NEW JERSEY STATE BAR ASSOCIATION
New Jersey Law Center
One Constitution Square
New Brunswick, NJ 08901
(732) 937-7505

SUPREME COURT OF NEW JERSEY
DOCKET NO. 089278

IN RE SUPREME COURT ADVISORY COMMITTEE ON PROFESSIONAL ETHICS OPINION NO. 745	NOTICE OF PETITION FOR REVIEW OF ADVISORY COMMITTEE ON PROFESSIONAL ETHICS OPINION NO. 745

BRIEF OF NEW JERSEY STATE BAR ASSOCIATION IN SUPPORT OF PETITION FOR REVIEW

Of Counsel:
Timothy F. McGoughran, Esq.
President, New Jersey State Bar Association
New Jersey Law Center / One Constitution Square
New Brunswick, New Jersey 08901
Attorney ID No.: 028901986

On the Brief:
Christina Vassiliou Harvey, Esq. / Attorney ID No. 023642004
Diana C. Manning, Esq. / Attorney ID No. 018021993
Kyle A. Valente, Esq. / Attorney ID No. 245702020

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PRELIMINARY STATEMENT

The Advisory Committee on Professional Ethics ("ACPE" or "the Committee") issued Opinion 745 in response to inquiries received by the attorney ethics research hotline "about out-of-state lawyers seeking payment of referral fees from New Jersey certified attorneys." The Committee determined certified attorneys are not permitted to pay referral fees to out-of-state referring attorneys under Rule 1:39-6(d) unless the latter "is licensed and eligible to practice law in New Jersey." The New Jersey State Bar Association ("NJSBA") respectfully submits the Committee's analysis and conclusion are incorrect, and requests this Court grant its Petition and summarily reverse Opinion 745.

First, the Committee's interpretation of R. 1:39-6 is at odds with well-established canons of statutory construction. Concluding that "attorney" as it appears in Rule 1:39-6 means only a "New Jersey attorney" ignores the fact that the plain language of the Rule contains the word "attorney" *without* any qualification; it does not employ the term "New Jersey attorney" or except out-of-state attorneys. Without such qualification, for purposes of permissible recipients of referral fees in the context of Rule 1:39-6, the word "attorney" necessarily includes out-of-state attorneys as well as New Jersey attorneys.

Second, Opinion 745 conflates the nature of a referral fee paid to a New Jersey certified attorney, on the one hand, with a division of a legal fee under

R.P.C. 1.5(e), on the other. Rule 1:39–6(d) provides that a lawyer who refers a matter to a certified attorney is entitled to the payment of a referral fee "without regard to services performed or responsibility assumed by the referring attorney." This distinction is important, because an attorney who receives a referral fee under Rule 1:39-6(d) is not *sharing* fees with another lawyer as the "fee" is earned without performing legal services. Put simply, it is the Rule 1:39-6(d) referral itself, *not* any service rendered by the referring lawyer, which is the distinguishing factor.

Third, Opinion 745 ignores the potential harm to New Jersey clients, the public at-large, and the administration of justice. Opinion 745 eliminates the incentive for out-of-state lawyers to refer cases to certified attorneys deemed by this Supreme Court to possess the requisite skill, knowledge, experience, and competence to handle complex cases for the betterment of New Jersey clients. By excluding out-of-state attorneys from the ability to receive a referral fee, Opinion 745 increases the risk of harm from representation by out-of-state attorneys not familiar with New Jersey practice with potentially significant adverse consequences to the client, resulting in a loss of confidence in the justice system.

Finally, Opinion 745 creates immediate harm to certified attorneys with pre-existing referral fee arrangements with out-of-state attorneys made in

reliance on the unambiguous language of R. 1:39-6(d). According to the Committee, an out-of-state attorney who refers a case to a certified New Jersey lawyer is engaging in the practice of law in New Jersey by having referred the underlying case and receiving a referral fee under Rule 1:39-6(d). The effect of Opinion 745 is to place two competing obligations of a certified attorney in conflict with each other: the ethical obligation to not divide fees except as permitted by law, see R.P.C. 1.5(e), and the contractual obligation to pay referral fees that arose at the time a matter was referred to a certified attorney.

