APPENDIX R. Guidelines for Litigation Conduct

Introduction

The widely-perceived, accelerating decline in professionalism - often denominated "civility" - has been the subject of increasing concern to the profession for many, years. Twice since 1988, the American Bar Association has urged adoption of, and adherence to, civility codes. What has been lacking, however, is an ABA-endorsed model code. The GUIDELINES FOR LITIGATION CONDUCT fill that void.

These GUIDELINES are consensus-driven and state nothing novel or revolutionary. They are purely aspirational and are not to be used as a basis for litigation, liability, discipline, sanctions or penalties of any type. The GUIDELINES are designed not to promote punishment but rather to elevate the tenor of practice - to set a voluntary, higher standard, "in the hope that," in the words of former ABA President John J. Curtin, 46some progress might be made towards greater professional satisfaction."

The GUIDELINES FOR LITIGATION CONDUCT are modeled on the Standards for Professional Conduct adopted by the United States Court of Appeals for the Seventh Circuit, a set of proven aspirational standards. Chief United States District Judge Marvin E. Aspen of Chicago, architect of the Seventh Circuit Standards, has accurately observed that civility in the legal profession is inextricably linked to the manner in which lawyers are perceived by the public - and, therefore, to the deteriorating public confidence that our system of justice enjoys.

Deteriorating civility, in former ABA President Lee Cooper's words, "interrupts the administration of justice. It makes the practice of law less rewarding. It robs a lawyer of the sense of dignity and self-worth that should come from a learned profession. Not least of all, it ... brings with it all the problems ... that accompany low public regard for lawyers and lack of confidence in the justice system."

The problem of incivility is more pervasive, and insidious, than its impact on the legal profession alone. As Justice Anthony M. Kennedy has stressed:

Civility is the mark of an accomplished and superb professional, but it is more even than this. It is an end in itself. Civility has deep roots in the idea of respect for the individual.
The decline in civility is not limited to the legal profession, but this profession has been in the forefront of those addressing this problem. These GUIDELINES are offered in this spirit.

Gregory P. Joseph
Chair, 1997-1998
Section of Litigation
American Bar Association

Guidelines for Litigation Conduct

August 1998

Preamble

A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as lawyers, we will be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner.

A judge's conduct should be characterized at all times by courtesy and patience toward all participants. As judges we owe to all participants in a legal proceeding respect, diligence, punctuality, and protection against unjust and improper criticism or attack.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay and often to deny justice.

The following Guidelines are designed to encourage us, judges and lawyers, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which, are hallmarks of a learned profession dedicated to public service.

We encourage judges, lawyers and clients to make a mutual and firm commitment to these Guidelines.

We support the principles espoused in the following Guidelines, but under no circumstances should these Guidelines be used as a basis for litigation or for sanctions or penalties.

Lawyers' Duties to Other Counsel

1. We will practice our profession with a continuing awareness that our role is to zealously advance the legitimate interests of our clients. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications. We will refrain from acting upon or manifesting bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status toward any participant in the legal process.

2. We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct directed to other counsel, parties, or witnesses. We will abstain from disparaging personal remarks or acrimony toward other counsel, parties, or witnesses. We will treat adverse witnesses and parties with fair consideration.

3. We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.

4. We will not, absent good cause, attribute bad motives or improper conduct to other counsel.

5. We will not lightly seek court sanctions.

6. We will in good faith adhere to all express promises and to agreements with other counsel, whether oral or in writing, and to all agreements implied by the circumstances or local customs.

7. When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide other counsel the opportunity to review the writing. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to other counsel's attention. We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.

8. We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement to obtain unfair advantage.

9. In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.

10. We will not use any form of discovery or discovery scheduling as a means of harassment.

11. Whenever circumstances allow, we will make good faith efforts to resolve by agreement objections before presenting them to the court.

12. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.

13. We will not request an extension of time solely for the purpose of unjustified delay or to obtain unfair advantage.

14. We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

15. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars, or other functions that produce good faith calendar conflicts on the part of other counsel.

16. We will promptly notify other counsel and, if appropriate, the court or other persons, when hearings, depositions, meetings, or conferences are to be canceled or postponed.

17. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided our clients' legitimate rights will not be materially or adversely affected.

18. We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know his or her identity, unless the rules provide otherwise.

19. We will take depositions only when actually needed. We will not take depositions for the purposes of harassment or other improper purpose.

20. We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.

21. We will not obstruct questioning during a deposition or object to deposition questions unless permitted under applicable law.

22. During depositions we will ask only those questions we reasonably believe are necessary, and appropriate, for the prosecution or defense of an action.

23. We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary, and appropriate, for the prosecution or defense of an action. We will not design production requests to place an undue burden or expense on a party, or for any other improper purpose.

24. We will respond to document requests reasonably and not strain to interpret requests in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents, or to accomplish any other improper purpose.

25. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary, and appropriate, for the prosecution or defense of an action, and we will not design them to place an undue burden or expense on a party, or for any other improper purpose.

26. We will respond to interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information, or for any other improper purpose.

27. We will base our discovery objections on a good faith belief in their merit and will not object solely for the purpose of withholding or delaying the disclosure of relevant information, or for any other improper purpose.

28. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

29. We will not ascribe a position to another counsel that counsel has not taken.

30. Unless permitted or invited by the court, we will not send copies of correspondence between counsel to the court.

31. Nothing contained in these Guidelines is intended or shall be construed to inhibit vigorous advocacy, including vigorous cross-examination.

Lawyers' Duties to the Court

1. We will speak and write civilly and respectfully in all communications with the court.

2. We will be punctual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time; if delayed, we will notify the court and counsel, if possible.

3. We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

4. We will not engage in any conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

5. We will not knowingly misrepresent, mis-characterize, misquote, or mis-cite facts or authorities in any oral or written communication to the court.

6. We will not write letters to the court in connection with a pending action, unless invited or permitted by the court.

7. Before dates for hearings or trials are set, or if that is not feasible, immediately after such date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.

8. We will act and speak civilly* to court marshals, clerks, court reporters, secretaries, and law clerks with an awareness that they, too, are an integral part of the judicial system.

Courts' Duties to Lawyers

1. We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to insure that all litigation proceedings are conducted in a civil manner.

2. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.

3. We will be punctual in convening all hearings, meetings, and conferences; if delayed, we will notify counsel, if possible.

4. In scheduling all hearings, meetings and conferences we will be considerate of time schedules of lawyers, parties, and witnesses.

5. We will make all reasonable efforts to decide promptly all matters presented to us for decision.

6. We will give the issues in controversy deliberate, impartial, and studied analysis and consideration.

7. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

8. We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

9. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.

10. We will do our best to insure that court personnel act civilly toward lawyers, parties, and witnesses.

11. We will not adopt procedures that needlessly increase litigation expense.

12. We will bring to lawyers' attention uncivil conduct which we observe.

Judges' Duties to Each Other

1. We will be courteous, respectful, and civil in opinions, ever mindful that a position articulated by another judge is the result of that judge's earnest effort to interpret the law and the facts correctly.

2. In all written and oral communications, we will abstain from disparaging personal remarks or criticisms, or sarcastic or demeaning comments about another judge.

3. We will endeavor to work with other judges in an effort to foster a spirit of cooperation in our mutual goal of enhancing the administration of justice.

Issued by ACPE June 25, 2019

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the Supreme Court of New Jersey

ACPE OPINION 735

Lawyer's Use of Internet Search Engine Keyword Advertising

The Advisory Committee on Professional Ethics received an inquiry asking whether a lawyer may, consistent with the rules governing attorney ethics, purchase a Google Adword or keyword that is a competitor lawyer's name, in order to display the lawyer's own law firm website in the search results when a person searches for the competitor lawyer by name. Internet search engine advertising programs permit businesses to purchase certain keywords or phrases; when a person searching on the internet uses those words in the search, the websites of purchasers of the keywords will appear in the search results, ordinarily presented as paid or "sponsored" ads. The same keywords or phrases usually can be purchased by more than one business.

Inquirer further asked whether, consistent with the rules governing attorney ethics, a lawyer may insert, or pay the internet search engine company to insert, a hyperlink on the name of a competitor lawyer that will divert the user from the searched-for website to the lawyer's own law firm website. Assuming (without finding) that internet search engine advertising programs can generally operate in this manner, the Committee considers the inquiry presented: may a

lawyer insert, or pay an internet search engine company to insert, a hyperlink on the name of a competitor lawyer that will divert the user from the searched-for website to the lawyer's own law firm website.

The inquiry was also docketed with the Committee on Attorney Advertising. That Committee found that purchasing a competitor lawyer's name as a keyword does not violate the rules governing attorney advertising. Attorney advertising rules apply to lawyers' "communications." RPC 7.1. The keyword purchase of a competitor lawyer's name is not, in itself, a "communication."

The Advisory Committee on Professional Ethics considered whether this conduct violates Rule of Professional Ethics 1.4 ("Communication"). Rule of Professional Conduct 1.4 provides that a lawyer shall inform a prospective client of how, when and where the client may communicate with the lawyer. There is no interaction, much less communication, between the lawyer who purchases a competitor lawyer's name as a keyword and the person searching on the internet. Rule of Professional Conduct 1.4 does not apply in this situation.

The Committee also considered whether purchasing a keyword of a competitor lawyer's name violates Rule of Professional Conduct 8.4 ("Misconduct"). This Rule states that it is "professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation . . . [or] engage in conduct that is prejudicial to the administration of justice . . . ." RPC 8.4(c) and (d).

There has been some disagreement among other jurisdictions on this issue. The Texas State Bar Professional Ethics Committee found that, "given the general use by all sorts of businesses of names of competing businesses as keywords in search-engine advertising, such use by Texas lawyers in their advertising is neither dishonest nor fraudulent nor deceitful and does

not involve misrepresentation." State Bar of Texas Professional Ethics Committee Opinion No. 661 (July 2016). See also Habush v. Cannon, 828 N.W.2d 876, 881-82 (Wisc. App. Ct. 2013) (a lawyer's purchase of competitor lawyers' names as keywords in internet search engines does not violate the Wisconsin right of privacy statute because the "use" of the competitors' names is not visible to the consumer). But see North Carolina State Bar 2010 Formal Ethics Opinion 14 (April 27, 2012) (purchasing another lawyer's name as keyword for internet search is dishonest conduct in violation of RPC 8.4(c)).

The Committee concurs with the approach of Texas and Wisconsin and finds that purchasing keywords of a competitor lawyer's name is not conduct that involves dishonesty, fraud, deceit, or misrepresentation. The websites of the keyword purchaser's law firm and the competitor's law firm will, presumably, both appear in the resulting search. The keyword purchaser's website ordinarily will appear as a paid or "sponsored" website, while the competitor lawyer's website will appear in the organic results (unless the competitor has purchased the same keyword, in which case it will also appear as a paid or "sponsored" website). The user can choose which website to select and the search engine ordinarily will mark the keyword-purchased website as paid or "sponsored." This is not deceptive, fraudulent, or dishonest conduct within the meaning of Rule of Professional Conduct 8.4(c).

The Committee further finds that purchasing keywords of a competitor lawyer's name is not conduct prejudicial to the administration of justice. The standard for conduct prejudicial to the administration of justice is high; this Rule applies to "particularly egregious conduct," or conduct that "flagrantly violat[es] . . . accepted professional norms." In re Helmer, 237 N.J. 70, 83 (2019) (quoting In re Hinds, 90 N.J. 604, 632 (1982)). Purchasing keywords that are the name of a competitor lawyer is not egregious or flagrant conduct.

Inquirer also asked whether a lawyer may pay Google to insert a hyperlink on a competitor lawyer's name that diverts the user to the first lawyer's website. The Committee finds that surreptitiously redirecting a user from the competitor's website to the lawyer's own website is purposeful conduct intended to deceive the searcher for the other lawyer's website. Such deceitful conduct violates Rule of Professional Conduct 8.4(c).

Accordingly, a lawyer may, consistent with the rules governing attorney ethics, purchase an internet search engine advertising keyword that is a competitor lawyer's name, in order to display the lawyer's own law firm website in the search results when a person searches for the competitor lawyer by name. This conduct does not involve dishonesty, fraud, deceit, or misrepresentation, and is not conduct prejudicial to the administration of justice. Therefore, it does not violate Rule of Professional Conduct 8.4(c) or (d).

A lawyer may not, however, consistent with the rules governing attorney ethics, insert, or pay the internet search engine company to insert, a hyperlink on the name or website URL of a competitor lawyer that will divert the user from the searched-for website to the lawyer's own law firm website. Redirecting a user from the competitor's website to the lawyer's own website is purposeful conduct intended to deceive the searcher for the other lawyer's website. Such deceitful conduct violates Rule of Professional Conduct 8.4(c).

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MARKETING

Navigating the Maze of Attorney Advertising Rules

Be aware of these three myths about advertising ethics rules.

By William Hornsby

As most readers know, the practice of law is governed state by state, with rules coming from the states' highest courts. Among the full range of a lawyer's activities, these rules of professional conduct, commonly known as the ethics rules, govern a lawyer's business-getting endeavors: advertisements, solicitations and other marketing activities.

Unfortunately, some myths about compliance with these rules surface with some frequency and tend to mislead lawyers about their responsibilities. Lawyers, legal marketers and legal service providers should be aware of and avoid these myths.

Advertising Ethics Myth No. 1

"I simply need to comply with the ABA Model Rules for ethics."

The American Bar Association has crafted sets of ethics rules since the original Canons were established in 1908. The current iteration of these rules is known as the Model Rules of Professional Conduct. Among other things, the Model Rules serve as the basis for teaching professional responsibility at most law schools. As a result, newly admitted lawyers are generally conversant with this set of obligations.

What we need to understand about the Model Rules, however, is that they, in and of themselves, have no force and effect to govern a lawyer's conduct. In fact, the Model Rules have been drafted as a resource for states to consider and hopefully adopt. Unless and until a state's highest court adopts the Model Rules, they are merely the policy of the ABA and do not serve as the basis for disciplinary action against lawyers.

We are now at a point where every state has adopted the *format* of the Model Rules. Nevertheless, when it comes to the advertising rules, no state has adopted the *content* of the Model Rules verbatim. Furthermore, no two states have an identical set of rules. Typically, the states rely on the Model Rules as a jumping off point to govern business-getting endeavors and then tailor and expand on those rules to address issues of particular concern in their jurisdictions. So, for example, some states include rules pertaining to dramatizations and testimonials while others detail the parameters addressing the communications of fees in lawyer ads.

The point is that lawyers must comply with the state rules that govern their conduct and not the ABA Model Rules, unless, of course, when those state rules mirror the Model Rules. Note that the ABA maintains a site linking to the state rules of professional conduct. When using this or any similar listing, be cautioned to make sure it is up to date.

Advertising Ethics Myth No. 2

"I'll be fine if I just comply with the lowest common denominator."

Most practitioners advertise and provide their services in a single state. However, those in large firms and others who seek out clients in several, if not all, states are confronted with the laborious and sometimes challenging task of multistate compliance. This level of compliance contains a layer of disclaimers and disclosures, limits the information that can be communicated and frequently waters down marketing messages in ways that make the firm less competitive. In fact, it is practically impossible for a large firm to comply with the restrictions of some states. For example, a few states require ads to identify the lawyer who will provide the services that are being advertised. In a multinational firm, the team of lawyers that will provide representation sometimes won't even be known until the matter is undertaken.

Consequently, some firms conclude that if they comply with the rules of the most restrictive state in which they are seeking clients — the lowest common denominator — then their lawyers will not be subject to disciplinary action in other states. Unfortunately, this assumption is faulty because the states are not linear from the least restrictive to the most restrictive. In many ways, state rules are simply different. One state has a disclaimer cautioning potential clients not to rely on advertising for the selection of a lawyer while another has a disclaimer indicating that the advertising lawyer is no better than other lawyers. Neither is more restrictive than the other. They are just different.

There are few shortcuts to multistate compliance and relying on the notion of the lowest common denominator is not one of them. On the other hand, firms may want to consider limiting some of their marketing materials to the states where compliance is not arduous.

Advertising Ethics Myth No. 3

"The vendors will take care of compliance."

Technology has resulted in an unparalleled array of third-party vendors building platforms for client development. Since technology is scalable, it is not that much more costly for a vendor to develop a platform that connects lawyers with clients in 51 jurisdictions than it is in one. These services range from simple online directories to complex matching mechanisms with some level of intake support.

Lawyers who anticipate participation in these services should consider some important questions.

- As a threshold question, who is responsible for compliance, the vendor or the participating lawyer? Frequently, a vendor's terms of service will shift this burden of compliance to the participating lawyer.
- If you are responsible for compliance, do you then have the ability to structure the communications and operations of the service in ways that are compliant with the rules of your state or are those communications and operations solely within the control of the vendor? As you can see, there is some risk of a catch-22 here with the participating lawyer responsible for compliance but with the vendor in control of the communications.

Lawyers should not assume that their participation in a client development platform is compliant with the rules of their state and should determine compliance before agreeing to participate in these services.

To be frank, ethics jail is not crowded with those who breach the ad rules, but there are consequences, including the embarrassment of a disciplinary investigation or complaint, the need to redevelop a marketing campaign that may be in violation of the rules, or the cost of ending a contract with a third-party vendor. As a result, lawyers, marketers and legal service providers should cautiously navigate the ad rules and avoid these myths. It may turn out to be a time-consuming task, but one that is well worth the effort.

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Ethics Hotline for New Jersey Lawyers

PLEASE NOTE: Court Rule 1:20-2(c) **prohibits** Assistant and Deputy Ethics Counsel of the Office of Attorney Ethics from giving any advice or advisory opinions. The OAE is **not involved** in providing any of the above written or telephonic advice. Nevertheless, the OAE provides the above references to assist the bar in avoiding ethical problems.

Written Ethics Opinions

General Ethics Issues: Advisory Committee on Professional Ethics - **ACPE - R. 1:19-1**

How: Written letter with certification **R. 1:19-3**
Who: New Jersey Lawyers **ONLY**
Cost: Free
Legal Effect: Binding on district ethics committees **R. 1:19-6**
Address: only in writing at:
Advisory Committee on Professional Ethics
Administrative Office of the Courts
P.O. Box 970
Trenton, NJ 08625
Staff: Carol Johnston

Advertising Issues: Committee on Attorney Advertising - **CAA - R. 1:19A-1**

How: Written letter with certification **R. 1:19A-3(a)**
Who: New Jersey Lawyers **ONLY**
Cost: Free
Legal Effect: Binding on inquirer and bar to disciplinary prosecution unless ad is false or misleading **R. 1:19A-3(c)**
Address: only in writing at:
Committee on Attorney Advertising
Administrative Office of the Courts
P.O. Box 970
Trenton, NJ 08625
Staff: Carol Johnston

Telephonic Ethics Help - For Attorneys Only

Rules of Professional Conduct Research Assistance - **ETRH R. 1:19-9** - Attorneys Only

How: 609-815-2924
Who: New Jersey Lawyers **ONLY - Court rules prohibit staff to clients or members of the public**
Cost: Free
When: 9 a.m. - 5 p.m.
Legal Effect: None. Information is inadmissible in any disciplinary or other legal proceeding. Inquirer must make final decision.
Address:
Committee on Attorney Advertising/Advisory Committee on Professional Ethics
Administrative Office of the Courts
P.O. Box 970
Trenton, NJ 08625
Staff: Carol Johnston

All Ethics Issues: American Bar Association (ABA) - **ETHICSearch**

How: 1-800-285-2221
Who: New Jersey Lawyers **ONLY** ABA and Non-ABA Members
Cost: No charge for initial consultation and preliminary research. In most cases the ETHICSearch lawyer can answer your question immediately. If you require extensive additional research, you will be charged an agreed hourly rate.
When: 9 a.m. - 5 p.m. CST
Legal Effect: None. This is a research service that is limited to ABA rules and advisory opinions. The inquirer must make final decision.
Address:
ABA Center for Professional Responsibility
321 N. Clark Street
Chicago, IL 60610
Staff: Attorneys from the ABA Center

Selected Sources for Ethics Research

Advisory Opinions: *Rutgers Law School*
What's there: ACPE, CAA and Unauthorized Practice of Law Opinions online in a searchable database.
Online Location: Rutgers Ethics Search

Disciplinary Case Summaries: *Office of Attorney Ethics*
What's there: Short summaries of disciplinary decisions of the Supreme Court of New Jersey from 1990 through last year.
Online Location: Office of Attorney Ethics - Disciplinary Histories

Attorney Disciplinary Decisions: *Supreme Court and Disciplinary Review Board*
What's there: Selected attorney disciplinary decisions of the Supreme Court of New Jersey and the Disciplinary Review Board from 1998 to date as selected by the Committee on Disciplinary Decisions (**R. 1:20-15(n)**).
Online Location: Rutgers DRB Search

Trust Accounting: *Random Audit Program of the Office of Attorney Ethics*
What's there: Educational advice on attorney trust and business accounts.
Online Location: Office of Attorney Ethics - Random Audit Program

Address:
Office of Attorney Ethics
P.O. Box 963
Trenton, NJ 08625
Phone: 609-530-5208

Mission Statement

We are an independent branch of government constitutionally entrusted with the fair and just resolution of disputes in order to preserve the rule of law and to protect the rights and liberties guaranteed by the Constitution and laws of the United States and this State.

Essential Links

Home
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RULE 1:19. Advisory Committee On Professional Ethics

1:19-1. Appointment and Organization

The Supreme Court shall appoint an Advisory Committee on Professional Ethics consisting of fifteen members of the bar and three lay members. Members shall serve for terms of three years with the terms of six such members expiring each year. No member who has served four full three-year terms shall be eligible for immediate reappointment. A vacancy occurring during a term shall be filled for the unexpired portion thereof. The Court shall annually designate a member of the committee to serve as Chairperson and another member to serve as Vice Chairperson. The Administrative Director of the Courts shall serve as secretary of the committee.

Note: Source-R.R. 1:26A(a). Amended June 29, 1990 to be effective September 4, 1990; amended November 7, 2005 to be effective immediately.

1:19-2. Jurisdiction

The committee shall accept inquiries only from the state bar association, from any county or local bar association, or from any member of the New Jersey bar, concerning proper conduct for a member of the legal profession under the Rules of Professional Conduct of the American Bar Association as amended by the Supreme Court (except for inquiries relating to advertisements and other communications arising under Rules of Professional Conduct 7.1 through 7.5, exclusive of 7.3(c), (d), (e) and (f)) and other Rules of this Court governing the practice of attorneys. It shall not consider an inquiry involving a pending action where its opinion might affect the interests of the parties, and it may decline to accept any inquiry without stating its reasons therefor.

