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ANCHOR LAW FIRM, PLLC and ANDREW M. CARROLL, ESQ., Plaintiffs-Appellants v. THE STATE OF NEW JERSEY, GURBIR GREWAL, in his official capacity as Attorney General of the State of New Jersey and MARLENE CARIDE, in her official capacity as Commissioner of Banking and Insurance Defendants-Respondents	SUPREME COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-000052-23 Civil Action ON APPEAL FROM: SUPERIOR COURT OF NEW JERSEY LAW DIVISION, MERCER COUNTY DOCKET NO.: MER-L-1186-21 SAT BELOW: HON. DOUGLAS HURD, J.S.C.

BRIEF OF *AMICUS CURIAE* NEW JERSEY STATE BAR ASSOCIATION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutions

Statutes

Miscellaneous

PRELIMINARY STATEMENT

Since the ratification of the United States Constitution and the New Jersey Constitution of 1947, the separation of powers and independence of the Judiciary have been pillars of the republican form of government. Consistent with that concept, the New Jersey Constitution gives the Judiciary exclusive jurisdiction over the practice of law. The New Jersey State Bar Association (NJSBA) asks the Court to reaffirm that authority in this matter.

Specifically, the statute at issue here threatens to allow an executive department agency to regulate and determine what constitutes the practice of law – a power that our Constitution has left exclusively to the Judiciary. The Court must also consider how the Department of Banking and Insurance's (DOBI) actions would impact the application of the Rules of Professional Conduct (RPCs), which govern how attorneys conduct the business of practicing law. If left to stand, the statutory provision at issue in this case and the powers it purports to grant to DOBI and its Commissioner will erode the authority of the New Jersey Supreme Court by seeking to redefine what constitutes the practice of law and potentially limiting the ways in which attorneys currently assist those in need

The principal issue before this Court is whether and to what extent the New Jersey Legislature is empowered to regulate the legal profession. Pursuant to the New Jersey Debt Adjustment and Credit Counseling Act, N.J.S.A. 17:16G-1 to -9

(NJDACCA), "[n]o person other than a nonprofit social service agency or a nonprofit consumer credit counseling agency shall act as a debt adjuster." N.J.S.A. 17:16G-2(a). Although the statute prohibits debt adjustment for profit, N.J.S.A. 17:16G-1(c)(2)(a) exempts "an attorney-at-law of this State who is not principally engaged as a debt adjuster" (Limited Attorney Exemption). Pursuant to N.J.S.A. 2C:21-19(f), acting as a debt adjuster without a license, unless exempted from licensure, is a crime of the fourth degree.

The NJSBA respectfully urges this Court to hold that the Limited Attorney Exemption is unconstitutional, as applied to New Jersey attorneys. The Limited Attorney Exemption impermissibly infringes on the Supreme Court's exclusive authority to regulate the practice of law. The New Jersey Constitution endows the Supreme Court, not the Legislature or executive branch, with the exclusive jurisdiction over the practice of law. N.J. Const. art. VI, § 2, ¶ 3. The Supreme Court sets the standard for admission to practice law in this State, regulates attorney conduct, promulgates ethical guidelines for the practice of law, adjudicates attorney disciplinary infractions, sanctions attorneys who violate their professional and ethical responsibilities, and, key here, delineates which activities constitute the practice of law. Stated differently, the Supreme Court's constitutional role and authority over the practice of law is *sui generis*.

The NJDACCA, through the Limited Attorney Exemption, violates the doctrine of separation of powers by restricting the amount of "debt adjustment services" that New Jersey attorneys can provide their clients in connection with legal representation without defining what "debt adjustment" is and without explaining what it means to be "principally engaged" as a debt adjustor. DOBI or its Commissioner are free to determine whether an attorney's conduct constitutes the practice of law. This transference of authority infringes on the exclusive authority of the judicial branch to regulate the professional conduct of attorneys in New Jersey.

Case law confirms that the definition of the practice of law encompasses the various types of services that the NJDACCA purports to regulate. Attorneys routinely provide debt adjustment services to clients as part of the assistance they provide. The Supreme Court wields the sole authority to regulate attorney conduct in this area. However, if left to stand, the Limited Attorney Exemption permits regulation over the practice of law by DOBI and its Commissioner.

The NJSBA submits that the Limited Attorney Exemption is unconstitutional, as applied to New Jersey attorneys.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

The NJSBA relies on the procedural history and statement of facts as presented by the parties.

