CHASAN LAMPARELLO
MALLON & CAPPUZZO

300 LIGHTING WAY
SUITE 200
SECAUCUS, NJ 07094
201 348 6000
CHASANLAW.COM

RALPH J. LAMPARELLO▲
ROBERT A. KAYE
CINDY NAN VOGELMAN
JOHN V. MALLON◆*
STEVEN L. MENAKER*
THOMAS R. KOBIN▲
ROBERT A. CAPPUZZO▲
MARIA P. VALLEJO▲
THOMAS A. MORRONE*
NICOLE R. CASSATA
RICHARD W. FOGARTY▲
CHEYNE R. SCOTT
DENNIS McKEEVER
THOMAS B. HIGHT
KIRSTIN BOHN▲
EDNA J. JORDAN

THOMAS N. ZUPPA, JR.▲
DREW D. KRAUSE◆
MICHELE L. DELUCA
ELLEN L. CAMBURN◆

KRISTEN OTTOMANELLI▲
DAVID A. LAMPARELLO
ASHLEY E. MORGAN
BRIANNA C. MARTINS
LYDIA J. YEOM
ERIN V. JENSEN
MAXWELL J. MERKER
AASTHA KATAKY-ALVAREZ
JOSEPH P. BALDOFSKY
THOMAS R. LLOYD
MICHAEL G. KAYAL▲

COUNSEL
PETER F. BARISO, JR.
ARTHUR N. D'ITALIA
THOMAS P. OLIVIERI
ROBERT M. CZECH

OF COUNSEL
JOHN P. BEIRNE
THOMAS M. BROGAN
NEIL B. FINK
MICHAEL S. FLEMING
HERBERT KLITZNER
MARCIE L. MACKOLIN
JOSEPH F. MACKOLIN
JAMES B. SHOVLIN▲
J. NICHOLAS STRASSER
JACLYN M. MORGESE▲

RAYMOND CHASAN
(1904-1988)

JOEL A. LEYNER
(1931-2020)

THOMAS R. KOBIN
201 809 6037 DIRECT
TKOBIN@CHASANLAW.COM

February 19, 2026

RECEIVED
FEB 20 2026
SUPREME COURT
OF NEW JERSEY
FILED
MAR 06 2026
CLERK

(Via Federal Express)
Honorable Chief Justice and Justices of the Supreme Court
c/o Heather J. Baker, Clerk Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 W. Market Street
Trenton, NJ 08625-0970

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 in in reply to the State of New Jersey, Office of the Attorney General's response to this firm's Petition for Review of Advisory Committee on Professional Ethics ("Committee") Opinion 749.

TABLE OF CONTENTS

A. In Opinion 749, the Committee Did Not Seek Any Facts and Mistakenly Assumed Facts. 2

B. No Duty Loyalty to Promote the Interests of the Public Entities 3

C. Counsel Has No Role In Budgeting Or Allocation Of Resources 5

D. Opinion 722 Does Not Support a Per Se Bar in this Matter 5

E. Reasons the Supreme Court Should Hear this Matter 8

F. Conclusion 9

A. In Opinion 749, the Committee Did Not Seek Any Facts and Mistakenly Assumed Facts.

In our Petition for Review, we raised the issue that the Committee did not seek or consider any facts concerning the concurrent representation of the municipality and the regionalized fire department, the North Hudson Regional Fire and Rescue ("NHRFR"). The State's response did not address this issue, but did supply the letter from the Inquirer. (Ra1-2) The letter from the Inquirer provides no facts except to identify the public entities involved. Opinion 749 provides scant additional facts, and assumes incorrect facts.

Critically absent from Opinion 749 is the attorney's role in representing a member municipality as its general counsel pursuant to N.J.S.A. 40A:9-113 and in representing the NHRFR as general counsel. Without having and reviewing the actual facts, the Committee should not have assumed facts and

an inherent conflict. The attorney's role for North Bergen and the NHRFR is explained in the Petition for review, and in almost 30 years, very few conflicts have arisen.

Opinion 749 did cite to what must have been the Union City ordinance creating the position of City attorney, and the Union City Attorney's tasks. (Pa3-4) Completely absent from the recitation of tasks is a role with respect to policy making, budgeting, allocation of resources, or promoting the interests of the City. There is no mention of the North Bergen Ordinance creating the North Bergen Law Department. If the Committee had reviewed that Ordinance, it would also have noted an absence of policy making, budgeting, allocation of resources, and promoting the interests of the Township. Further, there is nothing cited by the Committee or the State which reflects that the NHRFR general counsel has a role with respect to policy making, budgeting, allocation of resources, and promoting the interests of the NHRFR.

B. No Duty Loyalty to Promote the Interests of the Public Entities

The lynchpin of Opinion 749 is the notion that counsel has the concurrent duty of loyalty to promote the interests of the municipality and the NHRFR. (Pa8, Db10) Neither the Committee nor the State's brief provides any legal support for this premise on which Opinion 749 is based, and we are

aware of none. Without legal support for this core premise, the Opinion should be reversed.

N.J.S.A. 40A:9-113 provides that every municipality shall provide, by ordinance, for the appointment of a municipal attorney. Neither the statute, nor the ordinance cited by the Committee contains a duty to promote. If the Committee had obtained the North Bergen ordinance for its review, it similarly would not require a duty to promote the interests of the municipality. N.J.S.A. 40A:65-20(b) provides that a regional fire department "may appoint such other officers and employees, including counsel...." Again, a duty to promote the interest of the NHRFR does not exist in the statute. There was also nothing before the Committee which created or supported such a duty. Also, where the NHRFR is not even statutorily required to have general counsel, making the leap that such counsel would have a duty to promote the interests does not make sense.