Note: Source-R.R. 1:26A(b) (first sentence), (c) (third sentence), (d); amended April 4, 1977, effective immediately; first sentence amended June 26, 1987 to be effective July 1, 1987.

1:19-3. Form of Inquiry

All inquiries shall be addressed to the secretary who shall transmit them to the committee. They shall be in writing, shall set out the factual situation in detail, shall be accompanied by a short brief or memorandum citing the rules of court or canons of ethics involved and any other pertinent authorities, and shall contain a certificate that any opinion of the committee will not affect the interests of the parties to any pending action.

Note: Source-R.R. 1:26A(b) (second and third sentences).

1:19-4. Disposition of Inquiries

The committee may act through parts consisting of not fewer than six members, but if the opinion of any such part is not unanimous the inquiry shall be referred to the committee as a whole. No opinion shall be given by the committee as a whole unless concurred in by eleven members thereof. The opinion of the committee on any inquiry accepted for consideration shall be in writing and shall be filed with the secretary, who shall transmit a copy to the person making the inquiry and, where the committee so requests, make suitable arrangements for its publication. Published opinions shall not,

insofar as practicable, identify the party or parties making the inquiry. The committee, in its discretion, may conduct a hearing on any inquiry.

Note: Source-R.R. 1:26A(c) (first, second and fourth sentences), (e). Amended June 29, 1990 to be effective September 4, 1990.

1:19-5. Inquiries From Supreme Court

The committee as a whole shall consider and render opinions on such matters as the Supreme Court may from time to time submit to it. Such opinions shall not be published without prior approval of the court.

Note: Source-R.R. 1:26A(f).

1:19-6. Effect of Published Opinions

Published opinions of the committee shall be binding upon the Ethics Committee in their disposition of all matters.

1:19-7. Procedure

The committee shall, subject to the approval of the Supreme Court, determine the methods and procedure to be followed in considering inquiries and expressing opinions.

Note: Source-R.R. 1:26A(g).

1:19-8. Petitions for Review

(a) Notice. Within 20 days after an opinion is published, or within 30 days after any final action of the Advisory Committee on Professional Ethics other than the publication of an opinion, any aggrieved member of the bar, bar association or ethics committee may seek review thereof by serving on the Attorney General a notice of petition for review by the Supreme Court and by filing the original notice with the Clerk of the Supreme Court. The notice shall set forth the petitioner's name and address and the name and address of counsel, if any. The notice shall designate the action of the Advisory Committee on Professional Ethics sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved.

(b) Deposit for Costs. Deposit for costs shall be made in accordance with R. 2:12-5.

(c) Record on Petition for Review. If the petition for review is granted, the record on review shall be the formal opinion, if any, issued pursuant to R. 1:19-4 or R. 1:19-5, the inquiry, brief or memorandum submitted, and any documents or other evidence or proof relied upon by the Advisory Committee on Professional Ethics in arriving at its determination.

(d) Form of Petition for Review. A petition for review shall be in the form of a brief, conforming to the applicable provisions of R. 2:6 and not exceeding 15 pages if printed or 20 pages if otherwise reproduced or typed, exclusive of tables of contents, citations and appendix. It shall contain a short statement of the matter involved, the question presented, the errors complained of and the arguments in support of the

petitioner's position. It shall also contain a certification by the petitioner or counsel, if any, that the petition presents a substantial question and is filed in good faith and not for purposes of delay.

(e) Service and Filing of Petition for Review. Within 10 days after filing of the notice of petition for review, 2 copies of the petition shall be served on the Attorney General and the Secretary of the Advisory Committee on Professional Ethics and 9 copies thereof shall be filed with the Clerk of the Supreme Court.

(f) Response to Petition for Review. The Attorney General shall, within 30 days of the service of the petition, serve 2 copies of a brief in opposition to the petition and file 9 copies thereof with the Clerk of the Supreme Court. The brief shall be direct and concise, shall conform to the applicable provisions of R. 2:6 and shall not exceed 15 pages if printed or 20 pages if otherwise reproduced or typed, exclusive of table of contents, citations and appendix. Within 10 days of such service, petitioner may serve 2 copies and file 9 copies of a reply brief not exceeding 9 pages if printed or 10 pages if otherwise reproduced or typed, exclusive of tables of contents, citations or appendix.

(g) Final Determination. The final determination of a petition for review may be either by written opinion or by order of the Supreme Court and shall state whether the opinion or other action of the Advisory Committee on Professional Ethics is affirmed, reversed or modified or shall provide for such other final disposition as is appropriate.

Note: Adopted April 4, 1977 to be effective immediately; paragraphs (a) and (f) amended July 13, 1994 to be effective September 1, 1994.

1:19-9. Ethics Telephone Research Service

(a) Generally. The Advisory Committee on Professional Ethics shall operate a telephone ethics hotline to provide, with respect to issues of legal ethics within its jurisdiction, and issues of advertising and solicitation within the jurisdiction of the Committee on Attorney Advertising, general information and research assistance, but not legal advice or advisory opinions, to members of the bar of this state in good standing. The existence and limited nature of this ethics telephone research service shall be advertised regularly as a notice to the bar in the official publication designed by the Supreme Court. Staff shall assist attorneys requesting information to the extent that time and resources permit and to render general assistance and information to an inquiring attorney.

(b) Form of Inquiry and Certification. An attorney requesting information and research assistance on issues of legal ethics may communicate with the Ethics Research Assistance Service either by phone or in writing. At the time the initial inquiry is made, the attorney shall provide identification as a qualified member of the bar, shall certify that the facts presented concern his or her prospective ethical conduct and shall certify that the inquirer is not the subject of a disciplinary grievance or proceeding. The inquirer shall provide in good faith all material facts bearing on the ethical issue presented. Where the inquiry would require resolution of questions concerning substantive law, the inquiry shall be declined.

(c) Disclaimer. Before rendering assistance to an inquirer, the Ethics Research Assistance Service staff shall advise each inquirer that (1) only legal research assistance is being furnished and no legal opinion is being rendered and (2) the

inquirer is responsible for making his or her own final judgment on the ethical issue presented.

(d) Inadmissibility of Inquiry Results. Neither the fact that an inquiry has been made nor the results thereof, shall be admissible in any legal proceeding, including an attorney or judicial discipline proceeding.

(e) Records; Disclosure. The Ethics Research Assistance Service shall keep records of the number of inquiries and the nature and type of inquiries, but shall not reveal the name of the inquirer, the substance of a specific inquiry, or the specific response thereto. All information provided to, and all records maintained by, the Ethics Research Assistance Service shall be confidential and shall not be disclosed, except as authorized by the Supreme Court. All such information shall be immune from subpoena in any civil, disciplinary or administrative matter.

Note: Adopted January 31, 1995 to be effective March 1, 1995; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraph (a) amended October 9, 2007, to be effective immediately; paragraph (a) amended April 2, 2019 to be effective immediately.

MARKETING

Law Marketing Model Rule Revisions—Better Late Than Never?

By Micah Buchdahl

IF THE MULTISTATE PROFESSIONAL Responsibility Exam included questions regarding attorney advertising in 1991, I have no recollection of it. It certainly was not a topic discussed in law school back in the day.

The first time I became aware that "lawyer marketing" was widely *unacceptable* came in the late '90s, when I wanted to present a CLE program on the subject. I was told by a major CLE provider that it was not an accredited subject, which I found odd since there were a slew of ridiculous programs on accounting, stress, time-keeping and "legal research" (which was really nothing more than sales reps giving demos on products). How could a program teaching business development techniques to attorneys be so bad?

Well, it all turned out okay for me since I was also told that a program on the "ethics" of lawyer marketing was totally kosher. So I read the rules, court cases and ethics opinions, started teaching the subject matter and built a little cottage industry law practice dedicated to it. But that was not the original intent. It was to help lawyers learn marketing.

IT'S NOT AN AGE THING

More than a decade ago, I spoke on a few ABA panels with noted constitutional scholar and current dean of the Delaware Law School, Rodney Smolla, regarding lawyer advertising issues that had worked their way into various levels of the court system although very rarely to the U.S. Supreme Court. While I suggested that the debates over professionalism and appropriateness of lawyers marketing themselves were an "age thing," he countered that those who were for lawyer marketing or against it were about 50-50, and it had nothing to do with those demographics.

However, my serious interest in the subject of law marketing ethics really flowed from a CLE on the subject for "marketing partners," right around the turn of the century at a swanky Florida resort. Thomas Spahn, a partner at McGuireWoods in Tysons, Virginia, and the person I go to when I have a law marketing ethics question I can't solve, gave a fascinating presentation highlighting numerous ads that violated the rules in various jurisdictions—all from Am Law

200 firms and that appeared in *The American Lawyer*. I remember thinking if those firms couldn't figure out or follow the rules, how was a sole practitioner or small firm supposed to do it? Unless, of course, as many smaller law firms have often argued, they were being unfairly picked on when it came to oversight and enforcement.

WHY CHANGE?

In the March/April 2018 issue of this magazine, my colleague Lucian Pera provided an overview of the various issues that arise in a column titled "Marketing Ethically." He delineates what exactly constitutes marketing, which rules apply and related issues of solicitation.

Like an annoying water spout trickle, the ethics rules governing lawyer marketing have slowly tried to evolve since *Bates v. Arizona* in 1977. If you are doing the math, that is 41 years ago. A few things have changed since then. There is that whole internet thing. The technology changes have led to almost everything else—blurring of jurisdictional lines, globalization, and a shrinking and more competitive marketplace among them. In-house counsel won't just shell out unlimited funding as they used to. Consumers are better educated with greater "access to justice," as those looking to soften the ethics rules often tout. Quite frankly, the old rules no longer apply. Yet they are still on the books.

In August the ABA Standing Committee on Ethics and Professional Responsibility is expected to submit a final proposal to the ABA House of Delegates seeking to amend the lawyer advertising rules. This proposal first flowed from a 2015 report by the Association of Professional Responsibility Lawyers seeking a simplification and streamlining of the rules.

MODEL RULES ARE STILL MODELS

While the ABA Model Rules of Professional Conduct have always been about some degree of uniformity among the states, the reality is still that states hold the cards—and will adopt and adapt as they see fit. This basically means that, even after years of extensive debate to find a common (middle?) ground, it will likely be another decade before many proposed changes might be implemented. But it's a start.

The original Association of Professional Responsibility Lawyers proposal had great ideas. Yes, in this day and age, there should be better uniformity over what you can and can't do in advertising across state lines. Should something be allowable for a Pennsylvania

lawyer but not one in North Carolina? No. Does the font size on a direct mail piece really tip the scales of justice when selecting counsel? I'll answer my rhetorical question again—no. Are delays in solicitation really helping victims to better select an attorney? I won't answer no again but simply point out that those few lawyers who might lurk in the shadows after an accident—or more likely hold press conferences on-site or on courthouse steps—end up winning the day while the by-the-book law firm is sitting patiently waiting for an opportunity that has long been lost.

ON THE CUSP OF NEW RULES?

I've written in this column before about ethics issues and concerns—see "Content Marketing Is Outpacing the Ethics Rules," in the November/December 2015 issue. However, now we seem to be getting somewhere. The public forum on the ABA Standing Committee on Ethics and Professional Responsibility proposal at the ABA Midyear Meeting in Vancouver, Canada, this past February brought the usual wide range of voices—from the proposed revisions going too far to not going far enough. Which is pretty much on cue with the point Smolla made to me over 10 years ago. So, while I do not foresee extensive changes in the philosophies, rules, and oversight of law marketing and solicitation tomorrow, it's a start. The profession needs desperately to come to grips with the realities of today's legal marketplace and conduct business development as other (dignified) professions do.

First, we can't even figure out what is, and is not, advertising anymore. A blog—*yes, no, maybe?* Social media—*perhaps?* A seminar—*could be?* Law marketing is not as easy as the old directory, billboard or television commercial. Remember the *Yellow Pages*? I think some state bars think it is *still* a thing.

Second, there is the highly subjective nature of what is, and is not, "deceptive and misleading." In the end, that is really at the core of most marketing oversight. Your lawyers have 50 years of experience. Forty-nine of those are by a guy who has been of counsel and semiretired for a decade. Misleading? Deceptive? Is the attorney who won the big case you promote even still at the firm? Is your cute and clever slogan suggesting an end-result for me? There is a line—and it is not fine—between puffery and baloney. This is an area that still needs work—and oversight.

Third, there are states that could give a hoot about what lawyers are doing to market themselves while other states still put everything

under a microscope. The consistency gap is huge, and confusing, and probably unfair to a law firm trying to build new business in new places.

Finally, there is this widely understood notion that the rules—supposedly built to protect the public—are irrelevant in the world of Joe and Joan Q. Public. The only people really complaining about lawyer marketing are other lawyers—often jealous at the entrepreneurial approaches that are cutting into their own market share. Whom, exactly, are we even helping?

FINAL WORDS

The state of Virginia—coincidentally the home of ethics counsel Spahn—is one of the first to adopt some of the ideas behind the Association of Professional Responsibility Lawyers report, looking to streamline the process by mainly focusing on the all-important notion of whether something is "deceptive and misleading." Of course, that is still a subjective approach that is in the eye of the beholder—but it's a start. And reason for optimism. This is not "The '70s Show" anymore for Bates or the '90s for weathered attorneys like me. It is 2018 ... and archaic rules of the profession will only lead to ancient results (see dinosaurs, around 65 million years ago—which is much shorter in tech years). Let's see where the proposed changes go and if the states are amenable to them.

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What Do the Revised Rules for Lawyer Advertising Mean for Me?

Law Practice Today

August 15, 2018

By Micah Buchdahl

ABSTRACT: Yes, the ABA Model Rules have changed. But, no, it changes little for you right now.

You can call it updating, modernizing, changing or fixing, but the ABA House of Delegates recently voted in favor of amending Rule 7 of the ABA Model Rules of Professional Conduct addressing lawyer advertising.

To learn about how we got here, read my recent (pre-vote) marketing column in the ABA's July/August 2018 issue of *Law Practice Magazine*, titled Law Marketing Model Rule Revisions–Better Late Than Never? The column details the path to the August HOD vote. I was slightly surprised that no one stood to oppose the amendment, considering that the subject matter has been a lightning rod of controversy since I've been a lawyer (and well before that, as attorney Abe Lincoln is often referenced in law marketing ethics lectures). Yet the real proof will be in the pudding in the months and years to come. Which states will adopt the revised model rules as-is? My guess is that most will choose to put their own unique spin on subsequent changes. And I'll be pleasantly surprised if states look to be uniform in adoption and enforcement at some point before the Internet changes yet again.

Key Takeaways

At August's ABA Annual Meeting in Chicago, the House of Delegates voted to adopt Resolution 101, amending Model Rules 7.1 through 7.5 and their related comments of the ABA Model Rules of Professional Conduct regarding lawyer advertising rules.

As the late Phil Hartman used to say on Saturday Night Live, "this is something...this is nothing." Yes, this is something (and better than nothing), far from perfect, but an improvement over the archaic and outdated advertising ethics rules that were still on the books.

Nothing changes today. Model rules are just that. States will take their time (some longer than others) in determining which pieces of the rule changes (and comments) they wish to adopt, enact and enforce.

Why The Changes?

It should come as no surprise to you that lawyer marketing has changed a tad since 1977—and the U.S. Supreme Court decision in *Bates v. Arizona*. You might blame it on the Internet, globalization, competition, or entrepreneurial lawyers skirting the rules. But to a great extent, blame the states. Because while the ABA rules may serve as models, the reality is that the different approaches, interpretations, oversight and enforcement by states has made compliance a difficult task.

While I've heard some complaints about the two years it took to get these rule changes through the House, anyone who has ever shepherded a model rule change through knows that it is not an atypical amount of time. These changes are not designed in a vacuum. Quite the opposite, in fact – the process seems to seek weigh-in and perspective from virtually every interested party known to man. If your organization is remotely involved in the space, someone asked your opinion.

Most of the "changes" put forth amount to little more than an implementation of common sense in the legal marketplace. If you've had the pleasure of watching me present one or more of the hundreds of law marketing ethics CLEs I've taught for 20+ years, you know that my focus has always been on one core value—is an ad (or communication, as we now refer to it) "false or misleading?" Because in the end, isn't that really what concerns us the most? The changes reflect a better sense of reality.

Now the real question is not only how quickly state bars act to review and adopt, but if we see a more consistent approach and interpretation across the map.

A Nominal Thank You

In corporate America, many businesses have rules about what you can and can't receive from a vendor, salesperson, business referral or colleague in exchange for what might amount to remuneration of some sort. While such "payments" were generally prohibited in legal circles, the new rules allow for a token gift for an employee or colleague. Of course, how much is nominal is wide open to interpretation.

Raise your hand if a consumer has complained about your law marketing, perhaps feeling deceived or misled. No hands? That would be because the bulk of complaints have come from angry (lawyer) competitors and/or some state bar disciplinary committees. While the claim has always been a need to protect the client, the reality is that it has been more often about protecting the profession from itself.

While the new rules may not fully flesh out many of the newer marketing issues we face—clarification regarding social media, online reviews and referral-type businesses—they at least put some baseline concepts into place. One of the great advertising and solicitation disrupters—Avvo—is now in the hands of Internet Brands. The new owners quickly put up a white surrender flag for the controversial fixed-cost service that had many states up in arms. I'm not sure how much of a "disruptive" force the company will be in the future. But before being sold, it was a clear factor in forcing some of the issues involved in the updated model rules.

Social media channels have so many facets, with LinkedIn, Facebook and Twitter (and others) that it is difficult to simply state which of the rules in 7.1-7.5 apply. The same holds true for reviews, and beyond a review itself, whether bad reviews are being siphoned off—something I'd say has a serious "deceptive and misleading" spotlight on it. State bars are sometimes a little less than objective when it comes to decisions regarding referral-type businesses, because they often see it as their own (non-dues revenue generating) domain.

Nothing in these changes ensures consistency or standardization of oversight and enforcement across jurisdictions. Unless I missed some dramatic groundswell of support for states agreeing to work together

and handle these issues in the same fashion, the problem with multi-jurisdictional compliance will remain.

Highlights

Because you probably don't want to read through all the rules and comments under Resolution 101, here are some highlights for the slightly interested attorney, with a little editorial spin.

- These amendments relate to Model Rules 7.1-7.5. We'll now often refer to advertisements simply as "communications" because we live in a world where marketing ourselves is not reserved to the obvious "ad." Blame it on various aspects of the World Wide Web, but "content marketing" is not as clearly delineated and defined as old-tyme commercials.
- If we did not change the rules ourselves, the FTC would change them for us—issues of antitrust, commercial speech and stuff like that.
- These rules are designed to streamline and simplify, but most importantly, we need to focus on one core principle—is the ad or communication "deceptive and misleading"?
- "Office Addresses" are so brick-and-mortar last century. Now we "contact" each other—which could be via a virtual office or a laptop at the beach. Contact may be via e-mail, chat, messaging or other ways that don't involve meeting in person. The new rules remind you that a physical address or a landline is no longer assumed.
- Lawyer Referral Services—permissible or not—remains an area that will remain murky. I can assure you that some states will not cede control of their own interpretation (and cynically, perhaps, a revenue stream) to be consistent across the board.
- While you still can't pay for recommendations, nominal "thank you" gifts are permissible. I don't know about you, but is nominal a Chik-Fil-A gift card or two tickets to Hamilton? I'd accept both, but you might want to call your state bar ethics hotline (they will say yes to the sandwich; no to the show—but that is what you get for asking).
- Live person-to-person solicitation remains prohibited. Runners? What runners? Anyway, this includes viewing each other over an iPad. But it should correctly loosen the interpretation to allow solicitation/communication with what I'll call "educated recipients" of the message—in-house counsel, corporate CEOs and others who should know better.
- Eliminating the requirement to label targeted mailings as "Advertising"—which basically encouraged the recipient to throw it away without even opening it.

As states begin discussing and implementing these model rule changes, LPT will keep you informed of the progress. A few states—like Virginia—were ahead of the game in streamlining the process before the ABA's suggestions. It is definitely a step forward, which is certainly better than nothing.

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Content Marketing Is Outpacing the Ethics Rules

By Micah Buchdahl

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Do nice guys, or gals, finish last?

If you are a plaintiffs attorney representing accident and disaster victims, does a hard-line approach to following your state's Rules of Professional Conduct (RPC) in relation to advertising and solicitation regulations keep you from having a real chance to compete in a highly competitive (and lucrative) marketplace? I believe it does. While you might stand back and let the dust settle or wait the requisite 30 days before using direct mail or related means, the speed of society has changed to the point where many victims and their families start the process of seeking justice immediately.

Many lawyers who rely on directly soliciting clients are struggling in today's market where those who have developed good online content are reaping the benefits of Internet research by prospective clients. The time line and process for selecting counsel in the wake of a disaster is simply . . . different.

It's been exactly 20 years since the U.S. Supreme Court upheld a state's restriction on lawyer advertising under the First Amendment's commercial speech doctrine in Florida Bar v. Went For It. But how much sense do some of those limitations—designed to protect victims and their families in the wake of tragedy—really make now?

The irony of Went For It is that the decision closely preceded the deadly crash of ValuJet Flight 592 in the Florida Everglades in May 1996. The Internet was just getting started. Unless you were a very early adapter like immigration lawyer Greg Siskind—already creating content on a website in 1996—the concept of online didn't really exist. CNN was around. MSNBC was not. Social media was a pipedream still years away. No blogs, no search engine optimization or anything of that sort. Advertising and solicitation was still very "traditional."

In the aftermath of May 2015's deadly Amtrak crash, multiple articles appeared in the Philadelphia Inquirer about how lawyers were obtaining clients—the methods and the money involved. Two key things struck me. First, are today's ethics rules regarding solicitation so outdated that they no longer have value? And, second, for an attorney who believes in the reasoning and philosophy of these solicitation rules, does waiting out the 30 days just mean that he or she is no longer even in the game?

I've worked with many plaintiffs lawyers who struggle with the concepts associated with these regulations. As I often suggest in the advertising ethics CLEs I teach, it's easy to skirt the RPC through a variety of (mostly online) end arounds that do not violate any rules. States especially seem to have difficulty managing and enforcing advertising violations by attorneys outside their jurisdictions. The frustration from many lawyers is that they are playing by the rules—to a great competitive disadvantage. In my own ethics practice, inconsistency reigns when it comes to advertising and solicitation concerns under the RPC. On the flip side, when working with a plaintiffs lawyer on marketing and business development strategy, it would practically be negligent for me not to point out that good

online content marketing can help you "reach" a prospective client in the wake of a horrific circumstance.

