

NOTICE TO THE BAR

NEW JERSEY LAWYERS ASSISTANCE PROGRAM – PROPOSAL TO AMEND RULES 1:20-9 AND 1:28B-3 TO ALLOW THIRD-PARTY REFERRALS – PUBLICATION FOR COMMENT

The Supreme Court invites written comments on proposed amendments to Rule 1:20-9 (“Confidentiality; Access to and Dissemination of Disciplinary Information”) and Rule 1:28B-3 (“Confidentiality”) so as permit a third party to refer a law professional to the New Jersey Lawyers Assistance Program (NJ LAP). Third-party referrals would facilitate prompt connection between a person in need and the NJ LAP. At the same time, the proposed amendments would maintain the prohibition on the NJ LAP disclosing client information except if requested by the person receiving NJ LAP services.

Background

The Supreme Court is committed to supporting law professionals who need help to address substance use, mental health, and other challenges. Current Court Rules enable attorneys to seek help directly from the NJ LAP but do not permit a concerned colleague, judge, family member, friend, or court staff to initiate a confidential referral in order to establish a prompt connection between the NJ LAP and the law professional potentially in need of help. This structure is at odds with the approach in other jurisdictions, including Pennsylvania, that allow third-party referrals, including for people in crisis and at imminent risk of harm.

Proposal

To provide specific authority for the Office of Attorney Ethics to institute referrals to the NJ LAP, including for attorneys who disclose emergent risks during disciplinary investigations, Rule 1:20-9 could be amended, as follows:

R. 1:20-9. Confidentiality; Access to and Dissemination of Disciplinary Information

(a) **Confidentiality by the Director.** Prior to the filing and service of a complaint, a disciplinary stipulation waving the filing of a formal complaint, a motion for final or reciprocal discipline, or the approval of a motion for discipline by consent, the disciplinary matter and all written records gathered and made pursuant to these rules shall be kept confidential by the Director; except that the pendency, subject matter, and status of a grievance may be disclosed by the Director if:

- (1) the respondent has waived or breached confidentiality; or
- (2) the proceedings are based on allegations of reciprocal discipline, a pending criminal charge, or a guilty plea or conviction of a crime, either before or after sentencing; or
- (3) there is a need to notify another person or organization, including the Lawyers' Fund for Client Protection, in order to protect the public, the attorney, the administration of justice, or the legal profession; or
- (4) the Supreme Court has granted an emergent disciplinary application for relief; or
- (5) the matter has become common knowledge to the public.

(b) – (g) ...no change.

(h) Referral to New Jersey Lawyers Assistance Program. When an investigation instituted under R. 1:20-2 reveals reasonable cause to believe that a respondent may benefit from the services of a Lawyers Assistance Program, the OAE Director may make a referral to the New Jersey Lawyers Assistance Program and may share information otherwise deemed confidential under this Rule. Upon receipt of such a third-party referral, the New Jersey Lawyers Assistance Program may contact the identified attorney to offer services. Referrals made pursuant to this Rule remain confidential in accordance with R. 1:28B-3.

(i) – (q) ...change only to paragraph letters.

As to the ability for the NJ LAP to receive and act on third-party referrals from any source (not only the OAE), Rule 1:28B-3 could be amended, as follows:

R. 1:28B-3. Confidentiality.

The records, documents, and meetings of LAP and the Board of Trustees are confidential, with the following exceptions:

- (a) Annual audit reports;
- (b) Annual reports of the Board of Trustees to the Supreme Court;
- (c) Quarterly reports to the Board of Trustees from the LAP Director; and
- (d) All materials relating to the budget process that do not identify clients of the program or otherwise disclose confidential information that would compromise the confidentiality of the program as detailed in regulations adopted by the Board of Trustees and approved by the Supreme Court.

In no event, however, shall the identity of the program clients be disclosed in the above reports.

Nothing in this rule precludes LAP from receiving and acting on a referral from any third party. Such referrals shall be confidential.

Deadline for Comments

Please send any comments on this proposal in writing by **Monday, November 13, 2023** to:

Glenn A. Grant
Administrative Director of the Courts
Comments on Proposal to Permit Third-Party Referrals to the NJ
LAP
Hughes Justice Complex, P.O. Box 037

Trenton, NJ 08625-0037

Comments may also be submitted via email at the following address:
Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address, and those submitting comments by email should include their name and email address. Comments are subject to disclosure upon receipt.



Glenn A. Grant
Administrative Director of the Courts

Dated: October 13, 2023