The NJSBA submits this Court's timely intervention is necessary to summarily reverse Opinion 745 and permit Court-certified attorneys to pay referral fees to out-of-state attorneys in accordance with the Rules of Court.

STATEMENT OF THE MATTER INVOLVED

The ACPE issued Opinion 745 on March 7, 2024, interpreting Rule 1:39-6 to preclude the payment of referral fees to out-of-state attorneys. The NJSBA, the largest professional association of attorneys within this state, filed a notice of petition on April 1, 2024, seeking reversal of Opinion 745.

Pursuant to R. 1:39-6(d), New Jersey certified are permitted to provide referral fees to referring attorneys "without regard to services performed or responsibility assumed by the referring attorney[.]" Since its adoption, certified trial attorneys have relied on the plain language of R. 1:39-6(d) in the payment

of referral fees and in furtherance of their representation of New Jersey clients. This referral fee mechanism is *an exception to* the general rule prohibiting the division of a fee by and between lawyers who are not in the same firm, unless the fee is in proportion to the services performed by each lawyer or each lawyer assumed joint responsibility for the representation. See R.P.C. 1.5(e). Such a referral fee is one of the privileges granted to certified attorneys by the Supreme Court and the New Jersey Board on Attorney Certification in recognition of their "education, experience, knowledge, and skill for each designated area of practice[.]" R. 1:39.

The ACPE interpreted Rule 1:39-6 to preclude the payment of referral fees to out-of-state attorneys. This interpretation hinges on the premise that a Rule 1:39-6(d) "referral fee is considered payment for legal services rendered[.]" The ACPE's description of a Rule 1:39-6(d) referral fee as "a division of the legal fee, paid for legal services rendered" is a legal fiction, wholly unsupported by case law, and in direct conflict with the spirit and intent of the Rule. The NJSBA respectfully submits this Court should grant its petition and reverse Opinion 745.

QUESTION PRESENTED

Can New Jersey lawyers who are certified trial lawyers under Rule 1:39-1 through 1:39-9 pay a referral fee to out-of-state referring attorneys who are not licensed to practice law in New Jersey?

ERRORS COMPLAINED OF

The Committee misinterpreted the plain language of R. 1:39-6. The Rule does not contain the term "New Jersey attorney," nor does it except "out-of-state attorneys" from its purview. The absence of limiting language, appearing elsewhere in the Court Rules, demonstrates that in R. 1:39-6(d) there was no intent to limit the application to an "attorney-at-law of this State." Rather, the lack of such qualification in the language of R. 1:39-6(d) means the intent was to apply to "all attorneys" generally.

Opinion 745 also erroneously conflates the payment of a referral fee in the context of Rule 1:39-6(d) with the division of a legal fee under R.P.C. 1.5(e). This led to the mistaken conclusion that an out-of-state attorney's act of referring a case to a New Jersey attorney constitutes the practice of law in New Jersey, notwithstanding that no case law is cited in support of this proposition.

Because the Committee's opinion is not supported by the plain language of the Rule or other case law and poses the risk of significant harm to the public, this Court should grant this petition and summarily reverse the matter.

THE MEMBERSHIP OF THE NJSBA HAS A COMPELLING INTEREST IN OPINION 745.

"Petitions for Supreme Court review can be filed by 'any aggrieved member of the bar, bar association or ethics committee.'" On Petition for Rev. of Opinion 475 of Advisory Comm. on Pro. Ethics, 89 N.J. 74, 80 (1982)

(quoting R. 1:19–8). The NJSBA is the largest bar association in the state, and many of its members are certified attorneys who earnestly adhere to the Court Rules and Rules of Professional Conduct, including relying on a plain reading of R. 1:39-6(d) regarding the payment of referral fees. The interpretation of that Rule contained in Opinion 745 has caused widespread confusion and uncertainty, resulting in those NJSBA members being aggrieved by this decision. It is therefore respectfully requested that this Court grant this Petition.

