



NEW JERSEY STATE BAR ASSOCIATION

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Hon. Michael J. Blee, Acting Administrative Director
Comments on Proposed Rule 1:20-20 Amendments
Richard J. Hughes Justice Complex/P.O. Box 037
Trenton, New Jersey 08625-0037

Re: Proposed Amendments to Rule 1:20-20, "Future Activities of Attorney Who
Has Been Disciplined or Transferred to Disability-Inactive Status"

Dear Judge Blee:

Please accept these comments on behalf of the New Jersey State Bar Association (NJSBA) in response to the recent Notice to the Bar outlining proposed revisions to Rule 1:20-20 concerning the activities of certain disciplined attorneys. The NJSBA appreciates the opportunity to provide comments on this important topic.

The NJSBA agrees that an attorney who is suspended or disbarred or has been transferred to disability-inactive status should not provide legal services or take any action that might mislead the public to believe they are able to provide legal services. However, in our view, the proposed amendments to R. 1:20-20 go too far in mandating the actions required of attorneys in that situation as it relates to their voicemail, website and digital presence. The result could yield harsh and disparate unintended consequences.

The Association is particularly concerned about the effect of the proposed amendments on solo or small-firm practitioners who are suspended or on disability-inactive status from practice for a short time. We respectfully suggest that the Judiciary form a special ad hoc committee to examine these proposals more closely and consider separate provisions for disbarred, suspended and disability-inactive attorneys. If a committee is formed, we recommend that a special emphasis be placed on including solo and small-firm practitioners as members.

Some examples of provisions that require a closer analysis include R. 1:20-20(a)(4), which requires a disciplined attorney not to use an email address, domain name, website or social media account suggesting that the attorney has, owns or maintains a law office for the practice of law. This raises the question of whether a firm has to change its name, its email address and other online references if a named partner is suspended, even for just three months. This would be confusing to clients and have long-lasting effects on the firm, given the longevity of a digital footprint discussed below. Likewise, the provisions of paragraph 10 requiring a solo practitioner to prominently display a notice on their webpage of their inactive status and ineligibility to practice law could decimate a solo practitioner's practice, while an attorney with a larger firm would essentially be able to serve their suspension with little fanfare or disruption. Additionally, if attorneys are required to give up their domain names, it could open the door for others to buy the domain name, profit from the good will of the disciplined attorney or their firm and prohibit the original attorney or firm from reclaiming the domain once a suspension is finished. Further, paragraph 8 requires a voicemail message stating the attorney is ineligible to practice law, but paragraph 14 prohibits recommending another attorney to continue an action. This provision, as well as the email provision noted above, will leave clients and other individuals who might reach out to the attorney with little to no guidance about where to turn to continue with their case or obtain the legal guidance they are seeking. Instead of helping the public, these provisions may result in confusion and unintended bad outcomes for the public.

Another issue identified in connection with regulating a New Jersey attorney's online presence during a suspension or disbarment focuses on attorneys who are licensed in other jurisdictions – in another state, or, for example, through the patent bar. There are questions about how those attorneys would navigate complying with New Jersey's rules if the rules in their other licensed jurisdictions permit them to keep their websites and voicemails intact.

The NJSBA further notes that information posted on the internet has a much longer life than the time period that it is actually intended to be displayed, with caches of websites capable of being found long after the website is changed. Any posting requirements, therefore, will potentially follow the attorney well beyond any period of suspension or disability.

The proposal is also problematic for attorneys placed on disability-inactive status. An attorney who is in disability-inactive status is not engaging in misconduct, but requiring public disclosure of their medical information could be perceived as creating a stigma around their disability and is an intrusion into their personal medical issues. With all of the work being done to promote attorney wellness, this could have the opposite effect of discouraging lawyers from seeking medical and mental health treatment and disability-inactive status when needed and necessary.

Based on the above, it is apparent that some of the proposed provisions will have long-lasting detrimental effects on certain disciplined or disabled practitioners that may make it difficult to recover. For that reason, the NJSBA again respectfully requests that the Judiciary form an ad hoc committee to study the proposal further, with the goal of balancing the need to protect the public with ensuring an attorney, particularly a solo, small-firm or disabled attorney, is not subject to unintended career-ending consequences as a result of being subject to disciplinary action.

Again, thank you for the opportunity to submit these comments. The NJSBA stands ready to assist the Judiciary in addressing this important but difficult issue in the best way possible.

Respectfully,

A handwritten signature in blue ink, reading "Christine A. Amalfe". The signature is fluid and cursive, with the first name "Christine" and last name "Amalfe" clearly legible.

Christine A. Amalfe, Esq.
President

cc: Norberto A. Garcia, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director