Even if the duty of loyalty to promote the interests of the entities could be supported, there is no viable explanation of how this duty could create an inherent conflict that could not be addressed on a case by case basis under RPC 1.7 and 1.8(k).

C. Counsel Has No Role In Budgeting Or Allocation Of Resources

In attempting push this matter into the framework of Opinion 722 (Mayor serving as County Counsel), the Committee allocated to the attorney tasks fulfilled by the elected officials and members of the NHRFR Management Committee. The Committee mistakenly observed, "In advising either the RFR or the municipality on how to exercise its authority to allocate resources in any particular situation, a lawyer attempting to act as counsel for both entities would regularly confront the reality that their interests not only are not coterminous but often will conflict." (Pa9-10) The State argues that because of these assumed concurrent duties, the attorney "would regularly confront situations where these interests would be at odds." (Db10) As the only examples of this, the Committee cited the situations where an attorney could not advise either the NHRFR or a municipality on the allocation of resources and closing of a firehouse. (Pa10)

The fatal flaw in the Committee's analysis is that allocation of resources and which firehouses to close are municipal finance, political and operational decisions, none of which involve the attorney's input.

D. Opinion 722 Does Not Support a Per Se Bar in this Matter.

Opinion 722 found that a County Counsel cannot serve as Mayor of one of the municipalities in the same County. In using this opinion for support, the

Committee in Opinion 749 failed to recognize that the role of a mayor is dramatically different than that of a municipal attorney. The Committee in Opinion 749 stated, "Mayors in these municipalities prepare budgets, supervise all municipal property, negotiate contracts for the municipality, appoint the heads of administrative departments, along with other duties which include acting in the best interest of the municipality." (Pa7-8) With the limited exception of negotiating contracts, the municipal attorney does not fulfill any of these roles that a mayor would do. Even with contract negotiation, generally municipal employees negotiate the material terms and the attorneys then develop the contract based on those terms negotiated by others.

Opinion 722 stated: "In a Faulkner Act "strong-mayor" municipality, there is a "concentration of power in the hands of a highly-visible, independently-elected Chief Executive who has substantial power over the administration." Opinion 722 at 1. The Opinion at 2 also stated that the Mayor had the following powers:

> '[R]ecommend to the council whatever action or programs he deems necessary for the improvement of the municipality and the welfare of its residents,' 'make recommendations concerning the nature and location of municipal improvements and execute improvements determined by the governing body,' '[a]ssure that

> all terms and conditions imposed in favor of the municipality or its inhabitants in any statute, franchise or other contract are faithfully kept and performed,' and approve or veto all municipal ordinances. The power and authority of the mayor in this form of government is 'substantial.'

The functions and responsibilities of the Mayor of the municipality at issue in Opinion 722 and the attorney for a municipality are vastly different and because of the these diametrically different roles, Opinion 722 does not support a per se bar from dual representation in this matter.

Opinion 722 also recited the numerous instances where the County and the municipality might be at odds, including providing numerous contracted services with respect to public transportation, operation of recreational facilities, public health services, alleviations of flood conditions, pubic improvements, sewage disposal, drainage projects, road projects, purchases of materials and supplies and the sale of county or municipal property, as well as many lawsuits where the municipality and County were in an adversarial position. Opinion 722 at 3. In the present case, the NHRFR provides fire response services only. Further, as explained in depth in the Petition for Review, in almost 30 years, the conflicts that have arisen are extraordinary rare.

Thus, Opinion 722 does not support a per se bar.

Further, in discussing Opinion 706, involving a councilmember and an Assistant County Counsel in the same County, the Committee in Opinion 722 stated, "The Committee concluded [in Opinion 706] that while recusal from county or municipal matters may be required too frequently, a *per se* rule prohibiting the dual roles was not necessary." Respectfully, the Committee is creating conflicting Opinions which the Supreme Court should review. In the Assistant County Counsel and Councilmember context, the Committee is of the Opinion that even frequent conflicts did not warrant a per se bar. Here, in the present matter, there have been rare conflicts, and the Committee's examples of potential conflicts (closing firehouses and allocation of resources) do not even involve attorneys, yet the Committee has imposed a per se bar.

E. Reasons the Supreme Court Should Hear this Matter

The Supreme Court should grant the Petition for Review and hear this case for several reasons. First, the Committee assumed facts that are not accurate with respect to a municipal and regional fire department attorneys' role with respect to allocation of resources, including likening the role of a municipal attorney to that of a mayor. Second, the Committee interjected a standard that governmental entity general counsel must follow, i.e., a duty to promote the interests of the public entity. This will create confusion in the

profession, particularly where prior decisions have allowed dual representation of governmental entities. In re Opinion 653, 132 N.J. 124 (1993). Third, even though the appearance of impropriety rule was abolished over 20 years ago, Opinion 749 appears to be applying it without saying so. This is because it is assuming that the interests of the NHRFR and its member municipalities must clash so often that there is an inherent conflict in representing both. The examples provided by the Committee, however, do not raise conflicts as stated above, and if the interests of the NHRFR and its municipalities were at such odds, the regionalization of the municipal fire departments more than 25 years ago would have never happened.

F. 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