LEGAL ARGUMENT

POINT I
THE ACPE MISINTERPRETED THE PLAIN LANGUAGE OF RULE 1:39-1 THROUGH 1:39-9.

A. The ACPE's Interpretation of R. 1:39-6(d) Ignores the Plain Language of the Court Rule and Defies the Canons of Statutory Construction.

Generally, "[i]f a single fee is to be divided between in-state and out-of-state lawyers who are not in the same firm . . ., the propriety of the fee division is governed by R.P.C. 1.5(e): the division must be in proportion to the involvement of the out-of-state and in-state attorneys in the rendering of services or the assumption of responsibility for representation." Michels & Hockenjos, New Jersey Attorney Ethics, §36:6-4. "Out-of-State Attorneys" (GANN, 2024). R.P.C. 1.5(e) provides:

> (e) Except as otherwise provided by the Court Rules, a division of fee between lawyers who are not in the same firm may be made only if:

> (1) the division is in proportion to the services performed by each lawyer, or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; and
> (2) the client consents to the participation of all the lawyers involved; and
> (3) the total fee is reasonable.

New Jersey also permits a lawyer's payment of a referral fee to another lawyer when the recommended attorney is a certified attorney under R. 1:39-6(d). Rule 1:39-6(d) provides that "[a] certified attorney who receives a case referral from a lawyer who is not a partner in or associate of that attorney's law firm or law office may divide a fee for legal services with the referring attorney or the referring attorney's estate." The Rule does not contain the term "New Jersey attorney," or any other reference to a requirement of being licensed to practice law in this state, nor does it except out-of-state attorneys from its purview. Nevertheless, Opinion 745 concludes that only a referring attorney who is licensed and eligible to practice law in New Jersey may receive a referral fee from a certified lawyer under R. 1:39-6(d). The absence of limiting language, appearing elsewhere in the Court Rules, demonstrates that in R. 1:39-6(d) there was no intent to limit the application to only an "attorney-at-law of this State" from receiving a referral fee.

First, the Committee's interpretation of R. 1:39-6(d) is not in accordance with the plain language of the Rule. See First Resolution Inv. Corp. v. Seker,

171 N.J. 502, 511 (2002) (applying canons of statutory construction in interpreting court rules, including principle that enactments are to be construed consistent with their plain meaning). Specifically, the Committee's interpretation of "attorney" to only mean "New Jersey attorney" is comparable to interpreting a statute to mean "any citizen" when the statute used the term "any person." In re Zhan, 424 N.J. Super. 231, 237 (App. Div. 2012). In Zhan, the Appellate Division corrected the improper interpretation because "any citizen" is more restrictive than "any person." Here, Rule 1:39-6 includes the word "attorney" without any qualification and therefore must be interpreted to include both out-of-state attorneys, as well as New Jersey attorneys.

Second, under the doctrine of "*expressio unius est exclusio alterius,*" because the term "out-of-state attorney" and "New Jersey attorney" are used elsewhere in the Court Rules, the fact that R. 1:39-6(d) does not have these qualifications indicates that the intent was to apply to "all attorneys" without qualification. See Squires v. Atlantic County Bd. Of Chosen Freeholders, 200 N.J. Super. 496, 503 (App. Div. 1985)("the mention of one thing usually implies the exclusion of another"). See, e.g., R. 1:21-9(b)("The foreign legal consultant shall associate and consult with a **New Jersey attorney** and the associating **New Jersey attorney** shall assume full responsibility for the conduct of the foreign legal consultant.)(emphasis added); R. 1:21-3(c)(1)(" Permission for an **out-of-**

state attorney to practice under this rule...")(emphasis added); R. 4:11-4(b)(1)("[A]n **out-of-state attorney** or party may submit a foreign subpoena along with a New Jersey subpoena, in the name of the clerk of the Superior Court, which complies with subparagraph (3) to **an attorney authorized to practice in this State**...")(emphasis added).