If you are prohibited from soliciting a prospective client—be it in person, by phone or through a third party—how do you effectively and ethically reach that client? A 30-day moratorium on direct mail seems rather inane in a world of texts, tweets, blog posts and online video. There is a hazy, gray area where attorneys receive inquiries asking for legal advice in tweets and blog comments that need to be handled with care. A prospective client, especially one in a highly emotional state, who is looking for answers will often have questions. You certainly need to offer some sort of response.

While Florida is still cited as having some of the most stringent advertising restrictions, it also has some of the most detailed rules, opinions and guidelines to assist lawyers with proper compliance. Under 4.7-11 the "type of media" are detailed beyond simply stating print or electronic. The Florida bar also provides extensive social media guidelines and an extensive opinion on the dos and don'ts in chat rooms. A 2012 ethics opinion in California makes it clear that advertising rules are applicable to social networking sites such as Facebook or Twitter if they are indicating a lawyer's availability for hire. A 2010 Philadelphia Bar Association opinion says that interactions through social media, email, blogs and chat rooms are not the same as direct, in-person solicitation. This differs from the Florida bar's stance.

Good content marketing is both legal and good for the consumer. People can review a lawyer's credentials and read about their legal options before being subjected to the pressures that come when sitting directly across the table in an initial meeting or consultation. Much of the conceptualization behind the RPC is to avoid any notion of high-pressure sales tactics.

Unfortunately, in my backyard—Philadelphia—no different than many metropolitan markets, each year brings an array of sad and terrible circumstances that lead to the death and injury of innocents in the wrong place at the wrong time. If you think the highest profile personal injury lawyers are sitting back either waiting for the phone to ring or for the 30-day mark, you are living in a dream world.

Typically, one high-profile attorney in town is usually on the scene by the local evening news, although even that reference is dated; he is probably on Twitter 10 minutes after the accident. Who needs advertising when he is being interviewed repeatedly for television, online sites and the newspapers about finding out "who is responsible," and having his track record of other disasters accompany each interview? Again, as long as he does not approach a victim or victim's family, he can just wait for them to approach him.

Within days of an accident, there is additional media coverage of the "press conference" of the attorney, the victims he represents at his or her side. Some states say that lawyer advertising applies to press releases provided to media outlets. For example, in Florida they need not be filed for bar review if the release is provided to a legitimate media outlet with complete editorial control. Nonetheless, I received a newsletter from one firm announcing its representation of victims. Another touted experience in the injury arena, with perspective. No direct solicitation, mind you, but with search engine optimization and clever use of social media channels a savvy lawyer can get his or her message in front of the audience being sought.

An Inquirer story discussed "the race for clients" and the scramble in the immediate aftermath of the Amtrak crash. It noted that law firms "have held news conferences, advertised on the Internet, and issued news releases." One prominent attorney was quoted as saying that his firm doesn't reach out directly but "we try to make it easy for people to find us." It also mentioned the use of related blog and social media posts (such as "Catastrophic Train Accident Lawyers").

While the multiple articles I read on the subject never mentioned the RPC or any ethics restrictions, they did point out that, with fees that can be as high as 40 percent, there was really little "contingency" gamble involved in this particular accident. The Amtrak crash alone totaled eight dead and more than 200 injured. There is little risk, only reward.

In discussing these issues with noted ethics attorney Thomas Spahn of McGuireWoods, he reminded me of my own quote from a National Law Journal op-ed piece published in September 2009 entitled "Archaic Rules Hobble Attorneys." The final sentence is "[Some] people are smart . . . I think they can figure it out." The underlying notion is we know when we're being pitched—and the difference between substance and fluff.

"Many consumer regulations simply reflect an assumption that a person does not have the capability to hear and successfully process information on legal services," said Spahn. "The person on the other end of a lawyer ad or solicitation can decipher the message and make a buying decision—even in a difficult time."

To the best of my knowledge, no studies show that less restrictive marketing would harm clients if they receive direct mail or even engage in in-person solicitation earlier than many states permit. However, this situation once again puts the attorney being conservative in his or her interpretation of what is permissible lagging in the aforementioned "race" for a limited pool of potential clients.

The Inquirer article noted a marketing success story from a solo practitioner just outside of Philadelphia who quickly secured a client from the Amtrak derailment. He said that he gets many of his clients as a result of a book he authored, Winning Personal Injury Cases. But it was a client's spouse finding his website that led to a call to represent one victim. "I work hard on search engine optimization, and every once in a while it pays off," he is quoted as saying.

Another Inquirer piece on the plaintiffs attorneys representing Amtrak accident victims referenced a world of "very big fees and spectacular riches . . . . One firm boasting on its website of more than $2 billion in jury awards and settlements. Another a more 'modest' $917 million. At the traditional rate of 33 percent—an understatement because personal-injury firms now charge as much as 40 percent—that adds up to about a billion in fees."

In the wake of ValuJet, Texas, Louisiana and Florida initiated an undercover sting operation to monitor attorney solicitations. A 1996 New York Times article, "Texas Bar Sends a Warning to Its Overzealous Lawyers," highlighted the effective campaign—but also the uproar among bar members. It's not a sting that has been repeated, despite being effective. A similar sting today would be much more difficult to

duplicate and carry out. The world has changed too much. Lawyers can accomplish many of the same things without actually breaking any rules.

I'm not passing judgment on any of the attorneys or examples noted. I have friends and clients who represent people in these exact scenarios. And it would be wrong for me not to identify effective ways of successfully marketing to a lucrative audience—I absolutely do. However, all attorneys should be operating on a fair and even playing field. Nice guys should not finish last. The rules and enforcement need to mirror the times.

STRUGGLING WITH ETHICS ISSUES SURROUNDING BRANDED NETWORKS

By Micah Buchdahl

Originally Published in ABA Law Practice Magazine – January/February 2016

There is not a more controversial area of lawyer marketing when it comes to interpretation and enforcement of the Rules of Professional Conduct than the ever-growing legion of branded networks in the legal profession and the issues that arise from them.

Where there was once just Martindale-Hubbell or The Best Lawyers in America, there is now a proliferation of networks that ranges from local penny saver–like attorney rankings and ratings to sophisticated lead-generation sites. Companies such as Avvo and Justia, with entrepreneurial online endeavors, have transformed legal marketing in ways the U.S. Supreme Court could not have envisioned when it decided Bates v. State Bar of Arizona in 1977. And, with every state interpreting the Rules of Professional Conduct differently, the opinions are inconsistent and wide-ranging from one state to the next.

Dozens of state bar ethics opinions address the many issues that come with using and promoting these services. First and foremost is a concern surrounding Rule 7.1 and whether use of these services leads to false and misleading communications. There are also concerns regarding Rule 7.2 and the concept of "giving anything of value" for a recommendation. The end result of most is that many states require various disclaimers and specific requirements in the advertising of these "accomplishments." In regard to "recommendations," the typical interpretation is that an attorney is paying a reasonable cost of advertising versus getting a referral.

Among the other core issues that come into play here is the legitimacy and credibility of a network's methodologies in handing out accolades, along with whether the prohibition of comparing one lawyer's services to another is violated. Ironically, it's the big money players in the network arena that are often cited and challenged, whereas those smaller mom-and-pop shops with extremely questionable tactics and methodologies (i.e., pay for play and ridiculously unsophisticated systems for ranking lawyers as "top," "best," "powerful," "super" and every other related superlative) seem to continually operate under the radar.

An interesting element of these networks is they tend to accomplish what so many aspects of the Rules of Professional Conduct were built to prevent. Yet the reality of doing business in 2016 is that the

competitive marketplace outpaces the rules. Concerns about protecting the public at large from what they don't know are different in a world of online reviews and Ripoff Report—everybody has the capability of researching prospective counsel.

Over the years, many of these branded networks have spent heavily on legal representation to ensure that they stay in business, often with successful challenges. The apex came with New Jersey's issuance of Opinion 39 in 2008 that would have effectively shut down many of these networks in that state. As many states look to other states' related ethics opinions—the Utah state bar opinion on ratings from last year heavily cited elements of Opinion 39—the New Jersey Supreme Court effectively struck down Opinion 39 but did offer a dozen components that needed to be adhered to in using networks. In subsequent years, many challenges dissipated as state bars (and the ABA) evaluated the cost of litigation versus the likelihood of success. The networks withstood the challenge and continue to grow.

Do Lawyers Rule the Internet?

By Micah Buchdahl

Originally Published in ABA Law Practice Magazine – March/April 2016

If there is anything that 30 years of ABA TECHSHOW tells us it's that changes in technology have not even started to slow down. Perhaps they never will. Many of these technological components—from websites and online tools to competitive intelligence software and client relationship management systems—create the core of most law firm marketing and business development operations.

The Internet has shaken the legal services delivery model, making selection of attorneys and information accessibility there for the taking, through the website of your choosing. Even if only a fraction of the 1.25 million or so U.S. lawyers market themselves on the Internet—through a website, blog, LinkedIn profile, Yelp review, whatever—that still makes for a rather crowded online marketplace. In a profession with money to spend, we are a prime target for businesses seeking to help make those connections between businesses or consumers and law firms.

GOOGLE'S BIGGEST SPENDERS

You may be surprised to learn that 78 percent of the 100 most expensive keywords on Google belong to the legal profession. The remaining 22 percent can be divided up among an interesting mix of industries that include water damage, insurance, drug and alcohol rehabilitation, online education and business services. With 2015 Google AdWord sales around $70 billion, you might get a sense of just how lucrative selling search terms to attorneys must be.

In the research conducted by SEMrush, a company that provides competitive intelligence data to digital marketing professionals, its researchers have identified what makes these keywords so darn expensive. They are typically detailed, specific and highly targeted. As I often remind law firms, the cost is often dictated by the level of online competition in your geographic market and practice. In other words, a few big spenders in your space heavily increase the cost of doing business (effectively) online.

The No. 1 cost per click (CPC) on Google for the entire World Wide Web is—wait for it—"San Antonio car wreck attorney," at $670.44 CPC. Wow. By clicking through, I found a law firm clearly aiming for the consumer to now simply pick up the phone and call. Of course, "San Antonio auto accident lawyers" is a real bargain at $291.64—but remember it is based on competition for the phrase. And people spending these dollars are typically doing their competitive intelligence in selecting and placing search engine optimization components.

Where "mesothelioma" once ruled the roost, it is now below $400 per click. There are many terms related to structured settlements, driving under the influence and criminal law. A term like "the best car accident lawyers" might bypass an ethics violation that would occur if you actually used the language itself in your marketing. CPC strategy is its own area of expertise.

My reminder to law firms trying to compete in a space where the cost of doing business on Google is simply too high is to (1) find a different space, (2) focus heavily on content and organic search results and (3) shift the demographics of the client sought. In many cases clicking through to the law firm from some of the priciest keywords is based on a quick call-to-action and conversion—and not on educating the consumer about the area of law.

SOCIAL MEDIA ADJUSTMENTS

I'm not going to lie to you. I've made some good money teaching social media workshops and CLEs on the topic for about a decade now. And I'm not suggesting that I led anyone astray. Being knowledgeable and effective in places like LinkedIn and Facebook is important. However, if you are treating participation and the sites the same today as you did three years ago, you are probably not doing things right.

Some of the strongest uses of Facebook for lawyers now are with targeted advertising. Like any business built for profit, Facebook has decreased the visibility of businesses through unpaid posts and pages. A Facebook strategy last updated two years ago is going to be out of date.

LinkedIn has met with state bars to make sure their tools comply with our Rules of Professional Conduct. Clearly, a business-focused database without heavy lawyer participation and involvement is not going to make it. You can't spell B-U-S-I-N-E-S-S without L-A-W. Okay, you can, but you get the gist.

The good news is that the age demographics on these sites continue to increase. This means that the end users are much more likely to be purveyors of legal services than they once were. If you think of them as being places that the kids hang out, you are way off base.

Despite being well versed on the subject, I found it necessary to attend a program on "Parenting in Today's Electronic Culture" at my kids' school. As the dad of 7- and 11-year-olds, I found it fascinating to see that what I call social media and what kids consider social media are entirely different. Facebook did not enter the discussion. That is for old people. Instead, school-age children are on Instagram, Snapchat and Kik. Based on corporate America marketing trends, we are going to need to figure out effective ways to sell and promote legal services through places like Instagram and Snapchat. Of course, Twitter

remains an effective space for lawyers to market—probably that middle ground of demographic between the youth tools and those for us adult professionals.

LINKEDIN IS FOR JOBS

A recent conversation at an ABA Law Practice Division meeting centered on whether LinkedIn was still an effective business development tool. I think many lawyers feel oversold on the idea that a strong LinkedIn presence would translate to strangers calling out of the blue with lucrative new matters. Make no mistake; LinkedIn is one of the most beneficial databases for businesses available. It has very real marketing value. It gives you the ability to turn a cold call relationship into a warmer one, sometimes lukewarm, sometimes hot.

Many lawyers think that simply having a full profile and inviting in some "connections" is where the rubber meets the road. I've found that the greatest use of LinkedIn is as a secondary information source to supplement what I might learn from a website or other research. It cues you as to where there are similarities in networks. It provides information and competitive intelligence (for free) that was previously unattainable. Users that think having a zillion connections somehow makes them great networkers are dead wrong. It tells other LinkedIn users you are not particularly selective in who you call a "connection." It makes the person on the other end feel like less of a colleague and more like a meaningless number.

Like Facebook, LinkedIn has plenty of opportunities for us to spend money on generating exposure and creating leads. In the end, though, you need to remember one thing—LinkedIn is for jobs—getting a call from a recruiter, hiring a lateral, putting yourself out there. It is far more likely that a strong LinkedIn presence designed to attract a headhunter call will do just that. While it may not generate a business lead, it's the leading resource in today's job market. If you are looking for a new law firm or adding a new lawyer, this is the place you need to be. Obviously, the best tools require some sort of financial investment too.

FINAL THOUGHTS

So, where does that leave technology and marketing for lawyers in 2016?

If you are investing in Google for keywords, be sure to really examine the CPCs of relevant phrases. Many search engine optimization companies worth their salt will often be honest in telling you when an investment is simply too small for an impactful online campaign. You can save money by managing these accounts yourself. Or pay for the services and expertise.

Take the time to reexamine your LinkedIn, Facebook and related social media strategies. These sites are ever-changing.

And when you look at how the legal profession has used the Web for marketing, perhaps we do rule the Internet.

Revisiting Lawyer Ratings and Rankings

By Micah Buchdahl

Originally Published in ABA Law Practice Magazine – November/December 2017

It is not so much that I want to write another column on the lawyer ratings and rankings industry, more so that I feel like I have to. If it does not *literally* play into every working day of my professional life, it certainly feels like it. Not a lot has changed since last addressing the subject in this column (*The Impact of the Three R's: Ratings, Rankings and Reviews*, March/April 2014). But a recent e-mail from an attorney reading my piece from our online *Law Practice* magazine archives reminded me again how top-of-mind this subject continues to be. Every anecdotal example herein occurred in a two week time frame.

This column is about marketing time, money and resources poorly spent. It is about allowing individual entrepreneurs and multi-billion dollar corporations to continually enrich themselves at the expense of the undeniable lawyer ego (hey, I've got one myself). And it is about attorney oversight of the Rules of Professional Conduct, and a lack of caring or enforcement in too many jurisdictions.

My intention is not to pick on any lawyer or lawyer rating service. Beauty is in the eyes of the beholder as it relates to a very subjective category. I have my "preferred" accolades, where I believe there is greater detail and concern about methodologies and ethics—and less of a used car sales push to go along with it. Studies continually show that in-house counsel doesn't care. Marketers at law firms decry the time that go into the processes. Attorneys say they are rarely accurate, yet often list them near the top of a biography. Time passes and the only thing that happens is the industry grows and the number of listings multiplies.

Too legit to quit?

There are those ratings and rankings entities that still garner acceptance and credibility in the legal marketplace. Best Lawyers (and its' successful partnership with US News for "best law firms") has been around a long time and is respected in many legal circles. Besides their methodologies, they have stringent rules regarding proper use of the listings. While AV ratings may not carry a lot of weight with a younger generation of lawyers, it is still a (literal) badge of honor to many. And despite becoming a little more "salesy" than I might like, Chambers USA is still something that Big Law relishes and Mid Law clamors for attention with. Their editorial twist on the ratings game really changed the entire industry in a post-Internet world. In the online world, Avvo is a different animal for another column. American Lawyer Media has a litany of lists. Local and regional accolades and lists range from slightly researched to laughably illegitimate.

The Top Ten Percent

According to the congratulatory e-mail I received from the "In house counsel" of the ratings company (who, at the time was still a month short of being licensed to practice law after graduating last year), I had been identified as a "Lawyer of Distinction"—as featured (through paid advertising) on CNN and in

The New York Times. Fake news? No. Questionable advertising? Yes. For the princely or paltry sum of $475 (depending on how you look at it), I too can be a lawyer of distinction. Depending on who you talk to, I think I am—but that is based on old-fashioned "methodologies" such as word of mouth and reputation in the legal community. It was shocking how many attorneys had forked over the cash. And imagine my shock when I saw a ½ page ad in the ABA Journal—essentially a list of people that thought it valuable to spend $500 on a plaque and other goodies.

I followed one of those *distinct* attorneys to her website, where a criminal defense attorney in my town that I had never heard of boasted other recent "awards." It featured a badge from the website "Expertise," as "Best Criminal Defense Lawyers in Philadelphia,"—an honor that besides having no credible methodology violates ethics rules in the use of "expert" and "best" to boot. The "award" for "People love us on Yelp" (yes, that is an award, apparently) included a whopping three reviews in the last year from people that love her. I often feel misled by the Yelp review in picking a coffee shop in a strange town. I can only imagine how much time I'd spend in the slammer if I used it for selecting counsel after getting arrested for a criminal offense (not that I intend to have that hypothetical occur).

Just a quick 15 minute appointment

A finalist for a marketing director position starting telling the leadership of a prominent law firm in her interview how the attorneys at her present firm did not realize how important Super Lawyers was to her business development efforts. As I watched the eyes roll in the room, I could tell that she had just sunk her candidacy. She wasn't getting the job. In the interview post-mortem, it was determined that she was too green, not knowing that this particular ranking was not important to a corporate practice. Don't get me wrong. Being on the list is not negative or harmful; it just does not really help.

That did not stop a managing partner that I work with from telling me he'd "like to get on the list." Because the customer is always right, I went ahead and looked to assist him with his submission.

He was inundated with e-mails reminding him that the 2018 Super Lawyers nomination window is closing soon. "If you want to be included in the official review process, we must get your nominations and updated profile information by...The Super Lawyers Nomination Kit will help you understand the selection process and how you can effectively participate."

That was all well and good, except for the part that required the attorney to set up a "quick 15-minute appointment" to get him started in the process. I sent repeated e-mails back from the solicitation letting the sales person know that I would like to have that conversation and help the attorney with the process. No response. Another attorney at the firm was not as lucky—her solicitation suggested a "20 minute meeting with you to discuss how you can leverage your superlawyer status online," from a client development consultant. "If after we are done, you are not interested, no problem, however any referrals would be helpful. " Of course, I'm not interested—but how about call this competitor of mine and say that I sent you. Let him spend his time and money.

When I sought to cast a vote as a Pennsylvania-licensed attorney, I received an e-mail telling me that I was not eligible, as my office address was in another state. The system could not differentiate my actual

bar admission from my mailing address. Of course, my state of residence is New Jersey—home to some of the better attempts to assuage the ratings onslaught over the last few decades.

Substantiated, Bona Fide and Verifiable

The infamous NJ ethics Opinion 39 in 2006 threatened to put an end to ratings in the state once and for all. While the opinion was quashed, it did not stop the state from going back to the well last year. My 2014 column led with the sentence, "if you can't beat 'em, join 'em." I was throwing in the towel. Yes, methodologies were flawed. Yes, there were ethical concerns. But darn it, lawyers loved them—and who was I to say otherwise? But New Jersey was once again going to try and put up some roadblocks.

A "reminder" in May 2016 from the New Jersey Supreme Court Committee on Attorney Advertising once again took up its concern with awards, honors and accolades—mentioning Super Lawyers, Rising Stars, Best Lawyers, Superior Attorney, Leading Lawyer and Top-Rated Counsel, after having "received numerous grievances." The notice reminded attorneys in New Jersey (who may very well be Pennsylvania or New York attorneys that also have an NJ license) that beyond being "verified" there needs to be additional explanatory language and context when citing them. Is it simply a popularity contest? Does it come at a cost?

If referencing these accolades in your advertising (that includes a simple mention in your website bio, by the way), you need to provide a description and point to the methodology behind the honor. And yet another reminder that a "Great Lawyer" is not great, but was included in a list called "Great Lawyers of Planet Earth." If you are one of the few law firms complying with the notice to the letter, you have a description of the standard or methodology; the name of the comparing organization issuing the award; and the statement "No aspect of this advertisement has been approved by the Supreme Court of New Jersey." Trust me...I have a folder full of New Jersey ads from recent months that do not comply.

In recent years, even the Better Business Bureau (BBB) felt a need to advise consumers to question the value of "so-called top attorney awards." I can tell you that the BBB did a better job calling out "bull----" than many state bars. While I might complain about Super Lawyers, they are far, far from the total fakes and frauds that are out there—those that claim to have vetted and picked the "top one percent," or say they are an academy of this or an institute of that. Honors that clearly will not pass a smell test. The BBB tells consumers to do some research, ask a family member or friend, check with them...but do not rely on awards and organizations you've never heard of.

So, what is my point? You are thinking that I have told you nothing that you did not already know. I'm beating a dead horse. I'm preaching to the choir. I should just shut up and accept things as they are. All true. But I would propose the following attempts to better define the ratings & rankings market:

1. No plaques. I hate to take this out on the plaque industry. But based on the number of awards on my kids' shelves for various aspects of "participation," they will be fine. If an award comes with or requires getting a plaque, move along.

2. If an award requires any financial consideration to be honored, move along.

3. When you see the other "honorees" in a practice that you excel in are people you've never even heard of, consider moving on.

4. If you are a member of the bar responsible for RPC compliance and pass an advertisement that is in clear violation, consider doing something about it. Because if nobody cares to enforce it, the reality is that it is not fair for some attorneys to be forced to comply in a competitive market.

