



NEW JERSEY STATE BAR ASSOCIATION

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June 1, 2026

Hon. Michael J. Blee, J.A.D.
Acting Administrative Director of the Courts
Attn: Comments on 2024-2026 PRRC Report
Hughes Justice Complex / P.O. Box 037
Trenton, New Jersey 08625-0037

Re: Comments on 2024-2026 PRRC Report

Dear Judge Blee:

Thank you for the opportunity for the New Jersey State Bar Association (NJSBA) to provide comments, both in writing and at the Court Rules Hearing, on the recommendation of the Professional Responsibility Rules Committee (PRRC) to adopt a new Rule of Professional Conduct in New Jersey modeled after ABA Model Rule 1.8(j), which explicitly prohibits sexual relationships between lawyers and their clients. The NJSBA commends the members of the PRRC for their time and effort in discussing and debating the proposal. The NJSBA, though, has twice recommended against adoption of a rule in New Jersey like the one proposed, and its position has not changed.

It is important to note there is no disagreement with the premise that engaging in sexual relations with a current client could compromise an attorney's representation of that client and if it does, discipline is warranted. But the NJSBA has concerns that a blanket rule prohibiting the conduct will not be able to capture all the exceptions and nuances to that type of relationship and will result in more confusion, instead of bright line clarification. The myriad ways other states have attempted to provide clarity on the issue and address those exceptions and nuances is illustrative of the difficulty of the task, and there remains great concern about an ethics violation hinging on the specifics of one's intimate interactions that may have nothing to do with the actual legal representation.

A detailed summary of the NJSBA's robust discussion and recommendation on this topic was provided to the PRRC when it was considering the issue. I attach the NJSBA's letter to Hon. Ronald E. Bookbinder, A.J.S.C. (ret.), chair of the PRRC, for the Judiciary's consideration. In addition to the questions raised in that letter, the specific language proposed by the PRRC raises additional queries: When does a lawyer-client relationship "commence"? When the client first asks a legal question, perhaps casually in a social setting? When there is a formal consultation? Or when an actual retainer agreement is signed? What does it mean to "assist in the representation of a client"? In a large firm, various lawyers may be asked to contribute to a brief, to cover a deposition or to strategize on a procedural posture. A per diem attorney may do the same in a smaller firm setting. At what point does that type of assistance cross over to fall under the proposed rule?

Because every situation is very fact-specific, the NJSBA recommends a continued case-by-case analysis of the impact of sexual relationships between lawyers and clients on the legal representation provided in the context of the existing Rules of Professional Conduct. We commend the Disciplinary Review Board's (DRB's) handling of these kinds of situations when they arise. The DRB has amassed a robust body of opinions that provide guidance to lawyers and the public about what is appropriate conduct. The focus of analysis in those opinions has rightfully been the impact of the relationship to the legal representation being provided. That approach has served the public and the legal profession well, and the NJSBA recommends it be continued in lieu of the express rule recommended by the PRRC.

Thank you again for the opportunity to submit this information to the Judiciary. The NJSBA stands ready to provide additional information or contribute to further analysis as needed.

Respectfully,



Norberto A. Garcia, Esq.
President

cc: G. Glennon Troublefield, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director



NEW JERSEY STATE BAR ASSOCIATION

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February 3, 2026

Hon. Ronald E. Bookbinder, A.J.S.C. (ret.)
Chair, Supreme Court Professional Responsibility Rules Committee
c/o New Jersey Supreme Court
Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625

Re: Adoption of ABA Model Rule 1.8(j) Prohibiting Sexual Relations
with Clients

Dear Judge Bookbinder:

Thank you for seeking comments from the New Jersey State Bar Association (NJSBA) in connection with the review being undertaken by the Professional Responsibility Rules Committee (PRRC) about whether to recommend a new Rule of Professional Conduct (RPC) in New Jersey modeled after ABA Model Rule 1.8(j), which explicitly prohibits sexual relationships between lawyers and their clients. For all of the reasons outlined below, the NJSBA recommends against adoption of such a rule in New Jersey.

The NJSBA engaged in a robust discussion on the topic that included members of the organization who reflect various practice areas, geographic locations, firm sizes, years of practice and levels of experience on district ethics committees. All are in agreement with the concept that engaging in sexual relations with a current client could compromise an attorney's representation of that client which would justify some measure of discipline. However, there was also agreement that trying to capture all the numerous exceptions and nuances to that concept and develop an appropriate RPC is problematic.

The NJSBA considered whether to recommend adoption of the Model Rule when it was recommended by the “Pollock Commission” in 2001. At that time, the NJSBA recognized the need to protect clients for the potential for abuse that may result from an unequal power relationship between lawyer and client, but was concerned about a broadly-worded bright line rule that might go too far. The NJSBA has the same concerns now, favoring instead a continued case-by-case analysis of the impact of sexual relationships between lawyers and clients in the context of the existing RPCs governing the legal representation being provided.