In fact, R. 1:39-6(a)specifically addresses that "[t]he standards and systems adopted herein shall in no way limit the right of a certified attorney to practice law in any respect nor shall any attorney-at-law of this State be barred from engaging in a designated area of practice by reason of lack of eligibility or certification." The same limiting language does not appear in R. 1:39-6(d), thereby demonstrating that there was no intent to limit the application to only an "attorney-at-law of this State" from receiving a referral fee.

The Court Rules similarly limit application to New Jersey attorneys in certain instances. For instance, the Rules explain the scope of those who must pay fees as "every attorney admitted to practice law in this state, including all persons holding a plenary license, those admitted *pro hac vice*, those holding a limited license as in-house counsel, those registered as multijurisdictional practitioners, those certified as Foreign Legal Consultants, and those permitted to practice under Rule 1:21-3(c)." Further, as an example, the Rules specify in

R. 5:8A that "[c]ounsel shall be an attorney licensed to practice in the courts of the State of New Jersey and shall serve as the child's lawyer."

Here, the Committee's reading of "attorney," as it appears in Rule 1:39-6, to only mean "New Jersey attorney" ignores the fact that the plain language of the Rule contains the word "attorney" without any qualification. It does not employ the term "New Jersey attorney" or except out-of-state attorneys. As a result, for purposes of permissible recipients of referral fees in the context of Rule 1:39-6, the word "attorney" necessarily includes out-of-state attorneys, as well as New Jersey attorneys, and Opinion 745 must be reversed.

B. Opinion 745 Erroneously Conflates the Payment of a Referral Fee in the Context of Rule 1:39–6(d) With the Division of a Legal Fee Under R.P.C. 1.5(e).

Opinion 745 is based on the flawed premise that a referral fee is the equivalent of an earned fee paid as compensation for the performance of legal services. The text of Opinion 745 provides that:

> As a referral fee is considered payment for legal services rendered in the case (not in proportion to actual services rendered), the lawyer to whom the fee is payable must be eligible to practice New Jersey law.

The Committee determined certified attorneys are not permitted to pay referral fees to out-of-state referring attorneys under Rule 1:39-6(d) unless the latter "is licensed and eligible to practice law in New Jersey." In so doing, the Committee reasoned that payment of a referral fee in the context of Rule 1:39-

6(d) constituted the division of a legal fee for legal services rendered. According to the Committee, in Opinion 745, an out-of-state attorney who refers a case to a certified New Jersey lawyer is engaging in the practice of law in New Jersey by virtue of having referred the underlying case and receiving a referral fee under Rule 1:39-6(d).

A referral fee paid by a New Jersey certified attorney, however, is not a division of fees under R.P.C. 1.5(e). Rule 1:39–6(d) provides that a lawyer who refers a matter to a certified attorney is entitled to the payment of a referral fee "without regard to services performed or responsibility assumed by the referring attorney." The Appellate Division has explained that this distinction means an attorney taking the referral fee is not sharing fees with another lawyer because the fee is earned without performing legal services. Eichen, Levinson & Crutchlow, LLP v. Weiner, 397 N.J. Super. 588, 595-97 (App. Div. 2008)(explaining "[c]ompensation for work on a file is thus very different from receiving a referral fee").

The case law relied upon in Opinion 745 does not actually apply to out-of-state attorneys receiving a referral fee from a certified attorney. See Stack v. P. G. Garage Inc., 7 N.J. 118, 121 (1951) (voiding contract for handling of tax appeal because "it constitutes the practice of law"); see also Eichen, 397 N.J. Super. 588 (holding certified attorney should pay disbarred New Jersey

attorney's referral fee to trustee for the law practice); see also Appell v. Reiner, 81 N.J. Super. 229, 239 (Ch. Div. 1963)(New York attorney was not entitled to fee because the legal advice constituted the practice of New Jersey law), rev'd, 43 N.J. 313, 316 (1964)(reversing on the basis that it would be impractical to involve a New Jersey attorney in the negotiations that involved both New Jersey and New York members).

