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December 4, 2025

(Via Federal Express)
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FILED

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Heather J Baker
CLERK

**Re: Petition For Review, R. 1:19-8
Advisory Committee on Professional Ethics Opinion 749
Supreme Court Dkt. No. 091434
Our File No. 02000-0041**

Honorable Chief Justice Rabner and Honorable Associate Justices:

Please accept this letter brief as the Petition for Review of Advisory Committee on Professional Ethics Opinion 749 filed on behalf of Chasan Lamparello Mallon & Cappuzzo, PC. R. 2:6-2(b) As this Petition for Review pertains to an Advisory Committee on Professional Ethics opinion, rather than a typical appeal from the Superior Court, Appellate Division, the point headings below generally follow the required sections set forth in R. 1:19-8(d) rather than R. 2:6-2.

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I. Statement of the Matter Involved

Pursuant to R. 1:19-8, Chasan Lamparello Mallon & Cappuzzo, PC (“Petitioner”) requests review and reversal of Advisory Committee on Professional Ethics (“Committee”) Opinion 749 (“Opinion”). (Pa3-11)¹ Petitioner was not a party to the Opinion and did not request review of the conflict issue therein. The Opinion’s conclusion is that a per se conflict of interest exists when general counsel for a municipality concurrently serves as general counsel for a regional fire and rescue organization for that and other municipalities. (Pa8-9)

¹ “Pa” refers to Petitioner’s Appendix submitted herewith.

II. Procedural History

The Opinion was issued October 24, 2025, and it was published on November 5, 2025. On November 25, 2025, Petitioner filed a Notice of Petition with the Supreme Court pursuant to R. 1:19-8(a). (Pa1-2)

We also note that on November 14, 2025, Petitioner requested (1) that the Committee issue an emergent stay of the Opinion; (2) that the Office of Attorney Ethics not enforce the Opinion; and (3) reconsideration and reversal of the Opinion. (Pa12) As of today's date, Petitioner has not received a determination from the Committee.

III. Question Presented

Is there a per se conflict of interest where an attorney or firm is general counsel to a municipality and general counsel to a regionalized fire department that includes that municipality?

IV. Errors Complained Of

1. Absent one example where a conflict could conceivably arise, the Committee did not consider or seek any facts concerning the concurrent general counsel representation of a municipality and a regionalized fire department. Thus, the Committee's determination of a per se conflict is not supported by any facts.

2. If the facts were considered, the Committee would have determined

that the potential conflicts that arise are infrequent and can be readily addressed by recusals on a case-by-case basis.

3. The Committee found that general counsel to each entity “owes a duty of loyalty to promote the individual interest of the municipality,” and “owe[s] a duty of loyalty to promote the collective interests of the consortium as a whole.” (Pa8) There is no legal support cited or existing for this proposition.

V. Arguments in Support of Petitioner’s Position

The Opinion specifically mentions a Walsh Act municipality, see N.J.S.A. 40:70-1, et seq., and a regional fire department formed under the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1, et seq. (Pa3-4) Petitioner is aware of no other circumstance involving this situation, except the North Hudson Regional Fire and Rescue (“NHRFR”), where Petitioner serves as general counsel, and the Township of North Bergen, where Petitioner is the Township Attorney. (Pa20, ¶ 5)² Petitioner was not informed of the Committee’s consideration of the conflict issue presented in the Opinion, and had no opportunity to provide facts concerning our extensive representation of both North Bergen and the NHRFR for nearly 30 years. (Pa20-21, ¶¶ 6-13)

² Pa19-25 is the Certification of Thomas R. Kobin, submitted to the Committee on November 24, 2025, seeking reversal of the Opinion.

Petitioner's longstanding experience representing North Bergen and NHRFR demonstrates that precious-few conflicts have occurred during the nearly three decades that we have concurrently represented these public entities (Pa21-24, ¶¶ 13-18), and, therefore, the premise upon which the Opinion is based is flawed.

Petitioner — as Special Counsel — represented North Bergen from September 1998 to July 2014. During that time, the North Bergen Township Attorney served as either Counsel or Of Counsel to Petitioner. Beginning July 1, 2014, Thomas Kobin from the Petitioner Firm served as Township Attorney for North Bergen. (Pa 20, ¶¶ 9-10)

As Township Attorney, Mr. Kobin (or other attorneys in the Petitioner firm):

- Prepares resolutions and ordinances for consideration by the Board of Commissioners as requested by the Mayor or Commissioners, the Township Administrator, or various department heads;
- Prepares contracts between the Township and various vendors related to purchasing, including public works contracts and professional services;
- Provides various representation on labor related matters, including Civil Service-related matters, disciplinary matters, and collective

bargaining;

- Ensures compliance with the Open Public Meetings Act (including attending Commissioner Meetings), Open Public Records Act, Local Public Contracts Law, and other applicable statutory provisions as they arise;
- Defends the Township on tort claims cases, worker's compensation cases, employment cases, and other litigation that may arise; and
- Advises the Mayor, Commissioners, Township Administrator, and department heads on various legal issues as they arise.

