Jersey lawyers. Additionally, the proposed Rule makes no mention of whether volunteers in such undertakings would qualify for *Madden* credit.

Finally, the NJSBA is unclear about the reporting requirements in the new Rule. The Rule contemplates that the supervising attorney will provide a report to the Court before the out-of-state attorney begins the pro bono practice and will report again by April 30 of the year following the pro bono work. The initial report appears to be aimed at establishing that the out-of-state lawyer is in good standing in the licensing state and will be supervised by a New Jersey lawyer. As to the second report, it is unclear if the intent is to allow the listed volunteers to claim *Madden* credit and how that would be incorporated into the annual attorney registration process. It is also unclear how the proposed Rule would interact with the pro hac vice process, through which New Jersey courts typically authorize out-of-state practitioners to appear.

Again, the NJSBA wholeheartedly supports the Court's continuing commitment to expanding access to pro bono legal representation for litigants who cannot afford private counsel; however, we believe the proposed amendments presented here would benefit from additional review and comment to address the issues raised above.

We thank the Court for its consideration of our comments, aimed at improving the proposal, and we stand ready to assist in any way we can.

Respectfully yours,



Domenick Carmagnola, Esq.
President

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cc: Jeralyn L. Lawrence, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director