In fact, what flows from Opinion 745 is equivalent to a determination that an out-of-state attorney's referral of a case to a New Jersey attorney constitutes the unauthorized practice of law. Because there is no statute or Rule that defines the unauthorized practice of law, such a decision is reserved for this Court under the Constitution. See N.J. Const. Art. VI, s II, ¶ 3; see also In re Op. No. 24 of Comm. on Unauthorized Prac. of Law, 128 N.J. 114, 122 (1992) ("Essentially, the Court decides what constitutes the practice of law on a case-by-case basis.").

The Appellate Division recently reviewed the unauthorized practice of law by an attorney admitted to practice *pro hac vice* in this state through an associate at his firm in a medical malpractice case. Johnson v. McClellan, 468 N.J. Super. 562, 570 (App. Div. 2021). After settling, the attorney paid the referring Pennsylvania attorney a referral fee. Id. at 571. The Appellate Division explained the attorney receiving the referral fee did not violate the unauthorized practice of law due to New Jersey's R.P.C. 5.5, which states:

> (b) A lawyer not admitted to the Bar of this State who is admitted to practice law before the highest court of any other state, territory of the United States, Puerto Rico, or the District of Columbia (hereinafter a United States jurisdiction) may engage in the lawful practice of law in New Jersey only if:
>
> ....
>
> (3) Under any of the following circumstances:
>
> ....
>
> (iv) the out-of-state lawyer's practice in this jurisdiction is occasional and the lawyer associates in the matter with, and designates and discloses to all parties in interest, a lawyer admitted to the Bar of this State who shall be held responsible for the conduct of the out-of-State lawyer in the matter.

Johnson, 468 N.J. Super. at 582–83 (App. Div. 2021)(quoting R.P.C. 5.5). The court further found the referring attorney's involvement in Johnson that was not the unauthorized practice of law was far more extensive than an out-of-state attorney who simply refers a matter: "Defendant's involvement in the underlying lawsuit was limited to providing recommendations to plaintiff to assist her in retaining a properly licensed or admitted attorney to represent her in her case and then assisting her attorneys of record, conduct which is permitted by R.P.C. 5.5(b)(3)(iv)." Id. at 583.

After the Johnson decision, the Committee on the Unauthorized Practice of Law ("UPL Committee") issued a decision providing guidance to out-of-state practitioners seeking to practice under R.P.C. 5.5. See Comm. Unauth. Prac. Op. 60 (Dec. 19, 2022). The Committee explained an out-of-state lawyer does not need to register as a multijurisdictional practitioner under R.P.C. 5.5(b)(3) for

"lower-level assistance, such as researching legal issues and drafting documents under the direct supervision of an admitted lawyer." Moreover, "out-of-state lawyers who merely consult with an admitted lawyer on specialized legal issues need not register as a multijurisdictional practitioner." Id. The UPL Committee further explained, "If the consultation is lawyer-to-lawyer and does not involve direct interaction with the client, this activity is not considered the unauthorized practice of law and generally does not require registration as a multijurisdictional practitioner." Comm. Unauth. Prac. Op. 60. A referral falls precisely within this definition of lawyer-to-lawyer interaction.

But this guidance is directly contradicted by the view expressed in Opinion 745 that now considers out-of-state lawyers who refer matters to certified attorneys as being engaged in the unauthorized practice of law. The Committee on the Unauthorized Practice of Law's decision explains there are three ways an out-of-state lawyer may practice within New Jersey without constituting the unauthorized practice of law: 1) consulting with a New Jersey lawyer regarding a client's needs; 2) registering as a multijurisdictional lawyer for occasional practice in New Jersey; and 3) seeking *pro hac vice* admission. Id. Here, as explained by the Committee that this Court empowered to review unauthorized practice of law, the act of referring a case does not constitute the practice of law in New Jersey. This conclusion is now contradicted by a different

Committee – a compelling reason this Court should hear this matter on an expedited basis.