LEGAL ARGUMENT

POINT I

THE LIMITED ATTORNEY EXEMPTION IMPERMISSIBLY INFRINGES ON THE SUPREME COURT'S EXCLUSIVE AUTHORITY TO REGULATE THE PRACTICE OF LAW.

A. Under the New Jersey Constitution, the Supreme Court is Vested with the Exclusive Authority to Regulate the Practice of Law.

Prior to the adoption of the current New Jersey Constitution, all three branches of government were involved in the admission of attorneys to practice, and both the Legislature and Judiciary exercised control over attorney conduct. See State v. Rush, 46 N.J. 399, 411 (1966). The New Jersey Constitution of 1947, however, granted the Supreme Court the exclusive authority to:

> []make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.

N.J. Const. art. VI, § 2, ¶ 3. See also State v. Rue, 175 N.J. 1, 14 (2002) (discussing the Court's authority to proscribe disciplinary and procedural rules for attorneys and the practice of law).

Thus the Supreme Court, not the executive or Legislature, is vested with the exclusive authority over the practice of law. See, e.g., State v. Bander, 106 N.J. Super. 196, 200 (Monmouth County Ct.), rev'd on other grounds, 56 N.J. 196 (1970)

("It is now well settled in our State that the Supreme Court has exclusive jurisdiction over the practice of law."); Winberry v. Salisbury, 5 N.J. 240, 255 (1950) (expressly rejecting the possibility that the State Constitution granted the legislature authority over the courts). The Court elucidated this principle in In re LiVolsi, 85 N.J. 576, 585 (1981), stating that:

> For 33 years this Court has exercised plenary, exclusive, and almost unchallenged power over the practice of law in all of its aspects under [the New Jersey Constitution].

The Supreme Court exercises "its constitutional authority to govern the admission to practice and the discipline of persons admitted by the adoption of rules governing attorney conduct and by the issuance of opinions construing the rules." Michels & Hockenjos, New Jersey Attorney Ethics, §1:2. "Exercise of the Court's Authority Through Rules and Opinions" (GANN, 2025). The Rules of Professional Conduct (RPCs) are the Supreme Court's codification of the rules governing attorney conduct in New Jersey. The Supreme Court has also established several committees that consider issues implicated by the RPCs and to address those issues when needed. As a result, the substantive body of law governing attorneys and the practice of law in New Jersey consists of:

> []the Rules of Professional Conduct, the Rules Governing the Courts of the State of New Jersey, the opinions touching on attorney ethics issued by the Supreme Court itself, and the opinions issued periodically by the committees of the Supreme Court, specifically, the Advisory Committee on Professional Ethics, the

> Committee on the Unauthorized Practice of Law, and the Committee on Attorney Advertising.

Id. Every aspect of a lawyer's practice is encompassed by these rules. Everything from the process by which attorneys are admitted to practice, to the manner in which an attorney may leave the practice of law, are regulated. Advertising, accounting of client funds, communication with clients, dealings with third parties, competence of the attorney, conflicts of interest, and the unauthorized practice of law are among the myriad subjects that these comprehensive rules contemplate. The penalty for attorney misconduct in violation of these rules ranges from admonition to censure to disbarment, subject to the recommendations of the Disciplinary Review Board and Office of Attorney Ethics. As evidenced by the promulgation of far-reaching and thorough rules and the efficient enforcement of them, the Supreme Court has demonstrated its commitment to regulating the practice of law and has guarded the public trust inherently implicated by the attorney-client relationship.

The RPCs specifically note that any dual regulation of attorneys should be avoided. The comments to ABA Model Rule 8.5 Disciplinary Authority; Choice of Law (upon which the RPCs are based), state:

> [] [M]inimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the

> determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

ABA Model R. Prof'l Conduct 8.5 Cmt. [3]. In an effort to avoid the type of problem identified in the comments (*i.e.*, multiple sets of potentially conflicting regulations), attorneys are often exempted from the coverage of statutory schemes. In some instances, this is done expressly by the Legislature. In other instances, the judicial branch has exempted attorneys from statutes. See, e.g., Vort v. Hollander, 257 N.J. Super. 56 (App. Div. 1992), certif. denied 130 N.J. 599 (1992).[1] In Vort v. Hollander, the Appellate Division affirmed dismissal of a consumer fraud claim brought against an attorney on the basis that "attorney's services do not fall within the intendment of the Consumer Fraud Act." Vort, 257 N.J. at 62. The Appellate Division further