(Pa22, ¶ 16)

The firm has represented NHRFR as its General Counsel since its creation in September 1998. (Pa20, ¶ 8) As General Counsel to NHRFR, the Petitioner firm:

- Prepares resolutions and the agenda for the Management Committee³ of the NHRFR per the directions of the Chairman of the Management Committee or the Executive Directors of the NHRFR;
- Prepares or reviews bid documents and contracts related to appointment of professionals, purchasing fire engines and

³ The governing body of the NHRFR is known as the Management Committee. See N.J.S.A. 40A:65-20.

equipment, and property maintenance, as directed by the Executive Directors;

- Ensures compliance with the Open Public Meetings Act (including attending Management Committee Meetings and preparing and circulating sunshine notices), Open Public Records Act, Local Public Contracts Law, and other applicable statutory provisions as they arise;
- Defends the NHRFR on tort claims cases, worker's compensation cases, employment cases, and other litigation that may arise; and
- Advises the Management Committee, Executive Directors, and Chief on various legal issues as they arise.

(Pa21, ¶ 13)

In the past 27 years of the Petitioner's concurrent representation of North Bergen and NHRFR, there have only been two issues over which the firm had a conflict under RPC 1.7, 1.8 and specifically 1.8(k). (Pa22, ¶ 17)

- Guttenberg v. NHRFR, North Bergen, Union City, Weehawken, and West New York. In this litigation filed in August 2024, Guttenberg asserted that it was overpaying its fair share of NHRFR's operating costs and was entitled to the return of a firehouse it had contributed during the formation of NHRFR. Petitioner recused itself and separate counsel were

assigned to represent both North Bergen and NHRFR in the litigation.

- Vehicle Maintenance Shared Services Agreement Since early in the existence of the NHRFR, the NHRFR and North Bergen were parties to a shared services agreement whereby North Bergen provided vehicle and equipment maintenance for the NHRFR. The agreements had three-year terms and were routinely renewed throughout the years until 2024 when it was terminated. Employees from North Bergen and the NHRFR negotiated the terms and renewal terms of the agreement. Where negotiation or approval of this agreement involved a conflict under RPC 1.7 or 1.8, separate counsel was assigned from North Bergen's and the NHRFR's list of approved counsel.

(Pa22-24, ¶ 17)

The instances where a conflict of interest has arisen are extremely limited and infrequent. Such conflicts can be, and have been, easily addressed on a case-by-case basis with the ready assignment of other counsel from each entity's existing list of approved counsel if there is a substantial risk of a conflict under RPC 1.7, 1.8 and specifically RPC 1.8(k). (Pa24, ¶ 18)

The Committee posited the question before it as: "Whether inherent aspects of the lawyer's anticipated dual role would create a per se structural conflict of interest that would pose a substantial risk that the lawyer could not

provide independent advice or diligent representation to one or both entities.” (Pa4-5) It answered the question and found: “That a lawyer cannot serve as corporation counsel to a single funding entity while concurrently serving as general counsel to the entity being funded without creating a per se structural conflict of interest, not remediable by case-by-case recusal, that cannot be waived.” (Pa10) Beyond the bald declaration that the positions created inherent competing loyalties and aside from citing a hypothetical example involving advising of which firehouses may be closed (Pa10), the Committee found and relied upon no facts to support the conclusion that a significant or substantial risk exists that the lawyer’s responsibilities would be compromised.

RPC 1.7(a)(2) declares that a conflict exists when “there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client.” (Emphasis added.) Similarly, RPC 1.8(k) proscribes that:

A lawyer employed by a public entity, either as a lawyer or in some other role, shall not undertake the representation of another client if the representation presents a substantial risk that the lawyer's responsibilities to the public entity would limit the lawyer's ability to provide independent advice or diligent and competent representation to either the public entity or the client.

(Emphasis added.)

