

## **NOTICE TO THE BAR**

### **SUPREME COURT REQUEST FOR COMMENTS ON THE REPORT AND RECOMMENDATIONS OF THE SPECIAL COMMITTEE ON ATTORNEY ETHICS AND ADMISSIONS**

This notice publishes the report of the Supreme Court Special Committee on Attorney Ethics and Admissions (“Special Committee”) and the Supreme Court’s request for comments on the Special Committee’s report and recommendations.

The Supreme Court created the Special Committee to review the recent American Bar Association (ABA) amendments to the Model Rules of Professional Conduct and standards for admission to practice law. The ABA had formed a “Commission on Ethics 20/20” to review these rules and standards “in light of advances in technology and global legal practice developments.” The ABA Commission examined client confidentiality in a digital age; ethics issues arising from new forms of advertising; outsourcing of legal services; issues relating to lawyer mobility; choice of law problems related to conflicts of interest; issues relating to practice of out-of-state lawyers; and practice of foreign lawyers in the United States. The Special Committee reviewed the new ABA Model Rules and the reports and recommendations of its Commission on Ethics 20/20s, with a particular focus on whether New Jersey’s Rules of Professional Conduct, Rules of Court, and standards for admission to practice law should be revised. The Special Committee has submitted its report and recommendations to the Supreme Court concerning amendments to various Rules of Professional Conduct and rules relating to admission.

On one topic – admission by motion – the Special Committee was deeply and evenly divided; its Report sets forth both the arguments for and those against admission by motion.

On all other matters, the Special Committee was in full agreement. With regard to admissions, it does not recommend a rule permitting practice pending admission; it supports a rule permitting in-house practice by foreign (licensed outside the United States) lawyers; and it supports a rule permitting pro hac vice admission of foreign (licensed outside the United States) lawyers.

With regard to the Rules of Professional Conduct, the Special Committee declines to recommend amending RPC 1.1 (Competence) to include new language requiring lawyers to maintain a level of proficiency with technology. It supports an amendment to RPC 1.6 (Confidentiality of Information) to address the lawyer’s duty to prevent inadvertent or unauthorized disclosure of information relating to representation of a client and also to permit a lawyer to reveal limited client information to detect and resolve conflicts of interest arising from the lawyer’s change of employment, changes in the composition or ownership of a firm, or the sale of a firm. It recommends amending RPC 4.4(b) (Respect for Rights of Third Persons) to refer to “electronic information;” to address limited “wrongfully obtained” information as well as “inadvertently sent” information; and to prohibit “mining” electronic documents for embedded

information (metadata) when there is reason to believe the metadata was not intentionally included in the document.

The Special Committee supports revising RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants) to address non-lawyer assistance both inside and outside the firm, including legal outsourcing. It supports revisions to RPC 1.0 (Terminology) to reflect modern communication methods. It recommends revisions to RPC 1.18 (Prospective Client) to address situations where a prospective client does not speak to a lawyer but merely sends documents, and consultations made under false pretenses.

The Special Committee does not recommend changes to the advertising rules (RPCs 7.1, 7.2, and 7.3). Further, it does not recommend an amendment to RPC 1.1 (Competence) on legal outsourcing; an amendment to RPC 8.5 (Disciplinary Authority; Choice of Law) regarding an agreement on application of a particular jurisdiction's disciplinary rules; or an amendment to RPC 5.5 (Lawyers Not Admitted to the Bar of This State and the Lawful Practice of Law) on certain violative conduct.

The Special Committee also considered other matters, not specifically proposed by the ABA Commission. It recommends that a new rule on civility and professional conduct be added to RPC 8.4 (Misconduct). It recommends a new paragraph in RPC 5.2 (Responsibilities of a Subordinate Lawyer) that provides a "safe harbor" for lawyers who, in good faith, seek advice from firm ethics counsel or independent counsel on ethical conduct. It recommends an amendment to RPC 8.5 (Disciplinary Authority; Choice of Law) regarding the discipline rules to be applied when the predominant effect of the conduct is in a different jurisdiction. It recommends that foreign (licensed outside the United States) lawyers be permitted to practice New Jersey law as multijurisdictional practitioners under RPC 5.5 (Lawyers Not Admitted to the Bar of This State and the Lawful Practice of Law). Lastly, it recommends that official comments to the Rules of Professional Conduct be developed and adopted by a Court committee.

The Court hereby requests the legal community and interested members of the public to comment on the Special Committee's Report and Recommendations. Please send any comments in writing by **August 1, 2015** to:

Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Comments: Special Committee on Attorney Ethics and Admissions  
Richard J. Hughes Justice Complex  
P.O. Box 037  
Trenton, New Jersey, 08625-0037

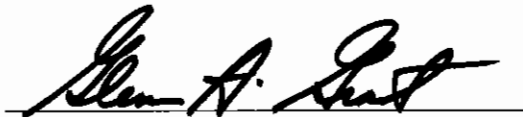
Comments may also be submitted via e-mail to: [Comments.Mailbox@judiciary.state.nj.us](mailto:Comments.Mailbox@judiciary.state.nj.us).

Please be advised that comments submitted in response to this notice are subject to public disclosure upon receipt.

The Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address and those submitting comments by

e-mail should include their name and e-mail address.

With regard to the Special Committee's recommendation regarding RPC 4.4(b) and metadata, the Court asks that comments on that particular recommendation not be submitted in response to this notice. A separate committee – the Supreme Court Working Group on Ethical Issues Involving Metadata in Electronic Documents – is currently considering whether RPC 4.4(b) should be amended, or a comment added to it, to state that unrequested embedded information (metadata) in an electronic document is either deemed or not deemed to be inadvertently sent, and whether lawyers receiving such electronic documents containing unrequested metadata may “mine” the document and make use of that metadata. Persons who seek to comment solely on this issue should await publication of the Working Group's Report and at that time comment on both the Special Committee's recommendation and that of the Working Group.



Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts

Dated: June 9, 2015