[1] This is not a minority view. A majority of states agree with New Jersey's approach and have judicially excluded attorneys from consumer protection statutes for the same reasons as New Jersey. See, e.g., Preston v. Stoops, 285 S.W.3d 606, 609 (Ark. 2008) (The Arkansas Deceptive Trade Practices Act does not apply to the practice of law because "[o]versight and control of the practice of law is under the exclusive authority of the judiciary."); Beyers v. Richmond, 937 A.2d 1082, 1092 (Pa. 2007) ("The General Assembly has no authority under the Pennsylvania Constitution to regulate the conduct of lawyers and the practice of law."); Jamgochian v. Prousalis, No. 99C-10-022, 2000 Del. Super. LEXIS 373 (Del. Super. Ct. 2000) (Delaware's consumer protection statute was not applicable to attorney conduct occurring within the practice of law); Rousseau v. Eschleman, 519 A.2d 243 (N.H. 1986) (attorneys were exempted from the provisions of New Hampshire's Consumer Protection Act because the Supreme Court established a professional conduct committee which has responsibility for regulating attorney conduct).

observed that "the practice of law in the State of New Jersey is in the first instance, if not exclusively, regulated by the New Jersey Supreme Court." (citing N.J. Const. art. VI, § 2, ¶ 3).

Specific to this case, however, the NJDACCA provides that "[n]o person other than a nonprofit social service agency or a nonprofit consumer credit counseling agency shall act as a debt adjuster." N.J.S.A. 17:16G-2(a). Although the statute prohibits debt adjustment for profit, N.J.S.A. 17:16G-1(c)(2)(a) exempts "an attorney-at-law of this State who is not **principally engaged** as a debt adjuster[.]" (emphasis added). In contravention of the separation of powers and the exclusive authority of the Supreme Court to regulate the practice of law, the NJDACCA restricts the amount of debt adjustment services that New Jersey attorneys can provide their clients as part of their legal representation. The NJDACCA does not define what "debt adjustment" is but based on the definition of a "debt adjuster"[2], the statute arguably applies to any New Jersey attorney involved in foreclosure actions, as well as in bankruptcy, insolvency and collection proceedings. Further,

[2] "Debt adjuster" is defined as "a person who either (a) acts or offers to act for a consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or otherwise altering the terms of payment of any debts of the debtor, or (b) who, to that end, receives money or other property from the debtor, or on behalf of the debtor, for payment to, or distribution among, the creditors of the debtor." N.J.S.A. 17:16G-1(c)(1).

the phrase "principally engaged" is undefined, rendering it unclear to attorneys when their conduct falls within the ambit of the statute.

Given this overreach, the Appellate Division should find the NJDACCA is unconstitutional as applied to New Jersey attorneys. The practice of law in New Jersey is regulated exclusively by the Supreme Court. The NJDACCA violates the separation of powers provision of the New Jersey Constitution such that it is unenforceable as to New Jersey lawyers engaged in the practice of law. When New Jersey attorneys perform "debt adjustment" services in the context of an attorney-client relationship, they are engaged in the actual practice of law and are subject to the sole province of the Supreme Court.

B. Debt Adjustment, When Performed by an Attorney on Behalf of a Client, Constitutes the Practice of Law.

The NJDACCA impermissibly regulates the conduct of attorneys in furtherance of the legal representation of their clients. A New Jersey licensed attorney who performs debt adjustment services within the context of an attorney-client relationship is engaged in the practice of law. Attorneys routinely provide debt adjustment services to clients as part of their legal representation. See generally, Ferguson v. Skrupa, 372 U.S. 726, 732 (1963) (a "debt adjuster's client may need advice as to the legality of the various claims against him, remedies existing under state laws governing debtor-creditor relationships, or provisions of the Bankruptcy

Act – advice which a nonlawyer cannot lawfully give him"); accord N.J. Comm. Unauth. Prac. Op. 36, 136 N.J.L.J. 221 (Jan. 15, 2001).

In Op. 36, the Committee on the Unauthorized Practice of Law determined that "debt resolution" services, which included the review of complaints, evaluation of claims levied against a client, and communications with creditors' attorneys "in an effort to compromise the claims," constituted activity that "falls within the practice of law." In Am. Budget Corp. v. Furman, 67 N.J. Super. 134 (Ch. Div.), aff'd per curiam 36 N.J. 129 (1961), a company engaged in the business of debt adjusting challenged a former statute prohibiting the practice, with certain exceptions. The former statute defined a "debt adjuster, "in part, as a person who:

> acts or offers to act for consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or in anywise, altering the terms of payment of any debts of the debtor…

N.J.S.A. 2A:99A-1(a). The Court in Furman upheld the constitutionality of the statute, finding that "services encompassed by the statutory definition of debt adjuster are often an integral and essential part of an attorney's job when he represents a debt-ridden client." Id. at 143. The Court additionally observed that "[i]t is plain by now that in their activities debt adjusters may encroach upon the practice of law." Id. In Appell v. Reiner, 43 N.J. 313, 316 (1964), the Supreme Court determined that "the rendering of advice and assistance in obtaining extensions of credit and compromises of indebtedness" constituted the practice of law.