Had the Committee conducted an actual, as opposed to a theoretical,

assessment of the duties and obligations of the Township Attorney and the General Counsel to the NHRFR, it would have appreciated that the functions of the positions have only minimal overlap and infrequent clash of obligations. An actual assessment would never have supported the conclusion that there was a significant or substantial risk that the attorney's responsibilities to one entity would impede the attorney's responsibilities to the other. Simply stated, the Committee had insufficient facts to form its Opinion and should not have entered a per se ban. It should have adopted the approach taken in ACPE Opinion 706 (July 3, 2006) which found that it had insufficient details on the two positions (Assistant County Counsel and Council member in a municipality in the same County) to impose a per se ban.

Moreover, the Committee's conclusion that "individual recusals would be insufficient" because the public entities' "interests would actually overlap with such regularity" (Pa11) is belied by the facts. As previously noted, there have been only two issues in 27 years when the retention of conflict counsel was required. This hardly constitutes the "regularity" that could properly support a per se conflict rule.

Whether the positions pose a significant or substantial risk is appropriately left to counsel to assess, and not under a blanket per se conflict rule. As ACPE Opinion 706 appropriately observed, "An attorney [holding two positions] must

assess whether there is a substantial risk that the attorney's responsibilities [to one entity] would limit the attorney's ability to provide independent advice or diligent and competent representation [to the other entity]."

Petitioner firm's role representing North Bergen and NHRFR has given rise to rare conflicts which were appropriately addressed through recusal and assignment of conflict counsel. Because the Committee issued its Opinion without the benefit of a full understanding of the actual factual history and relationship regarding this firm's past representation of North Bergen and NHRFR, the decision should be reversed.

The Committee found that general counsel to each entity "owes a duty of loyalty to promote the individual interest of the municipality," and "owe[s] a duty of loyalty to promote the collective interests of the consortium as a whole." (Pa8) There is no supporting authority cited or available for this statement. Attorneys do not provide public relations services or promote the interest of governmental entities. In fact, local governmental entities are required to fulfill their statutory obligations as delegated by the State of New Jersey. Dome Realty, Inc. v. City of Paterson, 83 N.J. 212, 225 (1980) ("As a general principle, it is established beyond question that municipalities, being created by the State, have no powers save those delegated to them by the Legislature and the State Constitution."). They do not need to "promote their interests." Governmental

entities do not have good will and cannot assert defamation claims. See, e.g., Weymouth Twp. Bd. of Ed. v. Wolf, 178 N.J. Super. 481, 485-86 (Law Div. 1981) (holding that governmental entities do not have the right to bring defamation causes of action); College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, 919 F. Supp. 756, 759 (D.N.J. 1996) (citing multiple cases for the proposition that governmental entities cannot maintain defamation/slander/libel causes of action); Johnson City v. Cowels Communications, Inc., 477 NW2d 750, 752-53 (Tenn. Supreme Ct. 1972) (“Plaintiff candidly admits that it is unable to find one case wherein it has been expressly held by any court that a municipal corporation has a reputation which may be the subject of libel; or that a municipal corporation is a ‘person’ within the meaning or definition of libel statutes.”).

Municipal attorneys and attorneys for separate autonomous entities such as North Bergen and the NHRFR, have a duty of loyalty to *protect* the legal interests of the entities. This is very different than a duty to *promote* the interests of the entities.

The issue presented to the Committee was narrow in that there are a limited number of Walsh Act municipalities in New Jersey and a limited number of regionalized “joint meeting” fire departments formed under N.J.S.A. 40A:65-1, et seq. However, the issue is not limited to Walsh Act municipalities, but

could affect any number of the over 560 municipalities in New Jersey. There are also numerous regionalized entities throughout New Jersey dealing with numerous municipal services such as sewer, water, and other services. Further, the Legislature favors and encourages shared and regionalized services. N.J.S.A. 40A:65-2(c). The Opinion negatively impacts clients' ability to have the attorney of their choice. If governmental entities are restricted in their choice of counsel, this may be an impediment to regionalization and its potential for taxpayer savings. Thus, the Opinion could have expanded implications throughout the State.

VI. Certification of Substantial Question and Good Faith, R. 1:19-8(d)

The undersigned attorney hereby certifies that this Petition presents a substantial question and is filed in good faith and not for the purpose of delay.

VII. Conclusion

For the foregoing reasons, Petitioner requests that the Supreme Court grant this Petition for review and reverse Opinion 749.

Respectfully Submitted,
Chasan Lamparello Mallon & Cappuzzo, PC
Petitioner

By: /s/ Thomas R. Kobin
Thomas R. Kobin