



## NEW JERSEY STATE BAR ASSOCIATION

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June 20, 2024

Hon. Glenn A. Grant, J.A.D.  
Acting Director, Administrative Office of the Courts  
Richard J. Hughes Justice Complex  
25 W. Market Street  
Trenton, NJ 08625

Re: P.L. 2024, c.2 - Affordable Housing Dispute Resolution Program /  
Code of Ethics

Dear Judge Grant:

On behalf of the New Jersey State Bar Association (NJSBA), I bring to your attention an important issue to note when establishing the Affordable Housing Dispute Resolution Program (the Program) pursuant to the recently enacted affordable housing legislation (P.L. 2004, c.2). To attract the most qualified individuals to assist the Program in meeting its goals, it is critical to have the appropriate standards by which individuals will need to abide when lending their expertise.

The NJSBA took no policy position on the legislation, but its members have an interest in ensuring the Program is able to operate in a fair and efficient manner. This means allowing the Program to enlist professional planners and attorneys with expertise in affordable housing to assist the Program in rendering determinations, resolving disputes and facilitating communications, as outlined in the statute. Since Mt. Laurel was decided, such professionals have helped the courts and the Council on Affordable Housing implement the State's nuanced and complex affordable housing programs as consultants, employees, and special adjudicators. In doing so, they have been guided by the Rules of Professional Conduct (RPCs) and the ethics standards set forth in Deland v. Township of Berkeley Heights, 361 N.J. Super. 1 (App. Div. 2003).

While the new statute envisions a new Code of Ethics, modeled upon the Code of Judicial Conduct, it is important that the statute requires the new Code for appointees of the Program only, not for attorneys and professionals who are consulting with or working with the Program. This is a critical distinction, as the Code of Judicial Conduct uses an appearance of impropriety standard (Canon 2), which was eliminated for attorneys in the 2004 RPC amendments. Applying the appearance of impropriety standard would unfairly limit professionals and their firms who are willing to lend their expertise to the efficient operation of the Program from performing any private client or municipal work in connection with affordable housing matters in the Fourth Round. This would act as a disincentive for such professionals to assist in the Program and will unnecessarily impair the functioning of the Program.

To avoid a situation where attorneys and other professionals feel compelled to refrain from offering their insight and expertise in this critically important work, the NJSBA urges you to include language in the new Code of Ethics providing the statutory requirements that the new Code applies to appointees of the Program, and that the Rules of Professional Conduct and the ethics standards set forth in Deland v. Township of Berkeley Heights, 361 N.J. Super. 1 (App. Div. 2003) continue to apply to attorneys and other professionals, respectively, who are consulting with or working for the Program. This will ensure everyone participating in the Program has a clear understanding of what is expected of them and will allow the Program to operate with the assistance and input of those most knowledgeable about the important topics being addressed.

Very truly yours,



William H. Mergner, Jr., Esq.  
President, New Jersey State Bar Association

cc: Christine A. Amalfe, Esq., NJSBA President-Elect  
Angela C. Scheck, NJSBA Executive Director