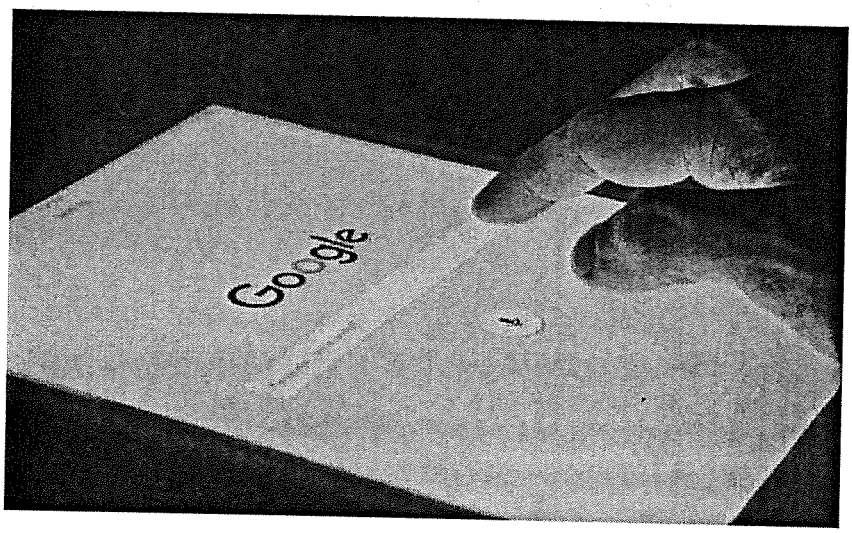
I do not know if U.S. Supreme Court Justice John Roberts was a Super Lawyer. I'm not sure if he was Tier One in Chambers. But when the next nominee touts in congressional hearings that he was a "Lawyer of Distinction," I'm going to really worry. In the meantime, tomorrow is another day. And it will certainly include one of my attorney clients asking whether I reviewed the Best Lawyers submissions. And because I like to earn a living, I'll be sure it gets done by the deadline.

Ethics Panel Details Good & Bad Search Engine Marketing Practices for Rival Lawyers

Attorneys can purchase search results on a rival law firm's name, but they can't divert traffic.

By **Charles Toutant** (https://www.law.com/njlawjournal/author/profile/Charles-Toutant/) | August 07, 2019 at 01:22 PM

(http://www.almreprints.com)



A New Jersey ethics authority has provided guidance on what's fair game and what's off-limits for lawyers who use search engines to attract new clients.

The Supreme Court's Advisory Committee on Professional Ethics said in an **opinion made public (https://images.law.com/contrib/content/uploads/documents/399/29955/ACPE735.pdf)** Tuesday that a lawyer may purchase a sponsored search keyword on a competing lawyer's name. That would show the purchaser's own law firm website in the results when a person types the competitor's name in a search engine.

However, the committee drew the line at another form of sponsored search marketing in which the lawyer pays to insert a hyperlink to his own website on the name of a competing lawyer. That would mean someone who clicked on the competitor's name in a search result would be diverted to the purchaser's website instead.

The first practice is not fraudulent, deceptive or dishonest and is not prejudicial to the administration of justice, the committee said. But the second practice is "purposeful conduct intended to deceive the searcher for the other lawyer's website," the committee said.

The committee examined whether the first practice violated RPC 1.4 and 7.1, which pertain to communication, and RPC 8.4, which pertains to misconduct, but found that none of those rules was violated. The committee found that the Texas State Bar Professional Ethics Committee and a court in Wisconsin have deemed the first practice OK, but a 2010 ethics opinion from the North Carolina State Bar concluded that purchasing another lawyer's name as a keyword for an internet search is dishonest and a violation of RPC 8.4(c).

The websites of the keyword purchaser's law firm and the competitor's law firm would presumably both appear in the resulting search, the former as a paid website and the latter in the organic results, permitting the user to choose which to select, the committee said.

But as for the second practice, the committee said that surreptitiously redirecting a user from the competitor's website is "purposeful conduct intended to deceive the searcher."

The issues examined in the ethics opinion are reminiscent of **a recent lawsuit (https://www.law.com/njlawjournal/2018/08/28/suit-over-nj-law-firms-online-marketing-practices-dropped/)** between two law firms over search engine marketing tactics.

In June 2018, Helmer, Conley & Kasselman of Haddon Heights brought a trademark infringement suit against Hark & Hark of Cherry Hill in the U.S. District Court. The lawsuit said Hark & Hark used Google's sponsored search advertising to lure prospective clients who had searched for Helmer Conley.

The suit claimed people conducting Google searches on terms such as "Helmer law office" or "Helmer lawyer" brought up search results with the heading "Helmer Conley Kasselman, Aggressive Criminal Defense." But the search results themselves listed the New Jersey street address and telephone number of Hark & Hark. Clicking on such a result brought up the Hark & Hark website, Helmer Conley alleged.

Helmer Conley voluntarily dismissed the suit in August 2018, after U.S. District Judge Noel Hillman of the District of New Jersey permanently enjoined Hark & Hark from engaging in the online activities that prompted the litigation.

Marc Garfinkel, a Morristown lawyer who represents other lawyers in ethics and disciplinary cases, agrees with the committee's handling of the issue, but is nonetheless uneasy about the practice of intercepting prospective clients who were conducting a web search for a competing law firm.

"I think this is well-grounded in the law, as I understand the law. But there is a fundamental sense of something wrong here, an unfairness that's being perpetrated," Garfinkel said.

"The acts are not illegal or fraudulent. But they're siphoning off business generated by somebody else's effort. It seems to be a little unfair. Maybe they owe a commission [to the other law firm] because they're capitalizing on that other lawyer's goodwill. Maybe that's why it seems unfair to me," Garfinkel said.

Charles Toutant

(https://www.law.com/njlawjournal/author/profile/Charles-Toutant/)

Charles Toutant is a litigation writer for the New Jersey Law Journal.

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Law Firms Mentioned

Helmer, Conley & Kasselman, P.A. (/search/?q=Helmer%2C+Conley+%26a

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4 **The American Lawyer Announces Litigation Department of the Year Finalists (https://www.law.com/americanlawyer/2019/10/01/the-american-lawyer-announces-litigation-department-of-the-year-finalists/)**

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5 **Texas Litigator Phil Durst Has Died: 'Many Thousands Will Mourn' (https://www.law.com/texaslawyer/2019/10/02/texas-litigator-phil-durst-has-died-many-thousands-will-mourn/)**

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HELMER, CONLEY & KASSELMAN, P.A., YARON HELMER, ESQUIRE, and JAMES M. CONLEY, ESQUIRE, Plaintiffs, vs. HARK AND HARK, JEFFREY HARK, ESQUIRE, RICHARD Q. HARK, ESQUIRE, ABC INC., XYZ CORP., and JOHN DOES 1–50, Defendants.	Civil Action No.: JURY TRIAL DEMANDED **PLAINTIFFS' VERIFIED COMPLAINT**

Plaintiffs Helmer, Conley & Kasselman, P.A., Yaron Helmer, Esquire, and James M. Conley, Esquire, by and through undersigned counsel, by way of Verified Complaint against Defendants, Hark and Hark, Jeffrey Hark, Esquire, Richard Q. Hark, Esquire, ABC Inc., XYZ Corp., and John Does 1–50, hereby aver as follows:

— PARTIES —

1. At all times relevant herein, Plaintiff Helmer, Conley & Kasselman, P.A. ("HCK") was and is a professional services corporation existing under the laws of the State of New Jersey and is engaged in the practice of law with its principal place of business located at 111 White Horse Pike, Haddon Heights, New Jersey 08035.

2. At all times relevant herein, Plaintiffs Yaron Helmer, Esquire and James Conley, Esquire are and were attorneys licensed in New Jersey and partners of HCK. Messrs. Helmer and Conley shall be collectively referred to as the "Individual Plaintiffs."

3. At all times relevant herein, upon information and belief, Defendant Hark and Hark ("H&H") was and is a professional services corporation, partnership, joint venture, and/or association engaged in the practice of law with its principal place of business located at 1101 Route 70 West, Cherry Hill, New Jersey 08002.

4. At all times relevant herein, upon information and belief, Defendant Jeffrey Hark, Esquire ("JH") was and is an attorney licensed in New Jersey and was and is a member, principal, or partner of H&H.

5. At all times relevant herein, upon information and belief, Defendant Richard Q. Hark, Esquire ("RQH") was and is an attorney licensed in New Jersey and was and is a member, principal, or partner of H&H.

6. Defendants ABC Inc., XYZ Corp., and John Does 1–50 are fictitious names for individuals, corporations, partnerships, joint ventures, associations, or other forms of private entities, including business entities, the identities are of which are unknown at present, but who at all times relevant herein owned, operated, and/or managed H&H and/or had a duty to own, operate, and/or manage H&H, or who participated in the acts, omissions, and/or breaches of duty complained of herein and/or who otherwise caused the harm complained of herein to Plaintiffs.

— JURISDICTION AND VENUE —

7. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1121(a) because Plaintiff's claims raise a federal question under the Lanham Act, 15 U.S.C. § 1051 *et seq.*

8. Plaintiffs' remaining claims fall within the Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367 because they are so related to the federal claims that they form part of the same case or controversy.

9. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to this dispute, and the damages sustained in this dispute, occurred within the District of New Jersey.

— FACTS COMMON TO ALL COUNTS —

10. HCK is a well-known and respected law firm comprised of experienced attorneys who practice in the areas of criminal defense, family law, personal injury/negligence, and immigration. HCK maintains fourteen offices in New Jersey and one in New York, and HCK's attorneys practice in state and federal courts throughout New Jersey, Pennsylvania, and New York.

11. Individual Plaintiffs are well-known and respected lawyers in the community as criminal defense attorneys.

12. Plaintiffs have engaged in extensive advertising and marketing efforts to ensure that the public is aware of the legal services provided by HCK and the Individual Plaintiffs. Substantial amounts of time, effort, and money have been expended to ensure that members of the public associate Plaintiffs' names exclusively with Plaintiffs and their legal services.

13. Plaintiffs' names, when used in connection with the promotion of Plaintiffs' legal services, have acquired substantial recognition by the public seeking legal services by virtue of HCK's providing legal services.

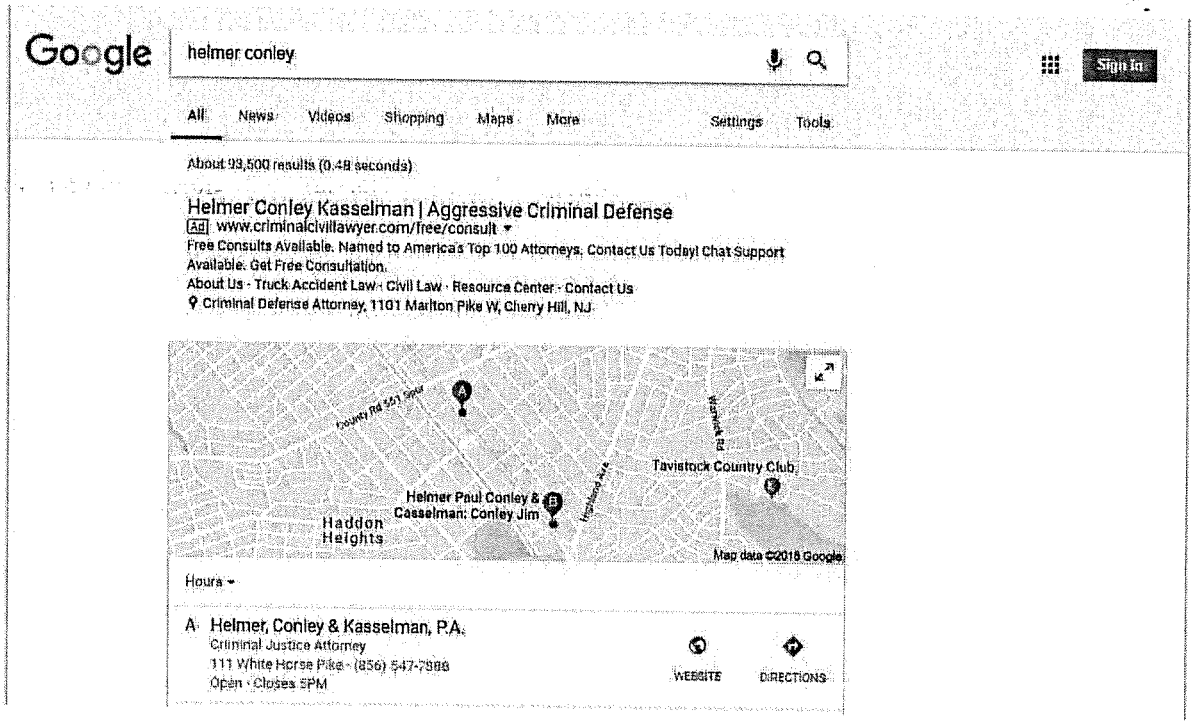
14. Plaintiffs have acquired an extraordinary degree of consumer recognition in the minds of the public seeking legal services and serve uniquely to identify Plaintiffs' legal services.

15. H&H is a law firm with offices in New Jersey and Pennsylvania that, according to its website, https://www.criminalcivillawyer.com, practices in the areas of criminal defense, personal injury/negligence, workers' compensation, and professional license defense. H&H also

maintains a separate website marketed specifically to Philadelphia-area criminal defendants, https://www.phila-criminal-lawyer.com. As such, Defendants are direct competitors of Plaintiffs.

16. By way of background, Google operates a keyword-triggered advertising program known as "AdWords" that generates the "Sponsored Links" section on the search-results screen. Sponsored advertisements appear above the non-sponsored "organic" search results. Advertisers participating in AdWords purchase or bid on certain keywords, paying Google for the right to have links to their websites displayed in the Sponsored Links section whenever an internet user searches for those words. Additionally, each time an internet user clicks on a particular Sponsored Link, Google charges a fee to the AdWords participant associated with that linked website. Businesses often participate in the AdWords program to generate more visits to their web-sites.

17. Upon information and belief, Defendants have purchased Plaintiffs' names and numerous variants thereon as Google AdWords in order to divert Plaintiffs' potential clients to Defendants. For example, a search of the terms "helmer conley" results in the following search results:



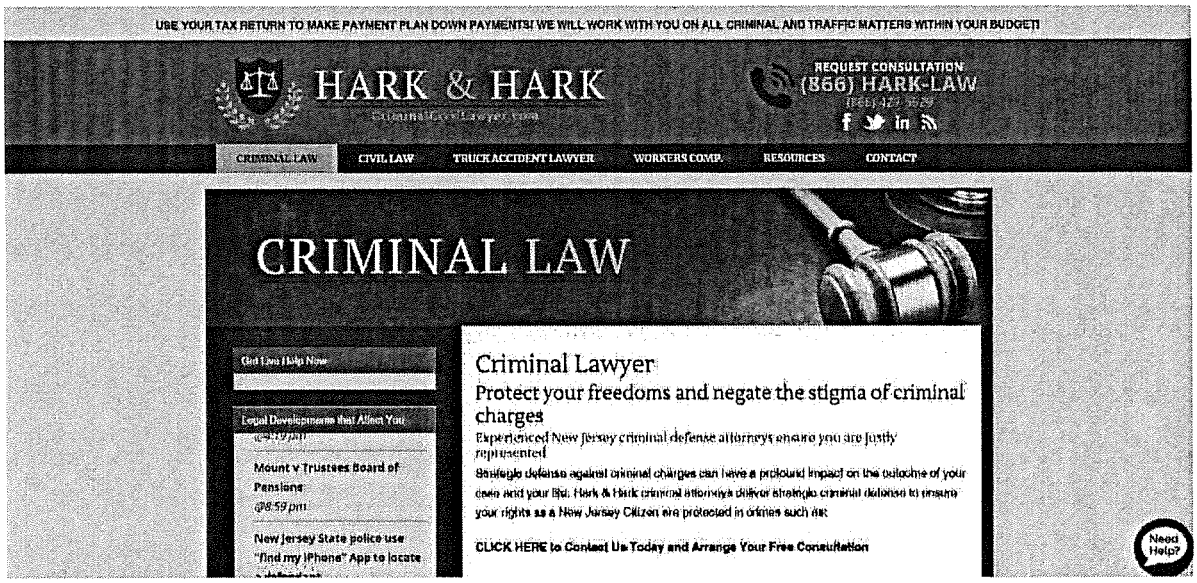
The top result is an advertisement with the heading "Helmer Conley Kasselman | Aggressive Criminal Defense." Underneath the heading, the advertisement displays H&H's phone number and address. Clicking on this advertisement directs the user to the following URL:

https://www.google.com/aclk?sa=l&ai=DChcSEwjUw_Tj5dXbAhVHQIYKHRCeBkQYABAAGgJ2dQ&sig=AOD64_2eSahkeDP-yHbkrEkqNo2QMxUOig&q=&ved=0ahUKEwi5ze7j5dXbAhWCrFkKHcI8DqEQ0QwIJQ&adurl=

which link then redirects the user to the following URL:

https://www.criminalcivillawyer.com/criminal-law/?gclid=EAIaIQobChMI1MP04-XV2wIVR0CGCh0QngZEEAAYASAAEgJSgPD_BwE

which displays the below website:



Other search strings that trigger the appearance of the advertisement include, but may not be limited to, the following: "helmer," "helmer law office," "helmer conley," "helmer kasselman," "helmer lawyer, "helmer defense," "conley law," and "helmer and associates."

18. As a result of the above, any person who is searching for Plaintiffs' legal services may then click on Defendants' sponsored ad, intending to be directed to Plaintiffs' website, and be misdirected to Defendants' website instead.

19. Plaintiffs have not licensed, authorized, or given permission to any Defendant for the use their names for any commercial purpose.

20. At no time did any Defendant request from Plaintiffs a license, authorization, or permission to use Plaintiffs' names for any commercial purpose.

21. Plaintiffs have not consented to the Defendants' use of Plaintiffs' names for any commercial purpose.

22. Defendants' actions, including unlawfully purchasing and using Plaintiffs' names as a keyword or heading on Google AdWords, were clearly designed to divert web traffic from Plaintiffs' website to Defendants' website.

23. Defendants' use of Plaintiffs' names as a keyword or heading on Google AdWords is likely to cause confusion amongst potential clients as to the affiliation, connection, association,

origin, sponsorship, or approval of Defendants' advertisements when potential clients search for Plaintiffs' names.

24. Defendants' use of Plaintiffs' names as keywords or headings on Google AdWords is likely to cause potential clients to retain Defendants, instead of Plaintiffs, for legal representation.

25. As lawyers, JS and RQS are held to a higher standard and duty than the general public.

26. Rule 7.1(a) of the New Jersey Rules of Professional Conduct provides that "[a] lawyer shall not make false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement."

27. Rule 8.4(c) of the New Jersey Rules of Professional Conduct provides that "[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation . . . ."

28. As a result of Defendants' actions, Plaintiffs have been damaged and irreparably harmed.

— FIRST COUNT —
LANHAM ACT FALSE ADVERTISING (15 U.S.C. § 1125(a)(1)(B))

29. Plaintiffs incorporate by reference the above paragraphs as though set forth at full herein.

30. The Lanham Act provides, in pertinent part, that

> [a]ny person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, names, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which[,] in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

15 U.S.C. § 1125(a)(1)(B).

31. The foregoing acts and conduct by Defendants constitute false designation of origin, false or misleading description of fact, and/or false or misleading representation of fact in connection with services provided in interstate commerce.

32. The foregoing acts and conduct by Defendants were an unauthorized use of Plaintiffs' names, reputation, and goodwill in connection with services provided in interstate commerce.

33. The foregoing acts and conduct by Defendants actually deceive and/or have the tendency to deceive a substantial segment of those who search for Plaintiffs on the internet.

34. The foregoing acts and conduct by Defendants have caused, and will continue to cause, irreparable injury to Plaintiffs' business, goodwill, and reputation.

35. The foregoing acts and conduct by Defendants are willful.

36. As a result of the above, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs pray for judgement in their favor and against Defendants, jointly and severally, awarding Plaintiffs:

A. Injunctive relief pursuant to 15 U.S.C. § 1116;

B. Damages in an amount to be determined at trial, including Defendant's profits, any damages sustained by the Plaintiffs, reasonable attorneys' fees, and the costs of the action pursuant to 15 U.S.C. § 1117(a);

C. Treble damages pursuant to 15 U.S.C. § 1117(b);

D. Pre-judgment and post-judgement interest; and

E. Such other and further relief as the Court deems just and proper.

— SECOND COUNT —
LANHAM ACT FALSE ASSOCIATION (15 U.S.C. § 1125(a)(1)(A))

37. Plaintiffs incorporate by reference the above paragraphs as though set forth at full herein.

38. The Lanham Act provides, in pertinent part, that

> [a]ny person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, names, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which[ ] is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person . . . shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

15 U.S.C. § 1125(a)(1)(A).

39. Plaintiffs' names are distinct and protectable under the Lanham Act.

40. The foregoing acts and conduct by Defendants constituted an unauthorized use of Plaintiffs' names, reputation, and goodwill in connection with services provided in interstate commerce.

41. The foregoing acts and conduct by Defendants are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants and Defendants' legal services with Plaintiffs and Plaintiffs' legal services.

42. The foregoing acts and conduct by Defendants are likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of Defendant and/or Defendants' legal services by Plaintiffs.

43. The foregoing acts and conduct by Defendants actually deceive and/or have the tendency to deceive a substantial segment of those who search for Plaintiffs on the internet by falsely associating Plaintiffs and Plaintiffs' legal services with Defendants and Defendants' legal services.

44. The foregoing acts and conduct by Defendants have caused, and will continue to cause, irreparable injury to Plaintiffs' business, goodwill, and reputation.

45. The foregoing acts and conduct by Defendants are willful.

46. As a result of the above, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs prays for judgement in their favor and against Defendants, jointly and severally, awarding Plaintiffs:

A. Injunctive relief pursuant to 15 U.S.C. § 1116;

B. Damages in an amount to be determined at trial, including Defendant's profits, any damages sustained by the Plaintiffs, reasonable attorneys' fees, and the costs of the action pursuant to 15 U.S.C. § 1117(a);

C. Treble damages pursuant to 15 U.S.C. § 1117(b);

D. Pre-judgment and post-judgement interest; and

E. Such other and further relief as the Court deems just and proper.

— THIRD COUNT —
NEW JERSEY UNFAIR COMPETITION LAW (N.J.S.A. 56:4-1)

47. Plaintiffs incorporates by reference the above paragraphs as though set forth at full herein.

48. The New Jersey Unfair Competition Law provides, in pertinent part, that "[n]o merchant, firm or corporation shall appropriate for his or their own use a names, brand, trade-mark, reputation or goodwill of any maker in whose product such merchant, firm or corporation deals." N.J.S.A. 56:4-1.