Notably, the ACPE did not reference either this Court's decision in Appell v. Reiner, 81 N.J. Super. 229 (Ch. Div. 1963), rev'd, 43 N.J. 313 (1964), or UPL Opinion 60 in its decision. In Appell, the Chancery Division denied a New York attorney payment for his time serving New Jersey clients on New Jersey mortgage issues. On appeal, this Court held "plaintiff's agreement to furnish services in New Jersey was not illegal and contrary to public policy" because of "the inseparability of the New York and New Jersey transactions." Appell, 43 N.J. at 316. Payment of a referral fee is also inseparable and should not constitute the unauthorized practice of law nor preclude payment of a referral fee to an out-of-state lawyer by a certified attorney.

POINT II
THE COURT SHOULD GRANT THIS PETITION BECAUSE OPINION 745 PRESENTS A REAL HARM TO THE GENERAL PUBLIC.

The purpose behind R. 1:39-6 is to allow others to identify those attorneys who have been designated by the Supreme Court as "specialists" who demonstrate an objectively adjudicated level of competence. One way of encouraging attorneys to refer matters that fall outside of their experience and knowledge to these Supreme Court-designated specialists is by allowing certified attorneys to pay a referral fee. By excluding out-of-state attorneys from

the ability to receive a referral fee, ACPE Opinion 745 poses an increased risk of harm from representation by out-of-state attorneys not familiar with New Jersey practice with potentially significant adverse consequences to the client, resulting in a loss of confidence in the justice system.

New Jersey's explicit fee division and referral fee rules are rooted in long-standing public policy that places the protection of clients at the forefront. "The primary motivation for the prohibition against giving compensation for recommending a lawyer historically has been the desire to protect the public from unscrupulous and undignified solicitation practices." N.J. Comm. on Attorney Advertising Op. 13 (Oct. 5, 1992). One purpose behind allowing payment of a referral fee involving a certified attorney is to encourage the referral of matters to experienced attorneys.

By precluding payment of a referral fee to an out-of-state attorney, Opinion 745 incentivizes the out-of-state attorney not best suited to handle a particular claim on behalf of a New Jersey client to nevertheless seek *pro hac vice* admission to handle the matter or to perform a portion of the "services performed" in order to derive a fee under R.P.C. 1.5(e). However, among the central goals of Rule 1:39-6(d) is to facilitate the pairing of competent New Jersey counsel with litigants involved in matters before our courts. The certified attorney specialization, coupled with the ability to pay referral fees, creates an

incentive for the out-of-state lawyer to refer the case to a specialist who has the skill, requisite knowledge, and experience to handle complex cases for the betterment of New Jersey clients.

This Court has long-ago recognized the harm that could occur when an out-of-state lawyer attempts to enter the New Jersey market. "To the extent that an out-of-state law firm seeks to capitalize on a reputation not based on the successful practice of New Jersey law, the potential for consumer deception will always be present." On Petition for Rev. of Opinion 475 of Advisory Comm. on Pro. Ethics, 89 N.J. 74, 96 (1982). The Court recognized that law firms differ from other businesses, due to "the trust [lawyers] have earned from their clients and the reputation they have developed with fellow practitioners, the courts and the community. It is the experience they have slowly accumulated by the repeated, successful exercise of judgment." Id.

Opinion 745 eliminates the incentive for out-of-state lawyers to refer cases to certified attorneys deemed by this Supreme Court to possess the requisite skill, knowledge, experience, and competence to handle complex cases for the betterment of New Jersey clients. Accordingly, the NJSBA respectfully requests that the Court grant this Petition and reverse Opinion 745.

POINT III

THE COURT SHOULD GRANT THIS PETITION DUE TO THE NEGATIVE AND DELETERIOUS IMPACT THAT OPINION 745 HAS ON THE PRACTICE OF LAW.