The Supreme Court of the United States, in reviewing a similar Kansas statute, determined that the business of debt adjusting involves the practice of law. See Ferguson, 372 U.S. at 732. In Ferguson, the Court elucidated that:

> The business of debt adjusting gives rise to a relationship of trust in which the debt adjuster will, in a situation of insolvency, be marshaling assets in the manner of a proceeding in bankruptcy. The debt adjuster's client may need advice as to the legality of the various claims against him, remedies existing under state laws governing debtor-creditor relationships, or provisions of the Bankruptcy Act - advice which a nonlawyer cannot lawfully give him.

Id. See also In re Pilini, 173 A.2d 828, 831 (Vt. 1961) (individual involved in "debt pooling" service and who attempted to handle litigation on behalf of debtor found to be engaged in the practice of law); Home Budget Service, Inc. v. Boston Bar Ass'n, 139 N.E.2d 387, 390 (Mass. 1957) (actions of corporations involved in the practice of "debt pooling" amount to the practice of law).

Here, the trial court concluded that the "DACCA does not prohibit an attorney's right to practice law; rather, DACCA regulates a distinct business of debt adjustment that contemplates those lawyers licensed in New Jersey can provide debt adjustment services to New Jersey consumers as long as that debt adjustment activity is not their principal activity." T17:L3-9. To be covered by the Limited Attorney Exemption, "an attorney-at-law of this State" must not be "principally engaged as a debt adjuster". N.J.S.A. 17:16G-1(c)(2)(a). The trial court's holdings cannot be reconciled with the United States Supreme Court's recognition that debt adjustment

services performed on behalf of a client constitute the practice of law. To hold otherwise would contravene established precedent. See, e.g., Ferguson, 372 U.S. at 732; see also Furman, 67 N.J. Super. at 143; Appell, 43 N.J. at 336; N.J. Comm. Unauth. Prac. Op. 36.

POINT II

THE LIMITED ATTORNEY EXEMPTION AS APPLIED TO NEW JERSEY ATTORNEYS IS UNCONSTITUTIONAL.

The NJSBA urges this Court to hold that the Limited Attorney Exemption is unconstitutional as applied to New Jersey attorneys. Enforcement of the NJDACCA against practicing attorneys violates public policy and significantly interferes with the Supreme Court's authority to regulate the practice of law. The nature and extent of the Limited Attorney Exemption's encroachment upon the Supreme Court's prerogatives and interests is substantial and deleterious.

Subjecting New Jersey licensed attorneys to the licensing and regulatory requirements imposed by the NJDACCA would, among other things, improperly: (1) give DOBI the authority to restrict an attorney's ability to provide debt adjustment services on behalf of clients during the course of a representation; (2) give the DOBI Commissioner the authority to determine which attorneys in this state are "qualified to be licensed and possess[] the necessary financial resources to

sustain [their] operation"[3] to provide debt adjustment services in conjunction with their practice of law; (3) require that attorneys obtain additional licenses from and pay licensing fees to agencies outside the judicial branch in order to offer traditional legal services; and (4) impinge on the Supreme Court's exclusive authority to suspend, disbar or otherwise discipline attorneys who have engaged in professional misconduct.[4]

First, DOBI is charged with assessing when an attorney is "principally engaged as a debt adjuster" and thus subject to the NJDACCA. Since the statute does not define what "principally engaged" means, this determination is presumably left to DOBI and its Commissioner. Arguably, New Jersey attorneys perform various debt adjustment activities anytime they are involved in foreclosure actions, as well as bankruptcy, insolvency and collection proceedings. The Supreme Court has not – and cannot - delegate its authority to DOBI to regulate attorneys who as a matter of their regular practice of law perform these debt adjustment activities on behalf of clients.