49. The foregoing acts and conduct by Defendants constitute the misappropriation of Plaintiffs' names for Defendants' own use.

50. As a result of the above, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs pray for judgement in their favor and against Defendants, jointly and severally, awarding Plaintiffs:

A. Injunctive relief pursuant to N.J.S.A. 56:4-2;

B. Damages in an amount to be determined at trial, including all damages, directly or indirectly caused, to Plaintiffs by such practices pursuant to N.J.S.A. 56:4-2;

C. Treble damages pursuant to N.J.S.A. 56:4-2;

D. Reasonable attorneys' fees and costs of suit;

E. Pre-judgment and post-judgement interest; and

F. Such other and further relief as the Court deems just and proper.

— FOURTH COUNT —
UNFAIR COMPETITION

51. Plaintiffs incorporate by reference the above paragraphs as though set forth at full herein.

52. The foregoing acts and conduct by Defendants constitute misleading, deceptive, injurious, or otherwise improper and wrongful practices which would render competition unfair

53. As a result of the above, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs pray for judgement in their favor and against Defendants, jointly and severally, awarding Plaintiffs punitive damages, compensatory damages, attorneys' fees, cost of suit, and such other and further relief as the Court deems just and proper.

— FIFTH COUNT —
TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

54. Plaintiffs incorporate by reference the above paragraphs as though set forth at full herein.

55. The foregoing acts and conduct by Defendants constitute an interference with Plaintiffs' reasonable expectation of economic advantage.

56. The foregoing acts and conduct by Defendants were done intentionally and with malice.

57. As a result of the above, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs pray for judgement in their favor and against Defendants, jointly and severally, awarding Plaintiffs punitive damages, compensatory damages, attorneys' fees, cost of suit, and such other and further relief as the Court deems just and proper.

— SIXTH COUNT —
COMMERCIAL APPROPRIATION OF NAMES OR LIKENESS

58. Plaintiffs incorporate by reference the above paragraphs as though set forth at full herein.

59. Plaintiffs have an interest in their names in the nature of a property right.

60. As set forth above, Defendants appropriated Plaintiffs' names without authorization or license for trade purposes.

61. As a result of the above, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs pray for judgement in their favor and against Defendants, jointly and severally, awarding Plaintiffs punitive damages, compensatory damages, attorneys' fees, cost of suit, and such other and further relief as the Court deems just and proper.

— SEVENTH COUNT —
UNJUST ENRICHMENT

62. Plaintiffs incorporate by reference the above paragraphs as though set forth at full herein.

63. Defendants received benefits from their use of Plaintiffs' names and retention of those benefits would be unjust.

64. As a result of the above, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs pray for judgement in their favor and against Defendants, jointly and severally, awarding Plaintiffs compensatory damages, attorneys' fees, cost of suit, and such other and further relief as the Court deems just and proper.

— EIGHTH COUNT —
IDENTITY THEFT (N.J.S.A. 2C:21-17)

65. Plaintiffs incorporate by reference the above paragraphs as though set forth at full herein.

66. New Jersey law provides a civil remedy for "[a]ny person who suffers any ascertainable loss of moneys or property, real or personal, as a result of the use of that person's personal identifying information" in violation of N.J.S.A. 2C:21-17(a). N.J.S.A. 2C:21-17.4(a).

67. A defendant violates N.J.S.A. 2C:21-17(a) where it:

> . . . by any means including, but not limited to, the use of electronic communications or an Internet website:
>
> (1) Impersonates another or assumes a false identity and does an act in such assumed character or false identity for the purpose of obtaining a benefit for himself or another or to injure or defraud another;
>
> (2) Pretends to be a representative of some person or organization and does an act in such pretended capacity for the purpose of obtaining a benefit for himself or another or to injure or defraud another;
>
> (3) Impersonates another, assumes a false identity or makes a false or misleading statement regarding the identity of any person, in an oral or written application for services, for the purpose of obtaining services;
>
> (4) Obtains any personal identifying information pertaining to another person and uses that information, or assists another person in using the information, in order to assume the identity of or represent himself as another person, without that person's authorization and with the purpose to fraudulently obtain or attempt to obtain a benefit or services, or avoid the payment of debt or other legal obligation or avoid prosecution for a crime by using the names of the other person; or
>
> (5) Impersonates another, assumes a false identity or makes a false or misleading statement, in the course of making an oral or written application for services, with the purpose of avoiding payment for prior services. Purpose to avoid payment for prior services may be presumed upon proof that the person has not made full payment for prior services and has impersonated another, assumed a false identity or made a false or misleading statement regarding the identity of any person in the course of making oral or written application for services.

68. A private party may bring an action under this statute even though the defendant has not been prosecuted for a crime. N.J.S.A. 2C:21-17.4(b).

69. The foregoing acts and conduct by Defendants constitute the theft of the identities of the Plaintiffs in violation of N.J.S.A. 2C:21-17(a).

70. As a result of the above, Plaintiffs have suffered an ascertainable loss of moneys or property as a result of Defendants' use of Plaintiffs' personal identifying information.

WHEREFORE, Plaintiffs pray for judgement in their favor and against Defendants, jointly and severally, awarding Plaintiffs:

A. Injunctive relief pursuant to 2C:21-17.4(a);

B. Damages in an amount to be determined at trial, including all damages, directly or indirectly caused, to Plaintiffs by such practices pursuant to 2C:21-17.4(a);

C. Treble damages pursuant to 2C:21-17.4(a);

D. Reasonable attorneys' fees, costs of suit, and out-of-pocket losses pursuant to 2C:21-17.4(a);

E. Pre-judgment and post-judgement interest; and

F. Such other and further relief as the Court deems just and proper.

— NINTH COUNT —
NEGLIGENT ENABLEMENT OF IMPOSTER FRAUD

71. Plaintiffs incorporate by reference the above paragraphs as though set forth at full herein.

72. Defendants owed a duty of reasonable care to Plaintiffs in connection with the internet marketing and the purchase of Google AdWords to avoid the risk of harm to Plaintiffs.

73. Defendants breached that duty by negligently failing to ensure that their internet marketing and the purchase of Google AdWords did not harm Plaintiffs.

74. As a direct and proximate result of the foregoing acts and conduct by Defendants, Plaintiffs were harmed.

WHEREFORE, Plaintiffs pray for judgement in their favor and against Defendants, jointly and severally, awarding Plaintiffs compensatory damages, attorneys' fees, cost of suit, and such other and further relief as the Court deems just and proper.

— TENTH COUNT —
INJUNCTIVE RELIEF

75. Plaintiffs incorporate by reference the above paragraphs as though set forth at full herein.

76. In view of the foregoing acts and conduct by Defendants, Plaintiffs will sustain immediate and irreparable harm if Defendants are permitted to continue using Plaintiffs' names for trade purposes or otherwise.

77. Plaintiffs are likely to succeed on their claims set forth herein.

78. Plaintiffs do not possess an adequate remedy at law to compensate them for the continuing irreparable harm and injury that Plaintiffs are and will sustain without the entry of the requested injunctive relief.

79. The balancing of the equities as well as the public interest all weigh in favor of granting Plaintiffs' requested injunctive relief.

WHEREFORE, Plaintiffs pray that the Court enter an Order:

A. Preliminarily and permanently enjoining and restraining Defendants and their officers, partners, agents, subcontractors, servants, employees, affiliates, related companies, and all other acting in concert or participating with them from:

a. Purchasing keywords that are identical or substantially similar to Plaintiffs' names;

b. Bidding on keywords that are identical or substantially similar to Plaintiffs' names;

c. Making use of Plaintiffs' names in a manner that is likely to confuse actual and potential clients into believing that the legal services that are the subject of Defendants' advertising are sponsored by, affiliated with, or otherwise tacitly endorsed by Plaintiffs; and

d. Engaging in any other act constituting unfair competition or deceptive practices with Plaintiffs.

B. Ordering Defendants to immediately terminate any and all contracts with search engine operators (e.g., Google, Bing, Yahoo!, and AOL), through which Defendants have bid on or purchased keywords that are identical or substantially similar to Plaintiffs' names.

C. Awarding compensatory damages, punitive damages, attorneys' fees, costs of suit, and interest; and

D. Awarding such other and further relief as the Court deems just and proper.

— DEMAND FOR TRIAL BY JURY —

Plaintiffs hereby demand a trial by jury on any and all non-equitable claims for which a trial by jury is made available.

FOLKMAN LAW OFFICES, P.C.

By: _____
BENJAMIN FOLKMAN
benfolkman@folkmanlaw.com

By: _____
PAUL C. JENSEN, JR.
pauljensen@folkmanlaw.com

Dated: June 22, 2018

VERIFICATION OF YARON HELMER, ESQUIRE

I, Yaron Helmer, Esquire, being of full age, certify as follows:

1. I am a Plaintiff in the above-captioned matter.

2. I have read the foregoing Verified Complaint and the factual allegations made on my behalf and on behalf of Helmer, Conley, and Kasselman, P.A. are true and correct as of my own knowledge, or, if alleged on the basis of information and belief, true and correct to the best of my information and belief.

3. I certify that the foregoing statements made by me are true. I am aware that if any are willfully false, I am subject to punishment.

By: _____
YARON HELMER, ESQUIRE

Dated: 6/22/18

VERIFICATION OF JAMES M. CONLEY, ESQUIRE

I, James M. Conley, Esquire, being of full age, certify as follows:

4. I am a Plaintiff in the above-captioned matter.

5. I have read the foregoing Verified Complaint and the factual allegations made on my behalf and on behalf of Helmer, Conley, and Kasselman, P.A. are true and correct as of my own knowledge, or, if alleged on the basis of information and belief, true and correct to the best of my information and belief.

6. I certify that the foregoing statements made by me are true. I am aware that if any are willfully false, I am subject to punishment.

By: James M. Conley
JAMES M. CONLEY, ESQUIRE

Dated: 06-22-2018

FOLKMAN LAW OFFICES, P.C.
By: Benjamin Folkman, Esquire
Paul C. Jensen, Jr., Esquire
1949 Berlin Road, Suite 100
Cherry Hill, New Jersey 08003
(856) 354-9444
(856) 354-9776 (fax)
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HELMER, CONLEY & KASSELMAN, P.A., et al., Plaintiffs, vs. HARK AND HARK, et al., Defendants.	Civil Action No.: 18-10927 **CONSENT ORDER**

WHEREAS, on June 22, 2018, Plaintiffs, Helmer, Conley & Kasselman, P.A., Yaron Helmer, Esquire, and James M. Conley, Esquire, filed a Verified Complaint against Defendants, Hark and Hark, Jeffrey Hark, Esquire, and Richard Q. Hark, Esquire; and

WHEREAS, on June 25, 2018, Plaintiffs filed a Motion for Temporary Restraining Order and Order for Hearing on Preliminary Injunction; and

WHEREAS, on June 26, 2018, the Court entered a Temporary Restraining Order and Order for Hearing on Preliminary Injunction (the "TRO") enjoining Defendants from making use of Plaintiffs' names in certain online advertisements and setting a hearing for preliminary injunction for July 6, 2018; and

WHEREAS, the parties now jointly submit this Consent Order for the approval of and entry by the Court.

IT IS HEREBY ORDERED THAT:

1. Defendants and their officers, partners, agents, subcontractors, servants, employees, and affiliates are hereby permanently enjoined and restrained from:

a. Purchasing keywords from search engine operators (e.g., Google, Bing, Yahoo!, and AOL) that are identical or substantially similar to Plaintiffs' names;

b. Bidding on keywords that are identical or substantially similar to Plaintiffs' names;

c. Making use of Plaintiffs' names in a manner that is likely to confuse actual or potential clients in any form in connection with any of their advertising; and

2. Defendants represent through their Counsel that any bidding on keywords identified in Paragraphs 1(a) and (b), above, was terminated effective June 26, 2018 in accordance with the TRO.

3. Defendants shall, within five (5) days of the date of this Order, provide Plaintiffs' counsel with a sworn declaration signed by Defendants attesting that Defendants have cancelled any and all contracts with search engine operators for keywords that are identical or substantially similar to Plaintiffs' names.

4. Defendants will immediately cease and desist from any further use of Plaintiffs' names or derivations thereon in connection with any advertising or marketing purposes.

Dated this 3rd day of ~~June~~ July, 2018.

At Camden, New Jersey

HON. NOEL L. HILLMAN
UNITED STATES DISTRICT JUDGE

The undersigned hereby apply for and consent to the entry of this Consent Order:

For the Plaintiffs:

FOLKMAN LAW OFFICES, P.C.

By: _____
BENJAMIN FOLKMAN

Dated: 7/3/18

For the Defendants:

WEIR & PARTNERS LLP

By: _____
STEVEN E. ANGSTREICH

Dated: 7/3/18

FOLKMAN LAW OFFICES, P.C.
By: Benjamin Folkman, Esquire
Paul C. Jensen, Jr., Esquire
1949 Berlin Road, Suite 100
Cherry Hill, New Jersey 08003
(856) 354-9444
(856) 354-9776 (fax)

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HELMER, CONLEY & KASSELMAN, P.A., et al., Plaintiffs, vs. HARK AND HARK, et al., Defendants.	Civil Action No.: 18-10927 **TEMPORARY RESTRAINING ORDER AND ORDER FOR HEARING ON PRELIMINARY INJUCTION**

AND NOW, on this 26th day of June, 2018, upon consideration of the Motion for Temporary and Restraining Order and Preliminary Injunction of Plaintiffs, and it appearing that: (a) Plaintiffs have demonstrated a reasonable probability of eventual success on the merits; (b) Plaintiffs will suffer immediate and irreparable harm not compensable in monetary damages unless injunctive relief is granted; (c) greater injury would result from a refusal to grant the injunctive relief requested than would result from granting such relief; and (d) the public interest would not be adversely affected by granting the injunctive relief requested;

IT IS HEREBY ORDERED THAT:

1. Plaintiffs' Motion for Temporary and Restraining Order and Preliminary Injunction be and is hereby GRANTED.

2. Defendants and their officers, partners, agents, subcontractors, servants, employees, affiliates, related companies, and all other acting in concert or participating with them are hereby enjoined and restrained from:

a. Purchasing keywords that are identical or substantially similar to Plaintiffs' names;

b. Bidding on keywords that are identical or substantially similar to Plaintiffs' names;

c. Making use of Plaintiffs' names in a manner that is likely to confuse actual and potential clients into believing that the legal services that are the subject of Defendants' advertising are sponsored by, affiliated with, or otherwise tacitly endorsed by Plaintiffs and including but not limited to the use of "Helmer Conley Kasselman" or any derivation in conjunction with www.criminalcivillawyer.com.

d. Engaging in any other act constituting unfair competition or deceptive practices with Plaintiffs.

3. Defendants shall, within five (5) days of the date of this Order, provide Plaintiffs' counsel with an itemized list of any and all contracts with search engine operators (e.g., Google, Bing, Yahoo!, and AOL), through which Defendants have bid on or purchased keywords that are identical or substantially similar to Plaintiffs' names and a sworn declaration signed by Defendants attesting to the following:

a. that Defendants have conducted a complete and thorough search for any and all contracts with search engine operators for keywords purchased or bid upon;

b. that Defendants have cancelled all such contracts; and,

c. that Defendant will immediately cease and desist from any further use of Plaintiffs' names or derivations thereon in connection with any advertising or marketing purposes.

4. Defendants shall preserve the integrity and security of all documents, electronic data, computer equipment, and any other material that may be discoverable pursuant to the Federal Rules of Civil Procedure in this action.

5. Defendants shall appear and show cause before this Court at 3 o'clock in the afternoon, or as soon thereafter as counsel can be heard, on the 6th day of July, 2018, why a Preliminary Injunction should not be issued.

6. Plaintiffs shall serve a copy of this Order upon all other parties or their attorneys, if any, within 2 days of the date of this Order.

Noel L. Hillman
U.S.D.J.

At Camden, New Jersey

CLOSED

U.S. District Court
District of New Jersey [LIVE] (Camden)
CIVIL DOCKET FOR CASE #: 1:18-cv-10927-NLH-AMD
Internal Use Only

HELMER, CONLEY & KASSELMAN, P.A. et al v. HARK AND HARK et al
Assigned to: Judge Noel L. Hillman
Referred to: Magistrate Judge Ann Marie Donio
Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 06/22/2018
Date Terminated: 08/22/2018
Jury Demand: Plaintiff
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

HELMER, CONLEY & KASSELMAN, P.A.

represented by **PAUL CHRISTIAN JENSEN , JR.**
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ATTORNEY TO BE NOTICED

Plaintiff

YARON HELMER
Esquire

represented by **PAUL CHRISTIAN JENSEN , JR.**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

JAMES M. CONLEY
Esquire

represented by **PAUL CHRISTIAN JENSEN , JR.**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

HARK AND HARK

represented by **STEVEN E. ANGSTREICH**
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20 Brace Road
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Fax: 856-740-1491
Email: sangstreich@weirpartners.com
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Defendant

JEFFREY HARK
Esquire

represented by **STEVEN E. ANGSTREICH**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

ABC INC.

Defendant

XYZ CORP.

Defendant

JOHN DOES 1-50

Defendant

RICHARD Q. HARK
Esquire

represented by **STEVEN E. ANGSTREICH**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/22/2018	1	COMPLAINT against ABC INC., JEFFREY HARK, RICHARD Q. HARK, HARK AND HARK, JOHN DOES 1-50, XYZ CORP. (Filing and Admin fee $ 400 receipt number 0312-8832999) with JURY DEMAND, filed by JAMES M. CONLEY, YARON HELMER, HELMER, CONLEY & KASSELMAN, P.A.. (Attachments: # 1 Civil Cover Sheet CIVIL COVER SHEET)(JENSEN, PAUL) (Entered: 06/22/2018)
06/22/2018	2	Corporate Disclosure Statement by HELMER, CONLEY & KASSELMAN, P.A.. (JENSEN, PAUL) (Entered: 06/22/2018)
06/22/2018		Judge Noel L. Hillman and Magistrate Judge Karen M. Williams added. (dd,) (Entered: 06/22/2018)
06/22/2018	3	Request for Summons to be Issued by JAMES M. CONLEY, YARON HELMER, HELMER, CONLEY & KASSELMAN, P.A. as to All Defendants. (JENSEN, PAUL) (Entered: 06/22/2018)
06/22/2018	4	SUMMONS ISSUED as to JEFFREY HARK, RICHARD Q. HARK, HARK AND HARK Attached is the official court Summons, please fill out Defendant and Plaintiffs attorney information and serve. Issued By *JAIME KASSELMAN* (jbk,) (Entered: 06/22/2018)
06/22/2018	5	AO120 Patent/Trademark Form filed. (jbk,) (Entered: 06/22/2018)

06/22/2018		CLERK'S QUALITY CONTROL MESSAGE - The case you electronically filed has been processed, however, the following deficiencies were found: Nature of Suit,Party Information, . The Clerk's Office has made the appropriate changes. Please refer to the Attorney Case Opening Guide for processing electronically filed cases. (jbk,) (Entered: 06/22/2018)
06/25/2018	6	SUMMONS Returned Executed by JAMES M. CONLEY, YARON HELMER, HELMER, CONLEY & KASSELMAN, P.A.. HARK AND HARK served on 6/22/2018, answer due 7/13/2018. (JENSEN, PAUL) (Entered: 06/25/2018)
06/25/2018	7	SUMMONS Returned Executed by JAMES M. CONLEY, YARON HELMER, HELMER, CONLEY & KASSELMAN, P.A.. JEFFREY HARK served on 6/22/2018, answer due 7/13/2018. (JENSEN, PAUL) (Entered: 06/25/2018)
06/25/2018	8	SUMMONS Returned Executed by JAMES M. CONLEY, YARON HELMER, HELMER, CONLEY & KASSELMAN, P.A.. RICHARD Q. HARK served on 6/22/2018, answer due 7/13/2018. (JENSEN, PAUL) (Entered: 06/25/2018)
06/25/2018	9	MOTION for Preliminary Injunction , MOTION for Temporary Restraining Order by All Plaintiffs. (Attachments: # 1 Text of Proposed Order Text of Proposed Order, # 2 Brief Plaintiffs' Brief, # 3 Declaration Declaration of Michael M. Nelson, # 4 Certificate of Service Certification of Service) (JENSEN, PAUL) (Entered: 06/25/2018)
06/26/2018		Set/Reset Deadlines as to 9 MOTION for Preliminary Injunction MOTION for Temporary Restraining Order . Motion set for 8/6/2018 before Judge Noel L. Hillman. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk`s Office and does not supersede any previous or subsequent orders from the Court. (dmr) (Entered: 06/26/2018)
06/26/2018	10	ORDER granting 9 Motion for Temporary Restraining Order and Order for Hearing on Preliminary Injunction;Defendants shall appear and show cause on 7/6/2018 at 3:00 PM, etc. Signed by Judge Noel L. Hillman on 6/26/2018. (dmr) (Entered: 06/26/2018)
06/27/2018	11	CERTIFICATE OF SERVICE by All Plaintiffs re 10 Order on Motion for Preliminary Injunction, Order on Motion for TRO *upon Hark and Hark* (JENSEN, PAUL) (Entered: 06/27/2018)
06/27/2018	12	CERTIFICATE OF SERVICE by All Plaintiffs re 10 Order on Motion for Preliminary Injunction, Order on Motion for TRO *upon Jeffrey Hark, Esq.* (JENSEN, PAUL) (Entered: 06/27/2018)
06/27/2018	13	CERTIFICATE OF SERVICE by All Plaintiffs re 10 Order on Motion for Preliminary Injunction, Order on Motion for TRO *upon Richard Q. Hark, Esq.* (JENSEN, PAUL) (Entered: 06/27/2018)

07/03/2018	14	NOTICE of Appearance by STEVEN E. ANGSTREICH on behalf of JEFFREY HARK, RICHARD Q. HARK, HARK AND HARK (Attachments: # 1 Certificate of Service)(ANGSTREICH, STEVEN) (Entered: 07/03/2018)
07/03/2018	15	CONSENT ORDER enjoining parties, etc. Signed by Judge Noel L. Hillman on 7/3/2018. (dmr) (Entered: 07/03/2018)
07/03/2018	16	ORDER re: 7/6/2018 hearing. Signed by Judge Noel L. Hillman on 7/3/2018. (dmr,) (Entered: 07/03/2018)
07/09/2018		Magistrate Judge Ann Marie Donio added. Magistrate Judge Karen M. Williams no longer assigned to case. (dd,) (Entered: 07/09/2018)
07/12/2018	17	STIPULATION *Extending Time to Answer Complaint* by JEFFREY HARK, RICHARD Q. HARK, HARK AND HARK. (ANGSTREICH, STEVEN) (Entered: 07/12/2018)
07/18/2018	18	STIPULATION AND ORDER Extending Time to Answer Complaint by 8/13/2018. Signed by Judge Noel L. Hillman on 7/18/2018. (dmr) (Entered: 07/18/2018)
08/22/2018	19	NOTICE of Voluntary Dismissal by All Plaintiffs (JENSEN, PAUL) (Entered: 08/22/2018)
08/22/2018		***Civil Case Terminated. (dmr) (Entered: 08/22/2018)

SUPREME COURT OF NEW JERSEY

On July 17, 2018, the Court released a report prepared by the Supreme Court Committee on Municipal Court Operations, Fines, and Fees. The report included a recommendation to develop a process for the dismissal of old complaints, taking into account the seriousness of the offense charged, the age of the case, and other relevant factors.