The NJSBA urges this Court to reverse Opinion 745 and expedite its review of the Opinion because any delay would further exacerbate the ethical and contractual dilemmas facing certified attorneys with agreements in place to pay referral fees to out-of-state attorneys. Opinion 745 creates immediate harm to certified attorneys with pre-existing referral fee arrangements with out-of-state attorneys that were made in reliance on the plain language of R. 1:39-6(d).

On the one hand, attorneys have an ethical obligation not to divide fees except as permitted by law. See R.P.C. 1.5(e). On the other hand, attorneys have contractual obligations to pay referral fees that arose when a matter was referred to a certified attorney. See Eichen, Levinson & Crutchlow, LLP v. Weiner, 397 N.J. Super. 588, 595 (App. Div. 2008)(holding attorney had obligation to pay referring disbarred attorney's trustee because referral was made prior to disbarment); see also Ravich, Koster, Tobin, Oleckna, Reitman & Greenstein, P.C. v. Gourvitz, 287 N.J. Super. 533, 539 (App. Div.)(holding referral fee is a legal obligation owed to referring lawyer), aff'd, 147 N.J. 170 (1996).

In Eichen, 397 N.J. Super. at 591-92, the Appellate Division addressed whether a referral fee must be paid to the trustee for a disbarred attorney's legal practice. The law firm which had successfully settled many cases that had been

referred by the disbarred attorney refused to pay the trustee the referral fees because the attorney was disbarred at the time the cases settled. Id. The Appellate Division explained the legal obligation became due at the time the referral was made, calling it a "financial obligation." Id. at 598.

Moreover, under the holding in Eichen, a referring lawyer with an active license at the time of a referral to a certified civil trial attorney is entitled to receive a referral fee even if the lawyer is subsequently disbarred at the time the fee becomes payable. Opinion 745, however, concludes that a duly licensed out-of-state attorney who makes a referral under R. 1:39-6(d) is *precluded* from receiving a referral fee if said attorney is not barred in the state of New Jersey. It stands to reason that the common denominator for a referring attorney to be eligible to receive a referral fee under R. 1:39-6(d) is a license to practice law irrespective of the jurisdiction. Opinion 745 arbitrarily excludes duly licensed out-of-state attorneys from receiving a referral fee and stands in direct conflict with the spirit and intent of the Rule and existing case law.

Accordingly, Opinion 745 places certified attorneys in the untenable position of potentially being exposed to civil liability for breach of contract if they do not pay a previously agreed upon referral fee to an out-of-state lawyer not licensed in New Jersey. Certified attorneys should not be placed in such a predicament given (1) their good-faith reliance on the plain language of R. 1:39-

6 that does not limit the payment of referral fees to only licensed New Jersey attorneys; (2) current law recognizes the payment of a referral fee is a legal obligation enforceable in court; and (3) the referral of a matter by an out-of-state attorney to a New Jersey attorney is not considered the unauthorized practice of law by the UPL Committee. To prevent this harm, the NJSBA respectfully requests the Court grant this Petition and summarily reverse Opinion 745.

CONCLUSION

The NJSBA's membership is deeply troubled by the impact of Opinion 745. The NJSBA respectfully requests this Court grant the within Petition and hold that certified attorneys may pay, and out-of-state attorneys may accept, referral fees as contemplated by the plain language of R. 1:39-6 to avoid harm to both the lawyers of this state and their clients.

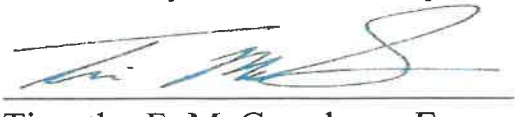
Respectfully submitted,
NEW JERSEY STATE BAR ASSOCIATION

By: 
Timothy F. McGoughran, Esq., President

Dated: April 10, 2024

CERTIFICATION OF GOOD FAITH

The undersigned counsel certifies this Petition presents a substantial question and is filed in good faith and not for the purposes of delay. I certify that the foregoing statements made by me are true. I am aware if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Timothy F. McGoughran, Esq.