Although a majority of other states have adopted some version of the Model Rule, the NJSBA does not believe it is necessary or would be useful to adopt the rule here. Ethics matters involving sexual relations with a client are very fact specific. The numerous versions of the rule adopted in other states, the number of exceptions, the various attempts to define key terms and the inclusion of explanatory language to limit the situations to which the rule’s prohibitions apply illustrate the difficulty in developing a comprehensive rule to address all the scenarios where this issue could arise. For example, who is the “client”? Some states differentiate corporate clients. But there may be circumstances where a relationship with a corporate officer clouds the objective judgment of the attorney, whether the corporate officer supervises, directs, oversees, regularly consults with the lawyer or is involved with the legal matter at issue or not. What about a former spouse, partner, or significant other? Should the previous relationship be an automatic bar to present representation? If so, for how long? Conversely, what about when the representation ends? May an attorney engage in a relationship with a client then? But who says when the representation has ended? An attorney may believe they have concluded the attorney-client relationship, but a client may believe the representation is continuing, as new legal issues for the client arise. And what constitutes “sexual relations”? Some states attempt to define the term, but should an ethics violation hinge on the specifics of one’s intimate interactions? The NJSBA believes a better alternative to a bright line rule with questionable definitions is a practice requiring a case-by-case examination into whether an attorney’s relationship with a client violates existing ethics rules by impacting the representation, presenting potential conflicts or resulting in harm to the client.

Support for that viewpoint can be found in the robust body of opinions amassed by Disciplinary Review Board (DRB) addressing the topic. Those opinions, approved by the New Jersey Supreme Court, provide fact-specific guidance to attorneys and the public about the ethics and disciplinary issues involved in situations where an attorney engages in a sexual relationship with a client. The Supreme Court, in accepting the DRB decision in *In re Liebowitz*, 104 N.J. 175 (1985), agreed that an

attorney-client relationship must be viewed from the perspective of the client and a determination made about what reasonable inferences can be drawn based on that perspective under the circumstances.

Examples of how the DRB has applied that type of individual analysis are cited in the *In re Mourtos* decision included in the PRRC materials. *In re Mourtos*, 256 N.J. 500 (2024). They include:

- *In re Mourtos*, where the DRB found that an attorney unethically engaged in a conflict of interest when the attorney was acutely aware of the client's mental health struggles but engaged in a sexual relationship with the client while continuing the legal representation anyway. *Id.*
- The *Liebowitz* decision noted above, where a law firm partner met with a court-assigned client and attempted to have a sexual relationship with the client after referring the case to an associate. The DRB concluded the client could reasonably infer that the partner was still the client's counsel and failing to succumb to the partner's wishes would adversely impact the legal representation being provided. *Liebowitz*, 104 N.J. 175.
- *In re Carroll*, 232 N.J. 111 (2018), where the DRB found respondent created "a significant risk" that the legal services being provided would be materially limited by the respondent's own interest where respondent engaged in a sexual relationship with an assigned client that respondent knew lacked the capacity to freely consent to the relationship due to alcohol use issues.
- *In re Warren*, 214 N.J. 1 (2013), where the DRB concluded respondent's knowledge of the client's prior suicide attempt, custody battle and treatment for drug dependence provided knowledge that the client was vulnerable, and the sexual relationship therefore created a conflict of interest.
- *In re Resnick*, 219 N.J. 620 (2013), where the DRB determined that an attorney who pursued a sexual relationship with a client knowing that the client was emotionally vulnerable after fleeing an abusive relationship created a conflict of interest, particularly where the client felt pressure to yield to the attorney's advances or face detrimental consequences to the legal representation being provided.

These cases are just a short sampling of the DRB decisions, approved by the Supreme Court, that put attorneys and the public on notice about the types of relationships that present ethical issues and should be avoided – not because of the relationship in each case *per se*, but because of the effect of the relationship on the representation.

The NJSBA believes that should continue to be the focus of the DRB's analysis of such situations. An explicit rule prohibiting sexual relationships will inevitably prove difficult to craft and even more difficult to determine when to apply. Such a rule will stunt an in-depth exploration of the particular circumstances and relationship of the parties and the effect on the actual legal services being provided, which should be the primary focus of an ethics inquiry.

In summary, the NJSBA believes that implementing a rule akin to ABA Model Rule 1.8(j) creating a *per se* ethics violation in situations where an attorney engages in a sexual relationship with a client is not necessary and will not be helpful in addressing unethical behavior. Instead, lawyers, their clients and the public are better served with a continuation of the current path where each situation is examined on a case-by-case basis and addressed through the existing ethics rules based upon the individual facts of the case and how those facts affected the legal services rendered.

Thank you again for the opportunity for the NJSBA to discuss and debate this important issue and provide a recommendation reflecting the collective viewpoint of our members. We appreciate the thoughtful consideration being given to the issue by members of the PRRC, and the continuing work of the Committee to ensure the utmost integrity in the practice of law in New Jersey. The NJSBA stands ready to provide any additional information or assistance that may be needed.

Respectfully,



Christine A. Amalfe, Esq.
President

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