According to the Administrative Office of the Courts, there are hundreds of thousands of open, unresolved cases that involve minor municipal offenses more than a decade old. For the period before 2003, for example, there are 787,764 open warrants for failure to appear in cases that involve parking violations, motor vehicle offenses (such as going through a stop sign, improper passing, general motor vehicle equipment violations, certain speeding offenses, and running a red light), local ordinance violations, fish and game violations, penalty enforcement actions, and related matters. The vast majority of those cases are from 1986 to 2003. Some are even older. 355,619 of those matters involve parking tickets; 348,631 relate to tickets for moving violations.

The above cases from prior to 2003 do not include more serious matters, namely:

(1) Indictable charges

(2) Disorderly persons charges

(3) Petty disorderly persons charges

(4) The following motor vehicle charges:

N.J.S.A. 39:3-10	Driving without a license
N.J.S.A. 39:3-10.13	Operating a commercial vehicle while intoxicated

N.J.S.A. 39:3-10.24	Refusal to submit to a breath test while operating a commercial vehicle
N.J.S.A. 39:3-10.18(b)	Operating a commercial vehicle while commercial license suspended or revoked
N.J.S.A. 39:3-40	Driving while license suspended or revoked
N.J.S.A. 39:4-49.1	Drugs in a motor vehicle
N.J.S.A. 39:4-50	Driving while intoxicated
N.J.S.A. 39:4-50.4a	Refusal to submit to a chemical test
N.J.S.A. 39:4-50.14	Underage driving while intoxicated
N.J.S.A. 39:4-50.19	Failure to install an interlock device
N.J.S.A. 39:4-96	Reckless driving
N.J.S.A. 39:4-98	Speeding (in excess of 35 mph over the posted speed limit)
N.J.S.A. 39:4-128.1	Passing a stopped school bus
N.J.S.A. 39:4-129(a), (b)	Leaving the scene of an accident resulting in personal injury or property damage
N.J.S.A. 39:6B-2	Driving without insurance
N.J.S.A. 12:7-46	Boating while intoxicated

(5) or cases associated with a matter in any of the above categories.

Those old outstanding complaints and open warrants in minor matters raise questions of fairness, the appropriate use of limited public resources by law enforcement and the courts, the ability of the State to prosecute cases successfully in light of how long matters have been pending and the availability of witnesses, and administrative efficiency.

To determine the appropriate way to address older, pending municipal court complaints that involve minor matters, it is ORDERED as follows:

1. The Court appoints the Honorable Ronald Bookbinder, Ernest Caposela, and Yolanda Ciccone, Assignment Judges of the Superior Court, to serve as a three-judge panel and conduct a series of hearings in the northern, central, and southern part of the

State as to why older, minor municipal court complaints pending for more than fifteen years should not be dismissed.

2. Notice of the hearing dates should be provided to the public and various interested organizations, including the Municipal Prosecutors Association, League of Municipalities, all affected municipalities (see paragraph 3), Attorney General, County Prosecutors, Public Defender, New Jersey State Association of Chiefs of Police, New Jersey State Bar Association, Association of Criminal Defense Lawyers, and American Civil Liberties Union.

3. At least sixty (60) days before the hearing dates, the panel, with the assistance of the Administrative Office of the Courts, shall make available to each municipality a list of cases described above for their municipality.

4. In advance of any hearing, interested parties shall submit in writing their position as to the dismissal of older, pending, minor municipal court matters.

5. At the conclusion of all of the hearings, the panel shall issue a report to the Supreme Court. The report shall include a recommendation for the general disposition of older, pending, minor municipal court matters, and, if appropriate, a recommended process and timeframe to raise challenges to the dismissal of individual complaints against specific defendants.

For the Court,

Chief Justice

Date: July 19, 2018

SUPREME COURT OF NEW JERSEY

WHEREAS a review by the Administrative Office of the Courts (AOC) has revealed that there are 787,764 unresolved complaints on minor municipal court matters dating from before January 1, 2003. In those matters, arrest warrants were issued to defendants for failure to appear, and the warrants remain open. The vast majority of those cases are from 1986 to 2003;

WHEREAS those minor outstanding matters include parking violations; motor vehicle offenses (such as going through a stop sign, improper passing, general motor vehicle equipment violations, certain speeding offenses, and running a red light); local ordinance violations; fish and game violations; and penalty enforcement actions. They do not include more serious matters, namely:

(1) Indictable charges

(2) Disorderly persons charges

(3) Petty disorderly persons charges

(4) The following motor vehicle charges:

N.J.S.A. 39:3-10	Driving without a license
N.J.S.A. 39:3-10.13	Operating a commercial vehicle while intoxicated
N.J.S.A. 39:3-10.24	Refusal to submit to a breath test while operating a commercial vehicle
N.J.S.A. 39:3-10.18(b)	Operating a commercial vehicle while commercial license suspended or revoked
N.J.S.A. 39:3-40	Driving while license suspended or revoked
N.J.S.A. 39:4-49.1	Drugs in a motor vehicle
N.J.S.A. 39:4-50	Driving while intoxicated
N.J.S.A. 39:4-50.4a	Refusal to submit to a chemical test
N.J.S.A. 39:4-50.14	Underage driving while intoxicated
N.J.S.A. 39:4-50.19	Failure to install an interlock device
N.J.S.A. 39:4-96	Reckless driving

N.J.S.A. 39:4-98	Speeding (only those complaints in which the speed was alleged to be in excess of 35 mph over the posted speed limit)
N.J.S.A. 39:4-128.1	Passing a stopped school bus
N.J.S.A. 39:4-129(a), (b)	Leaving the scene of an accident with personal injury or property damage
N.J.S.A. 39:6B-2	Driving without insurance
N.J.S.A. 12:7-46	Boating while intoxicated

(5) or cases associated with a matter in any of the above categories;

WHEREAS those old outstanding complaints and open warrants in minor matters raise questions of fairness, the appropriate use of limited public resources by law enforcement and the courts, the ability of the State to prosecute cases successfully in light of how long matters have been pending and the availability of witnesses, and administrative efficiency;

WHEREAS, after the AOC provided a list of cases eligible for dismissal to the affected municipalities and published a notice to the public and various interested organizations, pursuant to the Court's July 19, 2018 order, a panel comprised of three Assignment Judges ("panel") solicited and received public comments at three hearings about whether the identified minor municipal court complaints pending for more than fifteen years should be dismissed; and

WHEREAS the three-judge panel, upon review and consideration of the public comments provided at the hearings, issued a report to the Court recommending dismissal of the above 787,764 open matters and the development of a formal process for the annual dismissal of open municipal court matters that are more than 15 years old;

THEREFORE, in the interest of justice, and consistent with Rule 7:8-5 ("Dismissal") and the recommendation of the panel, it is ORDERED that

(a) the 787,764 open municipal matters implicated by the Court's July 19, 2018 order shall be **dismissed;**

(b) any associated open warrant for failure to appear shall be **recalled;** and

(c) any associated court-ordered driver's license suspension or revocation shall be **rescinded**. Any rescission of a court-ordered driver's license suspension or revocation pursuant to this Order is separate from any license restoration fee or process required by the New Jersey Motor Vehicle Commission.

It is FURTHER ORDERED that the panel's report shall be referred to the Supreme Court Municipal Court Practice Committee

(a) to examine whether dismissal of offenses more than ten years old should be considered and whether the types of matters eligible for dismissal should be expanded; and

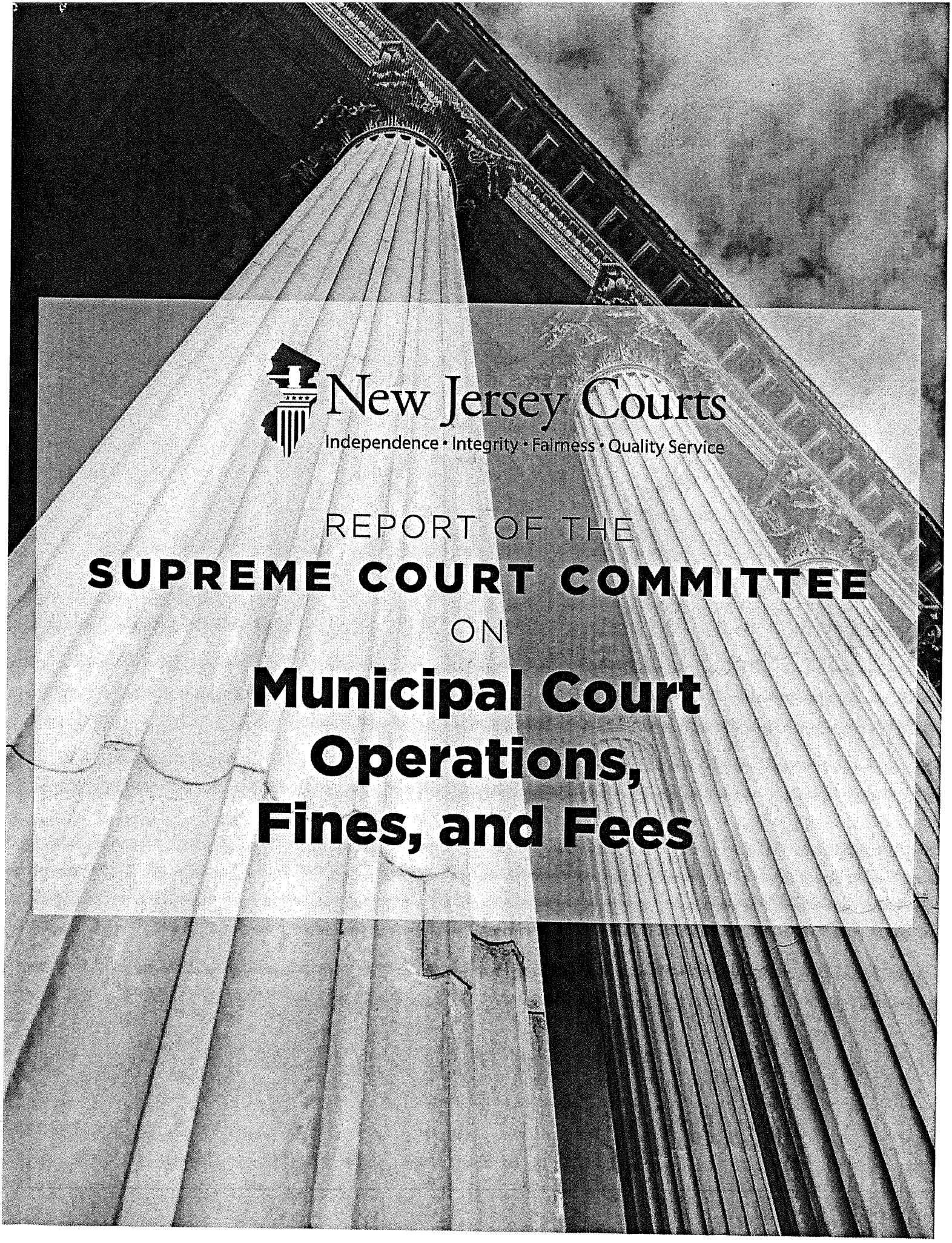
(b) to develop a process for the periodic review and dismissal of open, dated municipal court matters, which would include notice to municipal prosecutors and potential revisions to the court rules.

The provisions of this Order are effective immediately.

For the Court,

Chief Justice

Dated: January 17, 2019



New Jersey Courts

Independence • Integrity • Fairness • Quality Service

REPORT OF THE

SUPREME COURT COMMITTEE

ON

Municipal Court Operations, Fines, and Fees

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY

New Jersey's Municipal Courts handle approximately six million cases each year. Municipal Courts are often referred to as the face of the Judiciary. For most citizens, it is their only exposure to the courts and judges of this State. Municipal Courts across the country have been subjected to scrutiny as a result of court practices highlighted in the Department of Justice's 2015 investigation of the Ferguson Police Department in Missouri. The Department of Justice identified a number of basic constitutional principles required of courts, all related to the enforcement and imposition of fines and fees, and all grounded in the rights to due process and equal protection.

> *Most interactions between the public and the Judiciary take place in the municipal court system. Millions of people who come into contact with the municipal courts each year form their impressions of the justice system based primarily on those interactions.*
> *– Chief Justice Stuart Rabner*

New Jersey Municipal Courts have faced similar criticism. The 2017 report issued by New Jersey State Bar Association's Subcommittee on Judicial Independence in the Municipal Courts pointed out significant concerns about the independence of Municipal Courts. A series of newspaper articles beginning in late 2016 articulate a public perception that municipalities are increasingly relying on fines from tickets as a source of significant revenue, calling into question the overall fairness of such practices. These concerns were also exposed in two recent cases involving municipal court judges.

Chief Justice Stuart Rabner constituted the Supreme Court Committee on Municipal Court Operations, Fines, and Fees in March 2017 to address these concerns. **The Committee was charged with conducting a reform-minded review of Municipal Court practices.** This review emphasized several important concepts that affect all defendants in municipal court—particularly those of lesser economic means—including, but not limited to, the adequacy of notice provided to defendants before a driver's license suspension, the sufficiency of procedural safeguards for defendants who may be unable to pay a fine, whether an acquitted defendant can be assessed court costs, the use of excessive contempt sanctions, whether sufficient technology is available to the Municipal Courts and their users, and the independence of our Municipal Courts.

In accordance with the charge of the Chief Justice, the Committee conducted a detailed examination of New Jersey Municipal Court operations, considered national standards for municipal courts, and carefully reviewed various reports and recommendations made by the National Center for State Courts and the National Task Force on Fines, Fees and Bail Practices created by the Conference of Chief Justices and Conferences of State Court Administrators.

Despite the many significant concerns outlined in this report, the Committee concluded that New Jersey Municipal Courts compared very positively with similar courts around the country. This is due in large part to the significant reform efforts of the last 25 years, the increased oversight by the Judiciary both at the State and vicinage level, the mandatory training required of judges and staff, and the many excellent Municipal Court judges.

Nonetheless, **the Committee's review revealed a number of significant concerns where aggressive reform is needed.** Many of those issues identified by the Committee undermine both the administration of justice and the independence of the Municipal Courts. What follows is a summary of the main findings and conclusions of the report.

SIGNIFICANT CONCERNS IDENTIFIED BY THE COMMITTEE

- The excessive imposition of financial obligations on certain defendants;
- The excessive use of bench warrants and license suspensions as collection mechanisms; and
- The excessive use of discretionary contempt assessments.

The Committee is profoundly concerned with **the excessive imposition of financial obligations on certain defendants,** and what can be the never-ending imposition of mandatory financial obligations upon defendants that extend beyond the fine that is associated with the violation. While many of these fees and surcharges, and the funds that they support, are well intended, they ultimately have little to do with the fair administration of justice. They can be financially overwhelming to defendants, have a disproportionately negative impact on the poor, and often become the starting point for an ongoing cycle of court involvement for defendants with limited resources.

The Committee is equally concerned about **the excessive use of bench warrants and license suspensions as collection mechanisms.** There are 2.5 million outstanding municipal court bench warrants for failure to appear and failure to pay. These warrants often involve minor offenses and minimal amounts. The cost and collateral consequences in the enforcement of these warrants can also be devastating to individuals and families.

The Committee is particularly alarmed by **the excessive use of discretionary contempt assessments,** which are imposed by Municipal Court judges with all collected amounts going to the municipalities. Between calendar year 2015 and calendar year 2017 a total of $22 million in these contempt amounts were assessed. In the report, the Committee identifies that these practices at times have more to do with generating revenue than the fair administration of justice.

The Committee **strongly recommends statutorily mandating consolidation of smaller courts,** which often only meet once or twice a month, taking into account factors such as total annual filings, frequency of court sessions, and geography. Consolidated and streamlined courts not only enhance efficiencies, but can also protect the independence of the Municipal Courts. The Committee found that of the 515 courts, 225 had less than 3,000 filings in the 2017 court year, 166 had less than 2,000 filings, and 105 had less than 1,000 filings.

To address the Chief Justice's charge and the concerns expressed above, the Committee's report includes 49 separate recommendations and eight principles for Municipal Courts that capture the driving tenets of an independent judiciary. Those principles serve as guideposts in the honing and finalization of current and future reform, and emphasize the maxim that above all, Municipal Courts must be a forum for the fair and just resolution of disputes in order to preserve the rule of law. Central to this is the preservation of the independence of the Municipal Courts and ensuring that the Municipal Courts and Municipal Court judges are not affected by the generation of revenue, a concern repeatedly highlighted by the Committee.

A number of the Committee's guiding principles directly address the concerns regarding revenue generation:

- The Municipal Courts, as part of the Judiciary, are separate from the Legislative and Executive branches and are not a revenue-generating arm of the government;
- The imposition of fines, fees, and other financial obligations shall only be based on the fair administration of justice, and not the generation of revenue for a municipality;
- The appointment and reappointment of Municipal Court judges shall never be based on the revenue a Municipal Court judge generates for a municipality; and
- Municipal Court judges shall be selected and reappointed in an objective and transparent manner using methods that are consistent with an independent Judiciary.

> *It is the court's responsibility, in every case, to ensure that justice is carried out without regard to any outside pressures. The imposition of punishment should in no way be linked to a town's need for revenue.*
> *– Chief Justice Stuart Rabner*

Significant Committee recommendations are summarized below:

FAIR SENTENCING AND THE USE OF SENTENCING ALTERNATIVES:

- Develop policies and procedures that would monitor the imposition of contempt sanction amounts;
- Develop sentencing guidelines for discretionary, ranged financial penalties;
- Develop policies for the widespread review and dismissal of old complaints;
- The continued encouragement of the use of authorized post-disposition sentencing alternatives through additional policies and procedures;
- The development of policies and tools that would assist Municipal Courts in imposing such sentencing alternatives; and
- The legislative creation of additional sentencing alternatives.

PROCEDURAL SAFEGUARDS FOR DEFENDANTS UNABLE TO PAY A FINE:

- Significant changes to the Municipal Court's response to a defendant's post-disposition failure to pay, including the mandatory scheduling of an ability-to-pay hearing upon a failure to pay;
- Limiting the issuance of bench warrants to certain serious offenses or when outstanding fines and fees are substantial; and
- The development of a formalized policy for recalling existing bench warrants for failure to appear and failure to pay.

VOLUNTARY COMPLIANCE WITH COURT-ORDERED APPEARANCES AND LEGAL FINANCIAL OBLIGATIONS:

- The provision of automated text, email, and/or telephonic reminders of upcoming court dates and payment due dates;

- Modifying court notices to fully advise defendants in plain language of the consequences of a failure to appear or failure to pay;
- Advising defendants in plain language of the availability of sentencing alternatives; and
- Expanding the use of video and telephonic appearances.

INDEPENDENCE OF THE MUNICIPAL COURTS:

- A voluntary, transparent, and impartial appointment and reappointment process for Municipal Court judges;
- The establishment of a Municipal Court judge evaluation process that resembles that used for Superior Court judges, and would be based on both quantitative and qualitative data collected during the course of a judge's term;
- Legislatively increasing the term of service for Municipal Court judges from three to five years;
- Legislatively mandating the consolidation of small courts; and
- Legislatively adopting a transparent, impartial appointment and reappointment process for Municipal Court judges.

IMPROVE ACCESS TO THE MUNICIPAL COURTS THROUGH TECHNOLOGY:

- Offering NJMCdirect.com (an online payment center) at every Municipal Court's payment window, giving defendants the ability to pay all Municipal Court fines with a credit or debit card;
- Expanding remote appearances and actions that defendants can take on their case;
- Increasing the types of offenses that can be resolved online without a court appearance;
- Allowing the online rescheduling of an initial court date; and
- Allowing for the online completion of various Municipal Court forms in the NJMCdirect.com portal.

To capitalize on the momentum of this report, **the Committee recommends the establishment of a working group comprised of all three branches of government to implement the recommendations made by the Committee to achieve necessary reforms, and to create a forum for the discussion of additional relevant issues.**

The Committee anticipates that this report will provide a road map to improve Municipal Courts. Its proffer of principles and recommendations is made in an earnest attempt to enhance access and fairness to all litigants and court users, to increase the independence of the Municipal Courts, and to enhance public confidence in those courts, all as a means to further the State of New Jersey's ongoing commitment to equal justice for all.

II. INTRODUCTION

Municipal Courts across the country have been subjected to scrutiny as a result of court practices highlighted in the Department of Justice's 2015 investigation of the Ferguson Police Department in Missouri, and directly addressed in the subsequent Department of Justice "Dear Colleagues" letter[1] to state Supreme Court Justices and state Court Administrators in the United States. (Appendix A). In that letter, the Department of Justice identified a number of basic constitutional principles required of courts, all related to the enforcement of fines and fees, and all grounded in the rights to due process and equal protection. New Jersey Municipal Courts have faced similar criticism. A November 27, 2016 article, and a follow-up article published on November 30, 2016, both from the Asbury Park Press, articulate a public perception that municipalities are increasingly relying on fines from tickets as a source of significant revenue, calling into question the overall fairness of such practices. (Appendix B).

The principles expressed in that letter–equal access to the courts and fair justice for all–mirror the core values of the New Jersey Judiciary. Those values have been the driving force of every Judiciary initiative in recent history. They are the bedrock of the Judiciary's tireless commitment to ensuring that the avenues of justice remain open and fair to all members of society, including the most vulnerable, and have provided the inspiration for the New Jersey Judiciary to remain on the forefront of equal justice initiatives. New Jersey's 2017 implementation of criminal justice reform[2], the effective elimination of cash-based bail, is the most recent example of those efforts.