Second, the DOBI Commissioner is empowered to "require information deemed necessary to demonstrate that the applicant is qualified to be licensed and possesses the necessary financial resources to sustain its operation" and prescribe

[3] See N.J.S.A. 17:16G-3.
[4] Unless exempted from licensure, acting as a debt adjuster without a license is a crime of the fourth-degree. N.J.S.A. 2C:21-19(f).

forms for application for a debt adjustment license. N.J.S.A. 17:16G-3. The DOBI Commissioner is also statutorily authorized to "promulgate procedures and standards for the issuance or denial of licenses, [] promulgate grounds for and procedures under which licenses may be revoked, suspended, or reinstated, and [] establish fees necessary to meet administrative costs under [the NJDACCA]." N.J.S.A. 17:16G-4. Since debt adjustment, when performed by an attorney on behalf of a client, constitutes the practice of law, the Commissioner serves as a gatekeeper to attorneys who seek to perform certain services on behalf of clients that fall within the ambit of "debt adjustment." This dual regulation of the practice of law is nowhere found in the Constitution, and it is not proscribed by the Supreme Court.

Third, the NJDACCA imposes burdensome licensure requirements and licensing fees on attorneys to offer traditional legal services that constitute "debt adjustment" under the statute. Under Article VI, § 2, ¶ 3 of the New Jersey Constitution, the Supreme Court is vested with jurisdiction over the admission to practice law and it is the Supreme Court that fixes licensing and fees for attorneys in the state.

Fourth, the NJDACCA infringes on the Supreme Court's exclusive authority to discipline attorneys who have engaged in professional misconduct. It is a crime of the fourth-degree for an attorney to "act[] as a debt adjuster without a license" regardless of whether or not such services are in connection with the attorney's legal

representation of a client. See N.J.S.A. 2C:21-19(f). The statute also allows the imposition of penalties to be imposed on those who violate its provisions, including fines of up to $5,000 and commencement of a summary action brought by the Commissioner.

In Persels & Assocs., LLC v. Banking Comm'r, 122 A.3d 592 (Conn. 2015), the Supreme Court of Connecticut held that a limited attorney exemption in a debt negotiation statute was unconstitutional because it impermissibly intruded on the Judiciary's exclusive authority to regulate attorney conduct and licensure. The debt negotiation statute authorized the Commissioner to license and regulate persons engaged in the debt negotiation business, and provided a limited attorney exemption as follows:

> Attorneys who provide debt negotiation services are not exempted generally from such regulation, except those attorneys 'admitted to the practice of law in [Connecticut] who [engage] or [offer] to engage in debt negotiation as an ancillary matter to such [attorneys'] representation of a client. . .'

Persels, 122 A.3d at 654 (quoting CT Gen. Stat. 36a-671c(1)). The Court in Persels held that debt negotiation services provided by a national law firm were inextricably intertwined with the practice of law by licensed Connecticut attorneys who were regulated exclusively by the judicial branch. Id. at 676. Therefore, the limited attorney exemption violated the separation of powers provision of the Connecticut Constitution such that it was unenforceable as to Connecticut attorneys engaged in

the practice of law. Id. The Persels Court further held that although the legislature could regulate Connecticut attorneys as to entrepreneurial or commercial aspects of the profession of law, when the debt negotiation services were performed by Connecticut attorneys within the context of an attorney-client relationship, it constituted the actual practice of law and remained the sole province of the judicial branch. Id. Integral to the Court's holding in Persels was the finding that:

> [s]ubjecting Connecticut licensed debt negotiation attorneys…to the licensing and regulatory requirements imposed by the debt negotiation statutes would[] improperly: (1) give the Banking Commissioner the authority to determine which attorneys in Connecticut have the 'character, reputation, integrity and general fitness' to provide debt negotiation services in conjunction with their practice of law, Conn. Gen. Stat. § 36a-671(d)(1); (2) require that Connecticut attorneys obtain additional licenses from and pay hefty licensing fees to agencies outside the Judicial Branch in order to offer traditional legal services; and (3) impinge on the Judicial Branch's exclusive authority to suspend or disbar attorneys who have engaged in professional misconduct.

Id. at 670-71.

Here, the reasoning of the Persels Court is persuasive and equally applicable to New Jersey attorneys. The NJDACCA unduly permits DOBI and the Commissioner to interfere with the Supreme Court's regulation of the practice of law. The licensing and regulatory requirements imposed on attorneys by the NJDACCA is not authorized by the Supreme Court and is therefore unconstitutional.

Accordingly, the NJSBA respectfully urges this Court to hold that the Limited Attorney Exemption is unconstitutional as applied to New Jersey attorneys.

CONCLUSION

The NJSBA's membership is troubled by the NJDACCA and its impact on the practice of law in New Jersey and resulting harm to members of the bar and, ultimately, the public they serve. Accordingly, the NJSBA respectfully requests that this Court hold that the Limited Attorney Exemption is unconstitutional as applied to New Jersey attorneys.

Respectfully submitted,
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Dated: February 3, 2025