Building on ongoing court improvement efforts, significant concerns regarding New Jersey Municipal Courts, and motivated by the urgency suggested in the "Dear Colleagues" letter to examine the courts most frequently accessed by members of the public, Chief Justice Stuart Rabner constituted the Supreme Court Committee on Municipal Court Operations, Fines, and Fees in March of 2017. The Committee was charged with conducting a holistic review of Municipal Court practice, with an eye towards reform. The review required an examination of current laws and policies, including, but not limited to, the adequacy of notice provided to defendants before a driver's license suspension, the sufficiency of procedural safeguards for defendants who may be unable to pay a fine, whether an

[1] On December 21, 2017, the Department of Justice rescinded this letter and 24 other documents as "unnecessary, inconsistent with existing law, or otherwise improper." Press Release, Dep't of Justice, Office of Public Affairs, Attorney General Jeff Sessions Rescinds 25 Guidance Documents (December 21, 2017), available at https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-25-guidance-documents. (Appendix A-3).

[2] This monumental change in New Jersey's justice system was authorized by Constitutional amendment, N.J. Const., art. I, ¶ 11, and by statute, N.J.S.A. 2A:162-15 to 2A:162-26, and is referred to as "criminal justice reform."

acquitted defendant can be assessed court costs, the use of excessive contempt sanctions, whether sufficient technology is available to the Municipal Courts and their users, and the independence of our Municipal Courts. (Appendix C).

Committee membership was comprised of Superior Court judges, Presiding Municipal Court judges, Municipal Court judges, court executives from both the Administrative Office of the Courts (AOC)[3] and vicinages, Certified Municipal Court Administrators, members of the executive branch, representatives of the New Jersey State Bar Association and New Jersey League of Municipalities, and esteemed legal practitioners familiar with Municipal Court practice.

This report and the recommendations that it contains are the result of the Committee's diligent efforts to develop proposals that will further the Judiciary's goal of providing equal justice for all court users, including the most impoverished. The approach is multi-faceted, emphasizing all components of a fair justice system: judicial independence; notice and access to court; the review and modification of the tools used by Municipal Courts to both bring defendants into court and to collect financial obligations; appropriately limiting the use of warrants and license suspensions to enforce financial obligations; and the exploration of all available sentencing alternatives. The Committee has carefully balanced this noble objective with the need to maintain an appropriate level of defendant accountability, equally integral to the justice system. To that end, the Committee has developed both principles to guide Municipal Courts through this and future reform, as well as recommendations in furtherance of each maxim.

A. METHODOLOGY

After convening in March of 2017, the Committee split into four subcommittees to address subject matter areas consistent with its charge:

INDEPENDENCE OF MUNICIPAL COURTS

Charge: Review and make recommendations to change the appointment and reappointment process for Municipal Court judges, to enhance the independence of the Municipal Courts, and to recommend procedural and statutory changes in conformance with the above.

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[3] The Administrative Office of the Courts is tasked with fulfilling the court management duties constitutionally assigned to the Chief Justice. N.J. Const., art. VI, § VII, ¶ 1 ("The Chief Justice of the Supreme Court shall be the administrative head of all the courts in the State. He shall appoint an Administrative Director to serve at his pleasure.").

DRIVER'S LICENSE SUSPENSION[4]

Charge: Review and make recommendations to enhance fairness in the process of license suspension surcharges and fees, to explore alternatives to license suspensions, to review the adequacy of notices provided to defendants before a driver's license suspension, to explore the use of excessive and automatic surcharges and fines, and to recommend procedural and statutory changes in conformance with the above.

INDIGENT DEFENDANTS, ABILITY TO PAY, AND CONTEMPT

Charge: Review and make recommendations for sentencing alternatives to fines, to limit the use of contempt, to require consideration of the economic hardship a fine may have on a defendant, to reduce fines and fees for less serious offenses, to establish a uniform statewide guideline for fines and fees, and to recommend procedural and statutory changes in conformance with the above. This subcommittee will also be tasked with determining whether an acquitted defendant can be assessed court costs.

TECHNOLOGY IN THE MUNICIPAL COURTS

Charge: Determine whether sufficient technology is available to the Municipal Courts, identify technological improvements that can be made to better assist court users both in and outside of the courtroom, and to make recommendations for technological enhancements to improve processes in all Municipal Courts.

Subcommittee membership was structured to include a balance of Judges, non-judge court officials, legal practitioners, and other experts.

Both the larger Committee and each subcommittee met multiple times over the remainder of 2017 and into 2018. Committee meetings were used to discuss major themes of the charge. Subcommittee meetings were used to review significant policy papers, discuss the assigned subject area, review research, and propose and develop recommendations. Both Committee and subcommittee meetings included presentations from persons involved or familiar with various aspects of Municipal Court reform, including Assignment Judge Linda R. Feinberg (ret.); Assignment Judge Lawrence M. Lawson (ret.); Presiding Municipal Court Judge Frank J. Zinna (ret.); Laurie Dudgeon, Esq., Administrative Director of the Courts of Kentucky; and Daniel Phillips, then Legislative Liaison, AOC.

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[4] A Municipal Court can order or initiate the suspension of a driver's license or vehicle registration as part of a defendant's sentence or due to a failure to appear or failure to pay a fine, fee, or surcharge. N.J.S.A. 2C:46-2, consequences of nonpayment, summary collection; N.J.S.A. 39:4-139.10, failure to respond, pay parking judgment, penalties; R. 7:8-9, procedures on failure to appear. For the sake of brevity, references to license suspensions throughout this report should be read as encompassing both license suspensions and vehicle registration suspensions.

The Committee also looked to the work, guidance, and expertise demonstrated by other pre-existing groups:

- The National Task Force on Fines, Fees and Bail Practices (National Center for State Courts), of which Chief Justice Stuart Rabner is a member;
- The Subcommittee on Judicial Independence in the Municipal Courts (New Jersey State Bar Association), of which Assignment Judges Feinberg and Lawson were members;
- The Equal Justice Working Group of the Municipal Conferences[5], chaired by Judge Louis J. Belasco, Jr., P.J.M.C., member to the Committee; and
- The Contempt Working Group of the Municipal Conferences, which was also chaired by Judge Belasco, Jr., P.J.M.C.

At later meetings of the Committee, the chair of each subcommittee made an oral presentation of the proposed recommendations to the full Committee. Discussions and comments were solicited from members, both verbally and in writing. Those recommendations were incorporated into this report, which was reviewed, revised, and approved by the full Committee.

Throughout this process, great care has been taken to obtain a cross-section of all pertinent points of view in addressing each subject area, with an emphasis on achieving a consensus amongst members on all recommendations.

B. Overview of Municipal Courts in New Jersey

An examination of Municipal Court operations, fines, and fees requires first an understanding of current practices. What follows is a primer on the structure of the Municipal Court system, current enforcement and collection practices, the effects of these practices on indigent defendants, and a discussion of prior reform efforts.

1. Structure of the Municipal Court

New Jersey Municipal Courts are courts of limited jurisdiction, constitutionally authorized by N.J. Const., art. VI, § I, ¶ 1. Their creation and operation is governed by statutes primarily found in N.J.S.A. 2B:12-1 et seq. The organizational structure, financial funding, and collection processes of the Municipal Courts are discussed below.

[5] The Conference of Presiding Municipal Court Judges meets on a monthly basis to discuss ongoing, new, and upcoming issues relating to the municipal courts. The Conference of Municipal Division Managers holds similar meetings in schedule and substance. The two conferences are collectively referred to as the "Municipal Conferences."

i. ORGANIZATIONAL STRUCTURE

By statute, every municipality in New Jersey must establish a Municipal Court to adjudicate traffic and petty criminal offenses that occur within its borders. N.J.S.A. 2B:12-1a. Although a Municipal Court is required, municipalities may choose from three types of Municipal Courts that can meet the particular needs of a municipality: a single municipal court; a joint court; or a shared municipal court.[6]

Single Municipal Courts serve a single municipality. Joint courts or shared service courts are created through an agreement between municipalities. A joint Municipal Court is one in which two or more municipalities agree to form a single court. N.J.S.A. 2B:12-1b. Their caseloads and bank accounts are commingled to form one unified court. Therefore, four municipalities that agree to form a joint Municipal Court will be counted as having only one Municipal Court. Conversely, municipalities participating in a shared services agreement simply share resources as a way to hold down costs. This may include sharing courtrooms, chambers, equipment, supplies, employees, judges, and/or the court administrator. N.J.S.A. 2B:12-1c. Importantly, though, neither the cases nor the bank accounts are commingled, and the courts retain their individual identities. Thus, if four municipalities agree to only share services, they are treated as four individual Municipal Courts.

The majority of Municipal Courts do not meet daily, with most having court sessions on a part-time basis. This could mean meeting two to three times a week, once a week, or even once a month. In light of this, many municipalities in New Jersey take advantage of the cost-saving measures presented by a shared services or joint agreement. As of the writing of this report, New Jersey has 565 municipalities and 515 Municipal Courts.[7] Of those 565 municipalities, 316 have individual, stand alone courts, 173 municipalities share services, while the remaining 76 municipalities have agreed to form 24 separate joint Municipal Courts. This is an area that the Committee found ripe for reform. Consolidated and streamlined courts not only enhance efficiencies, but can protect the independence of the Municipal Courts. As will be discussed later in this report, the Committee strongly recommends statutorily mandating consolidation in furtherance of both of these endeavors.

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[6] Additionally, if a county meets certain population and density requirements, that county may establish a central Municipal Court that has county-wide jurisdiction. N.J.S.A. 2B:12-1e.

[7] Two of the 515 Municipal Courts are unique and warrant further explanation. First is the Bergen Central Municipal Court, a Municipal Court with vicinage-wide jurisdiction. Bergen County is the only county to meet the statutory population and population density requirements. N.J.S.A. 2B:12-1e. Second is the Court of Palisades Interstate Park, which has the same powers and jurisdiction of a municipal court with respect to offenses that occur in the portion of the Palisades Interstate Park that is within the State of New Jersey. This court was also created by statute. N.J.S.A. 32:14-22, 32:14-23.

Leadership at Municipal Courts is helmed by that court's Municipal Court judge or chief judge, in instances where a court has multiple municipal judges. N.J.S.A. 2B:12-8. Municipal Court judges are appointed to serve for three-year terms, and although eligible for repeated reappointment, are not eligible for tenure. N.J.S.A. 2B:12-4a. The appointment process is governed by statute and in most instances rests with the governing body of the municipality. N.J.S.A. 2B:12-4b. The exception is for judges of joint Municipal Courts and a central Municipal Court, who must be nominated and appointed by the Governor with the advice and consent of the Senate. N.J.S.A. 2B:12-4b, c.

Notably, there is no uniform appointment or reappointment process or procedure utilized in the State of New Jersey, and, similarly, there is no uniform salary requirement, as most positions are part-time. Municipal judges are thus paid annual salaries set by ordinance or resolution of the establishing county or municipality, N.J.S.A. 2B:12-7b, with many Municipal Court judges sitting as judge in multiple Municipal Courts. Indeed, as of the publication of this report, there are approximately 314 Municipal Court judges sitting in the 515 Municipal Courts that serve New Jersey's 565 municipalities.

Although appointment and compensation for a Municipal Court judgeship is reliant on the other two branches of government, either locally or statewide, significant oversight remains with the Supreme Court and the vicinage Assignment Judge. The Chief Justice has the authority to designate a judge of the Superior Court or one of the Municipal Courts to serve as the Presiding Judge of the Municipal Courts for a vicinage, who may exercise powers delegated to him or her by the Chief Justice, or as established by the Rules of Court. N.J.S.A. 2B:12-9. Presently, all Presiding Municipal Court Judges also sit as Municipal Court judges. Presiding Judges that are Municipal Court judges are to be paid by the State for the time related to assigned duties, N.J.S.A. 2B:12-9, and Presiding Judges who are Superior Court judges are fully funded by the State. Further, deviations from the above appointment procedures, such as the authority for a municipality to appoint one or more additional or temporary municipal court judges, and the cross-assignment responsibilities of each municipal court judge fall under the authority of the vicinage Assignment Judge. N.J.S.A. 2B:12-6.

The approximately 2,800 remaining Municipal Court employees across the state are hired by the municipality where the court is located. Those employees include, amongst others, Municipal Court Directors, violations clerks, and other clerical staff. Although all are critical to the operation of the Municipal Courts, there are two that are significant because their scope of responsibilities can include quasi-judicial determinations. They are Municipal Court Administrators and Deputy Municipal Court Administrators (hereinafter referred to jointly as "Court Administrators").

Court Administrators are statutorily mandated Municipal Court employees who are compensated by the municipality/county and who, pursuant to statute, can be authorized by a Municipal Court Judge to "administer oaths for complaints filed with the Municipal

Court and to issue warrants and summonses." N.J.S.A. 2B:12-10, -21a. In light of this potential for great responsibility, all administrators are either credentialed by way of certification, accreditation, or conditional accreditation, or in the process of obtaining one of those credentials.

The credentials are administered by the Municipal Court Administrator Certification Board (Certification Board), an entity created and overseen by the New Jersey Supreme Court. N.J.S.A. 2B:12-11; R. 1:41-4(f); M.C.A.C.B.Reg. 2.2. All include completion of some or all of the Principles of Municipal Court Administration (POMCA) training, a four-part, 25 day training implemented by the Municipal Court Services Division.[8] Certification candidates are also required to pass a written and oral examination, as administered by the Certification Board, and complete a court improvement project that is reviewed and approved by the Certification Board. Once a certification candidate completes POMCA, passes the oral and written examinations, and completes a court improvement project, they are recommended by the Certification Board to the Supreme Court for certification. Only the Supreme Court can designate a candidate as a certified Municipal Court Administrator. R. 1:41.

ii. FINANCIAL STRUCTURE – FUNDING AND COLLECTION

The funding structure for Municipal Courts is straightforward—each court is funded by the municipality, or municipalities, in the case of joint or shared courts. This funding includes salaries for judges and staff, facilities, and all other expenses, and is established as part of the governing body's annual budget. It is important to note that prior to the Municipal Court budget being established, it must first be reviewed and approved by the vicinage Assignment Judge to ensure that the proposed budget sufficiently captures the resources that the court will need to operate.

The financial collection structure for Municipal Courts is much broader, and what follows is a non-exhaustive glimpse of the collection complexities faced by the courts. The Municipal Courts collect a number of legal financial obligations, including fines for offenses, court costs, and surcharges, not all of which are retained by the municipality. Penalties for state offenses are generally governed by state statutes, with state law setting an exact amount or range for a fine. N.J.S.A. 2C:43-3(c); N.J.S.A. 40:49-5; N.J.S.A. 40:69A-29. For disorderly persons offenses, petty disorderly persons offenses, and local ordinances (including most parking offenses), all fines go to the municipality. N.J.S.A. 2C:46-4(c). For traffic offenses, in most instances in which a local police officer wrote the ticket, one-half of the fine money goes to the municipality, with the other half going to the

[8] The Municipal Court Services Division is a division in the Office of Trial Court Services of the Administrative Office of the Courts. The Municipal Court Services Division develops and coordinates implementation of high-level policy for the municipal courts; provides technical and legal support as needed; and gathers statistics regarding municipal courts.

county. N.J.S.A. 39:5-40 to –41. Otherwise, the collected money is forwarded to the state. N.J.S.A. 39:5-40. For local ordinance violations, municipalities may set their own fine amounts or ranges within the statutory maximum, as established by N.J.S.A. 40:49-5, and collected fines go to the municipality. Finally, approximately 60 funds linked to individual statutes have been created, and where appropriate, collected amounts are sent to those funds. The processes described above are the norm, and are followed unless otherwise required by statute.

Taken together, the Municipal Courts can be a considerable source of revenue—during calendar year 2017, more than $400 million was collected, with more than half of that total being turned over to municipalities. While a significant portion of the collected monies goes to the state and counties, the vast majority of monies turned over to municipalities from the courts go to the respective municipality general fund and can be used for any purpose. This includes salaries of elected officials, judges, and municipal employees, roads, and other public works projects. The costs for operating the municipal court in a municipality is just one of those costs to which court funding is allocated.

Beyond the assessment and collection of penalties, the Municipal Courts collect court costs intended to fund their operation, as well as other important state initiatives. A Municipal Court can assess court costs up to $33, with all but $5.50 going to the municipality to fund municipal court operations. That remaining $5.50 is used to fund the statewide municipal computer systems and training for emergency medical technicians (EMT). N.J.S.A. 22A:3-4. A similar funding structure is found in N.J.S.A. 2B:24-17, which allows municipalities to pass an ordinance requiring a defendant to pay up to $200 when applying for a municipal public defender. The fee may be waived in whole or in part if the defendant demonstrates an inability to pay.

Additionally, there are other mandatory penalties and costs that the Municipal Court must collect. These are generally referred to as surcharges. They must be imposed as part of sentencing, and are governed by state statute. Collected surcharges are then electronically conveyed to the appropriate specific funds established by the state. The surcharges mandated are dependent on the type of offense for which a defendant has been convicted.

For all Title 39 motor vehicle offenses, as set forth in N.J.S.A. 39:5-41, the below surcharges are universal, and must be assessed and transferred to the appropriate fund:

- $1 for the Body Armor Replacement Fund, as created by N.J.S.A. 52:17B-4.4;
- $1 for the New Jersey Spinal Cord Research Fund, as created by N.J.S.A. 52:9E-9;
- $1 for the Autism Medical Research and Treatment Fund, as created by N.J.S.A. 30:6D-62.2;
- $2 for the New Jersey Forensic DNA Laboratory Fund, as created by N.J.S.A. 53:1-20.28a; and
- $1 for the New Jersey Brain Injury Research Fund, as created by N.J.S.A. 52:9E-9.

The above list is not exhaustive, and defendants may be subject to other individual statutory surcharges that are associated with certain offenses.

The below list includes some statute-specific surcharges. In these instances, some of the amounts indicated are both assessed and collected by the Motor Vehicle Commission (MVC):

- For the Unsafe Driving Surcharge Revenue Fund, as created by N.J.S.A. 17:29A-35b(2), $250 is assessed for violations of N.J.S.A. 39:4-97.2, unsafe driving. This surcharge is assessed and collected by the court.
- For the New Jersey Automobile Insurance Guaranty Fund, as created by N.J.S.A. 17:29A-35b(2), the following fees are assessed and collected by MVC:
    - $3,000 assessed for first and second convictions under N.J.S.A. 39:4-50, driving while intoxicated;
    - $3,000 assessed for violations of N.J.S.A. 39:4-50.a4, refusal; and
    - $4,500 assessed for third conviction of N.J.S.A. 39:4-50, driving while intoxicated.
- The following fees are also assessed and collected by MVC, pursuant to N.J.A.C. 13:19-13.1:
    - $300 assessed for violations of N.J.S.A. 39:3-10, unlicensed driver or driving with an expired license;
    - $300 assessed for violations of N.J.S.A. 39:4-14.3e, failure to insure a motorized bicycle;
    - $750 assessed for violations of N.J.S.A. 39:3-40, driving with a suspended license; and
    - $750 assessed for violations of N.J.S.A. 39:6B-2, operating an uninsured vehicle.

SCENARIO 1:
JULIE'S SPEEDING TICKET

Julie received a speeding ticket for traveling 65 in a 55 mph zone. The ticket was payable, and could be paid online on NJMCdirect.com for a penalty of $95.00. That amount included the fine, court costs, and surcharges. Because a guilty finding results in 2 motor vehicle points being assessed by MVC, Julie appeared for her court date to seek a different result. After discussion with the prosecutor, the charge was amended to unsafe driving, N.J.S.A. 39:4-97.2, a violation that carries no motor vehicle points but a $250 surcharge. Julie's total penalties went from $95 to $389.

$100	FINE
$33	COURT COSTS
$1	BODY ARMOR FUND
$1	SPINAL CORD FUND
$1	AUTISM FUND
$2	DNA LAB FUND
$1	BRAIN INJURY FUND
$250	UNSAFE DRIVING FUND
$389	TOTAL

The landscape is even more complex for disorderly persons offenses and petty disorderly persons offenses, as the assessment of a particular surcharge is dependent on convictions in specific chapters of the criminal code. As there are many individual statutes with unique

surcharges, what follows is a small sample of the surcharges assessed and imposed by the Municipal Court at the time of sentencing:

- $100 assessed on domestic violence offenders to fund grants for domestic violence prevention, training, and assessment, as created by N.J.S.A. 2C:25-29.4;
- $250 for the Computer Crime Prevention Fund for disorderly persons/petty disorderly persons violations under Title 2C, Chapter 20, as created by N.J.S.A. 2C:43-3.8;
- $500 for the Drug Enforcement and Demand Reduction Fund for disorderly persons/petty disorderly persons violations under Title 2C Chapter 35, controlled dangerous substances, or Chapter 36, drug paraphernalia, as created by N.J.S.A. 2C:35-15;
- $50 criminal laboratory fee for each conviction under Title 2C, pursuant to N.J.S.A. 2C:35-20a;
- $50 for the Victims of Crime Compensation Office for disorderly persons/petty disorderly persons violations under Title 2C, and certain Title 39 violations, as created by N.J.S.A. 2C:43-3.1a(2)(a), (c); and
- $75 for the Safe Neighborhoods Services Fund for disorderly persons/petty disorderly persons violations under Title 2C, and N.J.S.A. 39:4-50, driving under the influence, as created by N.J.S.A. 2C:43-3.2.

SCENARIO 2:
STEVE'S DRUG CHARGE

Steve received a summons for possession of a small amount of marijuana. He applied for a Municipal Public Defender (a $200 fee) and was assessed a $100 fine by the court. However, the $675 in related surcharges, as well as the public defender fee, ballooned Steve's total costs for resolving the charge from $100 to $1,008.

$200	APPLICATION FEE FOR PUBLIC DEFENDER
$100	FINE
$33	COURT COSTS
$500	DRUG ENFORCEMENT AND DEMAND REDUCTION
$50	LAB FEE
$50	VICTIMS OF CRIME COMPENSATION
$75	SAFE NEIGHBORHOOD SERVICES FUND
$1,008	TOTAL

Finally, there are application fees that are assessed by the Municipal Court for participation in diversionary programs. They include the following:

- $75 application fee for participation in conditional discharge, N.J.S.A. 2C:36A-1, pursuant to N.J.S.A. 2C:43-3.1(2)(d);
- $75 application fee for participation in conditional dismissal, N.J.S.A. 2C:43-13.1, et seq., pursuant to N.J.S.A. 2C:43-13.8;

The Committee is deeply concerned about what can be a never-ending imposition of mandatory financial obligations upon defendants that extend beyond the fine that is associated with the violation. While many of these fees and surcharges, and the funds that they support, are well intended, they ultimately have little to do with the fair administration

of justice. They can be financially devastating on defendants, have a disproportionately negative impact on the poor, and often become the starting point for a perpetual cycle of court involvement for defendants with limited resources. Because most of these fees are statutorily mandated, giving no option to the courts in terms of their being ordered, this is an issue that can only be addressed by the legislature.

As indicated above, while the collection responsibilities of a municipal court are complex, these responsibilities are seamlessly executed by the technology that has been developed by the AOC. The scope of that technology, and its complete integration into case processing, will be discussed below.

iii. TECHNOLOGY IN THE MUNICIPAL COURTS

Over the last 30 years there has been a tremendous evolution in New Jersey's Municipal Court system, one driven by technical innovation and aspirations of excellence in the service of justice and the face of an ever-increasing case load. In 1985, the New Jersey Supreme Court approved the first Improvement Plan for the Municipal Courts. Prior to and at that time, the Municipal Court system was made up of 540 local courts that operated largely independently and without integrated and uniform statewide technology. That plan outlined several major initiatives and established a vision of a court system in which its citizens would be treated consistently and with the highest level of efficiency.

Today, New Jersey's 515 Municipal Courts utilize the same, unified computer system. As a result, court processes are standardized statewide, fiscal operations are computerized, police enter tickets electronically, information flows automatically to numerous other agencies, defendants pay financial penalties online, and more than a million matters are resolved without a single court employee ever touching a paper document. The Municipal Courts process approximately six million cases annually, and these technological enhancements have been crucial to ensuring that the courts meet their goal of resolving cases that come before them within 60 days. (Appendix D). Further, currently over half of all tickets in Municipal Courts are filed electronically, ensuring accuracy, data integrity, and speeding processing exponentially. The Automated Traffic System/Automated Complaint System (ATS/ACS) and NJMCdirect.com are the central elements of this unified system. These components together form the core of the technology in our Municipal Courts and are central to our efficient administration of justice.

AUTOMATED TRAFFIC SYSTEM/AUTOMATED COMPLAINT SYSTEM

The Automated Traffic System (ATS), initially piloted in 1986, allows traffic tickets from anywhere in the state to be entered into a centralized computer system and then tracked and processed automatically. The Automated Complaint System (ACS) followed via a 1993 pilot, provides for the automated court processing of all disorderly persons/petty

disorderly persons and other non-motor vehicle municipal offenses, such as local municipal ordinances and Administrative Code violations. The ACS system is the technical starting point for almost all indictable charges. The indictable complaint is accepted for filing by the Municipal Court, then transferred to Superior Court. Referred to jointly as ATS/ACS, both systems have been in place statewide in every municipal court since January 1, 1997.

Together, ATS/ACS provides for an electronic case management procedure that offers consistent, uniform court processes and operations guided by both law and court administration protocol. This ensures the efficient management of resources and flow of data between the courts and other agencies, including issuance of bench warrants and license suspensions. Crucially, the ATS/ACS system also automates the handling of financial matters relating to Municipal Court cases. Fines, surcharges, court costs, and other monies collected by each Municipal Court are disbursed electronically to state government executive branch entities and agencies, and to the numerous special funds discussed above. The system thus handles everything from initial processing or issuance of a traffic ticket to final disposition and payment, and all aspects of case management in-between. Processing more than one million computer transactions daily, ATS/ACS has been crucial to enhanced and standardized customer service in the Municipal Courts.

NJMCDIRECT.COM

In 2002 the Judiciary premiered an online ticket payment service, NJMCdirect.com. This is a website with a portal that allows the public to access court information and satisfy certain moving and parking tickets quickly and conveniently, providing court users with services that previously would require them to appear in court. These include the ability for members of the public to conduct a statewide search for all outstanding tickets; providing drivers with the opportunity to view and pay fines without the need to come to court; granting access to an electronic record of court ordered time payments; the ability to make required installment payments on-line; payment of tickets where the defendant's license has been suspended; a direct link to the Motor Vehicle Commission's website for license restoration; and driving directions to each Municipal Court.

NJMCdirect.com is fully integrated with ATS/ACS, which means that following a payment, court records and motor vehicle records are updated immediately, and, where appropriate, matters will be adjudicated and the funds distributed. The success and utilization of NJMCdirect.com cannot be understated. Nearly half of all eligible tickets are resolved remotely through NJMCdirect.com, demonstrating its central role in enhanced customer service and court efficiency.

FUTURE ENHANCEMENTS

As a result of the prior technological enhancements, Municipal Courts have been better able to handle the increase in caseload. Approximately six million cases are processed by

the Municipal Courts annually, each of which the courts strive to resolve within 60 days. While prior technological enhancements have made this goal attainable, all future enhancements must be made with an eye toward further efficiency. Fully converting ATS/ACS into a more comprehensive web-based system called the Municipal Automated Complaint System (MACS). This new system will allow uninterrupted and seamless operation by the Municipal Courts and increased access to the Internet. Additionally, expanded website functions are also being explored, to ensure that the interactive Municipal Court webpage is continually upgraded for better customer service.

Technology improvements in the Municipal Courts have come a long way over the last 20 years, but as in other areas, more must be done. The Committee is recommending additional enhancements that will improve efficiencies for both court users and Municipal Court staff, such as significantly expanding remote actions that defendants can take on their case, including rescheduling an initial court date and the availability of partial payment options. The Committee is also recommending enhancements that will provide for better accountability to ensure fairness in the administration of justice, such as in the tracking of the imposition of contempt sanctions by judges and the establishment of objective, measurable criteria by which sitting Municipal Court judges can be evaluated. The Committee is confident that the benefits to these improvements will impact all Municipal Court stakeholders and court users, regardless of economic status.

2. Life of a Municipal Matter

A municipal matter begins with the service of a charging document—a complaint-warrant or summons. Depending on the type of matter, the defendant may plead guilty and pay the fine or be required to appear in court to enter a plea. Of the approximately six million matters processed through the Municipal Courts on an annual basis, over five million are nearly evenly split between traffic and parking matters, and approximately 3.1 million are resolved without a defendant coming to court. Those matters are instead resolved by the court user pleading guilty and paying his or her penalties online through NJMCdirect.com, via check sent to the municipal court, or cash or credit card processed at (where accepted) a municipal court. Resolution via these methods is swift, the majority of which occur within two weeks of the charging document being issued.

For the remaining matters, the time between complaint initiation and disposition of a municipal matter can be quick. Oftentimes a mandatory court appearance will result in the first appearance, arraignment, plea agreement, plea colloquy, and sentencing all occurring during one court appearance. In some instances disposition is delayed by a defendant's failure to appear or because of delays in obtaining discovery. Other times, although a matter is regarded as disposed upon a finding or admission of guilt and sentencing, defendants remain engaged with the Municipal Court until their sentence is satisfied and their legal financial obligations are paid in full.

Because this report contains recommendations addressing enforcement mechanisms utilized in Municipal Courts to gain compliance, the below section will explain the current processes used to both bring a defendant to court and to ensure the complete payment of court-assessed fines and fees, as divided into pre- and post-disposition processes.

i. PRE-DISPOSITION ENFORCEMENT: BRINGING A DEFENDANT TO COURT

Regardless of the charging document used, a defendant charged in Municipal Court must either respond by or appear in court on a date certain. A failure to do so is referred to as a failure to appear (FTA), and triggers a sequence of escalating court responses that are governed by statute and R. 7:8-9, and have been programmed into ATS/ACS. The first step in this sequence is always the issuance of a notice informing the defendant of the failure to appear, instructing the defendant to appear in court on a date certain or to contact the court, and advising of the potential consequences of a continued failure: issuance of a bench warrant or a license suspension. A defendant receiving this notice is also assessed a $10 surcharge for the notice, N.J.S.A. 2B:12-31e(2)(b), and for each supplemental failure to appear notice. N.J.S.A. 22A:3-4.

If a defendant fails to respond to the notice, the court may issue a bench warrant for the defendant's arrest. R. 7:8-9. Simultaneous to the issuance of a warrant or after, a Municipal Court may also seek to have a defendant's license suspended. N.J.S.A. 2B:12-31; N.J.S.A. 39:4-139.10. There are two paths to license suspension, each dependent on the type of offense for which a defendant has been charged. For unanswered moving violations, the court may issue an order sending a matter to "close out". This does not result in an immediate suspension, but rather, the Municipal Court "closes" the matter in its records and notifies the Motor Vehicle Commission of the

SCENARIO 3:
TINA'S PARKING TICKET

Tina received a parking ticket after parking in front of her driveway. The ticket could be paid online for $54 through NJMCdirect.com. Tina misplaced the ticket and missed the due date. Although still able to pay online, a late fee was assessed and a notice was issued.

$54	PAYABLE AMOUNT
$10	FIRST LATE FEE FOR FAILURE TO PAY
$64	NEW PAYABLE AMOUNT

Tina once again misplaced the notice and did not pay the new payable amount by the new due date. A second late fee was assessed, and Tina was advised that if she did not pay by a date certain, her driver's license would be suspended.

$64	PRIOR PAYABLE AMOUNT
$10	SECOND LATE FEE
$74	NEW PAYABLE AMOUNT

Tina does not pay despite the notice. Her license is suspended and another fee is assessed for the order of suspension. Once she resolves her ticket, she will then need to pay a $100 license restoration fee to MVC to reinstate her license.

$74	PRIOR PAYABLE AMOUNT
$15	THIRD LATE FEE AND NOTICE OF LICENSE SUSPENSION
$3	MVC FEE ADDED UPON THE ISSUANCE OF AN ORDER OF LICENSE SUSPENSION
$100	MVC LICENSE RESTORATION FEE – TO BE PAID TO REINSTATE LICENSE
$192	TOTAL

unanswered charge. The MVC will then initiate its own procedures to suspend the license or driving privileges should the defendant remain unresponsive. For all other violations, the court may simply issue an order suspending the driver's license. A recent modification to this practice, provided pursuant to P.L. 2017, c.75, effective December 1, 2017, provides that for court-ordered suspensions for failures to appear for parking violations, MVC must delay the effective date of any suspension until 30 days after a supplemental notice is sent to the defendant advising of the reason for the suspension. Further, when a license suspension is ordered by the court, the defendant is assessed a $15 penalty and a $3 fee, the latter of which is transferred to MVC. N.J.S.A. 2B:12-31e(2)(a), (c).

These processes, guided by law and implemented through technology, are seamless. The New Jersey Municipal Court System benefits from a single, unified network system that allows for the efficient, uniform implementation of policies and practices. The enforcement process, implemented through ATS/ACS, places warrant and, where discretionary, license suspension eligible defendants on a list indicating their status that is available to the Municipal Court. The Municipal Court judge then makes a determination as to whether a bench warrant is issued or a license suspension is initiated.

ii. POST-DISPOSITION: COLLECTING FINES, FEES, AND SURCHARGES

A defendant who appears or responds to the municipal matter by the date certain can dispose of the charge through a guilty plea and payment of fine (either in court or, for traffic offenses only, online via www.NJMCdirect.com); guilty plea by way of a plea agreement and satisfaction of the penalty; or plead not guilty and try the matter to disposition.[9] In the event of a guilty plea or verdict, legal financial obligations—fines, fees, and surcharges—are expected due in full at the time of sentencing. However, there are a variety of sentencing alternatives available to defendants that are unable to pay their court-imposed legal financial obligations.

Alternatives are split into two general categories: those available at the time of sentencing, and those available after default. Eligibility for either is determined by statute. Defendants unable to pay a penalty in full at sentencing may be entitled to a time payment order; short-term payment order; or community service as a waiver of the financial component of the sentence. N.J.S.A. 2B:12-23.1a; N.J.S.A. 39:4-203.1. Time payment orders allow a defendant to pay a fine in monthly installments over a period of time. Short-term payment orders are utilized where a defendant is logistically unable to access funds to pay a legal financial obligation at the time of sentencing. As many Municipal Courts do not accept credit cards, short-term payment orders provide a defendant a brief opportunity, generally a few days or weeks, to secure the funds needed to pay a fine.

[9] Eligible defendants may also participate in diversionary programs available in municipal court, such as conditional dismissal, N.J.S.A 2C:43-13.1, and conditional discharge, N.J.S.A. 2C:36A-1.

There are a myriad of sentencing options available after a defendant defaults[10] on a time payment plan, including the following:

- Reduction or suspension of the penalty, or modification of the installment plan. N.J.S.A. 2B:12-23.1a(1); N.J.S.A. 39:4-203.1[11];
- Give credit against the amount owed for each day of confinement, if the court finds that the person has served jail time for the default. N.J.S.A. 2B:12-23.1a(2);
- Revocation of any unpaid portion of the penalty, if the court finds that the circumstances that warranted the imposition have changed or that it would be unjust to require payment. N.J.S.A. 2B:12-23.1a(3);
- Community service in lieu of payment of the penalty. N.J.S.A. 2B:12-23.1a(4);
- Imposition of any other alternative permitted by law in lieu of payment of the penalty. N.J.S.A. 2B:12-23.1a(5);
- Community service in lieu of incarceration related to nonpayment of the fine. N.J.S.A. 2B:12-23a; or
- Modification of the sentence with the person's consent. N.J.S.A. 2B:12-23a.

However, just as with a defendant who misses a court appearance, a failure to make a time payment triggers a sequence of notices and escalating court responses that, in the absence of a response from the defendant, can result in a bench warrant being issued and/or a license suspension. N.J.S.A. 2C:46-2; N.J.S.A. 2B:12-31; N.J.S.A. 39:4-203.2.

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[10] A default occurs when a defendant has failed to comply with the court-ordered payment plan; note that most defaults result in a driver's license suspension and/or the issuance of a warrant. N.J.S.A. 2B:12-31(a)(2), R. 7:8-9.

[11] Additionally, Title 39 defendants that the court has found to be indigent or participating in a government-based income maintenance program that demonstrate an inability to comply with a time payment order are eligible for waiver of any unpaid portion of that order up to $200, except for sentences for N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50a. Defendants that receive this waiver are required to "perform community service for a period of time to be determined by the court, or participate in any program authorized by law, or satisfy any other aspect of a sentence imposed." N.J.S.A. 39:4-203.1.

3. Impact of These Processes on Indigent Defendants

The pre- and post-disposition processes detailed above are legislatively created, authorized, and at times, mandated. These tools are regularly and lawfully used by the Municipal Court system to encourage compliance with court notices to appear and court orders to pay legal financial obligations. Many of the protocols are programmed into the Municipal Court computer system, ATS/ACS. However, these tools have very real, sometimes unintended consequences that can be economically overwhelming to an individual, quickly pushing a person living on the margins of low income into poverty or continuing the vicious cycle of impoverished defendants perpetually beholden to court fines and fees.

Scenario 4:
Dan's Ticket for Failure to Have His Car Inspected

Dan received a ticket for failing to have his car inspected. He had the option of paying the ticket online via NJMCdirect.com. The $130 payable amount includes the fines, court costs, and surcharges. Dan did not have the resources to pay the ticket by the due date and he did not contact the court.

As a result of the failure, a failure to appear notice was sent and a $10 late fee imposed. If Dan wishes to pay off the ticket without going to court he now must pay $140 by the date provided on the notice.

$130	Original Payable Amount
$10	Late Fee for Failure to Pay
$140	New Payable Amount

Dan remains unable to pay the amount assessed by the court. The Municipal Court has the discretion to issue a warrant for Dan's arrest. Instead, the Municipal Court opts to "close out" his case to MVC, who will initiate the suspension process. Once Dan is able to satisfy his $140 ticket, he will then need to pay a $100 license restoration fee to MVC to reinstate his license.

$140	New Payable Amount Due After License Suspension
$100	MVC License Restoration Fee – To Be Paid Once License is Reinstated
$240	Total

A defendant arrested on a bench warrant who is unable to satisfy bail often remains incarcerated until either his or her next scheduled court appearance or their bail is reduced. This scenario highlights the very purpose of criminal justice reform—to end pre-disposition incarceration due to an inability to pay money bail. Further, in the majority of instances, this consequence is in all likelihood disproportionately harsh compared to the ultimate penalty for the offense charged—a monetary fine. The detrimental effects cannot be overstated. Even a brief period of incarceration may cause a person to lose his or her job and their dependents, their home, and may ultimately be more costly to taxpayers than the total fines due. The Committee is profoundly concerned about the excessive imposition of financial obligations and the equally excessive use of warrants as a collection mechanism. As a result, the Committee makes several recommendations in this report to put limits on the excessive enforcement and issuance of bench warrants to collect financial obligations that have little or no connection to the fair administration of justice.

License suspensions also have far-reaching effects, as highlighted by the 2006 Motor Vehicles Affordability and Fairness Task Force Report. (Appendix E). In a survey conducted of individuals that had at that time or previously had their license suspended, 42% lost their jobs as a result of the suspension; 45% who lost their job as a result of the suspension could not find another job; and 88% of those that were unable to find another job reported a decrease in income. (Appendix E). Economically destabilized families and dependents of those defendants also suffer the aftermath of these effects.

Other jurisdictions have been receptive to this reality, and a trend has emerged to cease the practice of suspending a driver's license unless the court first determines that a defendant has the ability to pay but is willfully refusing to do so. (Appendix F). Prior to a license suspension occurring, New Jersey provides multiple court notices to defendants who fail to pay their court-imposed financial obligations, with direction that the defendant can come to court to address the matter. The Committee proposes, in Recommendation 20, pp. 52-53, that such notices be made even more user-friendly and informative. The Committee strongly urges that New Jersey explore ways to alleviate the impact of license suspensions with the goal of reducing the number of license suspensions, particularly for minor offenses and for minimal outstanding financial obligations.

SCENARIO 4 (CONT'D): DAN'S TICKET FOR FAILURE TO HAVE HIS CAR INSPECTED

Dan was not able to pay the $140 ticket or the anticipated restoration fee. He continued to drive to and from his place of employment on his now suspended license. He was pulled over, charged, and found guilty of the new offense of driving with a suspended license. He was ordered to pay the following:

$500	FINE TOTAL
$33	COURT COSTS TOTAL
$1	BODY ARMOR FUND
$1	SPINAL CORD FUND
$1	AUTISM FUND
$2	DNA LAB FUND
$1	BRAIN INJURY FUND
$750	MVC SURCHARGE (ASSESSED AND COLLECTED BY MVC OVER THE COURSE OF 3 YEARS)
$1,289	TOTAL FOR DRIVING WHILE SUSPENDED

At that same court appearance, Dan was also found guilty and ordered to pay the following on his outstanding ticket for the failure to have his car inspected:

$140	FINE, COURT COSTS, SURCHARGES, AND LATE FEE
$100	MVC LICENSE RESTORATION FEE
$249	TOTAL FOR SPEEDING

$1538 GRAND TOTAL

As a result of his inability to pay his original $130 penalty and contact the court, Dan's penalties have gone from $130 to $1,538.

Regardless of whether a bench warrant and/or license suspension has been issued, additional fees related to delinquency and unrelated to other surcharges can be assessed on the delinquent defendant. For each supplemental notice related to a failure to appear, a defendant is assessed an additional $10. N.J.S.A. 22A:3-4; N.J.S.A. 2B:12-31e(2)(b). If the

Municipal Court determines that a license suspension is required, a $15 penalty is assessed for an order of suspension, N.J.S.A. 2B:12-31e(2)(c), as well as an additional $3 fee that is ultimately transferred to the Motor Vehicle Commission. N.J.S.A. 2B:12-31e(2)(a). When a defendant is able to seek license reinstatement, generally after disposition or efforts are made to dispose of the Municipal Court matter, a $100 restoration fee must first be paid to the Motor Vehicle Commission. N.J.S.A. 39:3-10a.

The Committee fully recognizes the negative impact current statutorily authorized Municipal Court enforcement practices have on certain defendants, particularly those of lesser means. The Committee, however, is also cognizant of the goals behind the legislation authorizing or requiring such practices, which generally aim to promote public safety and uphold the authority and integrity of the judicial process. Balancing these oftentimes competing principles is the specific responsibility and challenge accepted by this Committee, and by other committees and judicial systems across the country. The recommendations later specified in this report are the by-product of this balancing.

4. PRIOR REFORM EFFORTS

Prior to the formation of this Committee, perhaps the most extensive committee-led examination of the Municipal Courts was undertaken in 1983 by the Supreme Court's Task Force on the Improvement of the Municipal Courts (hereinafter referred to as the "1983 Task Force"). The 1983 Task Force was charged with the goal of upgrading the status and improving the operation of New Jersey's Municipal Courts. To that end, the 1983 Task Force conducted an exhaustive study of the operation and administration of the Municipal Courts; statewide management structure; calendar management; Municipal Court personnel; budget and finances; trial and case processing; accountability and issues of public interest; and court facilities and operations. In 1985, a 200 page report was issued containing a number of significant recommendations. (Appendix G).

Over the course of the following decades, many recommendations contained within that report have been adopted, including a suite of 1993 legislative changes that have formed the Municipal Court system as we know it today. N.J.S.A. 2B:12-1 to -31. Significant recommendations from that report that have been adopted are identified below.

- The creation of a Municipal Presiding Judge position within each vicinage to assist the Assignment Judge in overseeing the operation of the Municipal Courts. This was codified by legislation in 1993, N.J.S.A. 2B:12-9;
- Requiring that a candidate for a Municipal Court judgeship be an attorney admitted to the practice of law for a minimum of five years. This was codified by legislation in 1993, N.J.S.A. 2B:12-7;
- The creation of a certification process for Municipal Court Administrators, as overseen by the Supreme Court and the AOC, N.J.S.A. 2B:12-11. The Supreme Court established the Municipal Court Administrator Certification Board in 1994;

- The creation of the Administrative Office of the Court's Municipal Court Services Division. The Municipal Court Services Division was formally established as a division within the Administrative Office of the Courts in 1986;
- The establishment of a uniform budget format to be promulgated by the Administrative Office of the Courts to aid the Presiding Municipal Court Judge and Municipal Court judge in ensuring that sufficient resources are allocated to operate the courts. A statewide budget package was officially promulgated in 2002; and
- The creation of a statewide computer system (ATS/ACS) for the issuance of traffic tickets and complaints by the local or state police or through citizen complaints. ATS was initially piloted in 1986, while ACS was piloted in 1993. The ATS/ACS system was fully functioning in every municipal court by January 1, 1997.

Notably, 1983 Task Force recommendations that were not adopted related to changing the appointment process, establishing the provision of tenure, and requiring uniform, capped salaries for Municipal Court Judges. Efforts to institute structural changes to the municipal system, be it through the creation of regional courts or the urging of consolidation of courts, have similarly been unsuccessful.

Those efforts preceded the 1983 Task Force, beginning in 1958 when then Chief Justice Joseph Weintraub called for the institution of a system of regional courts with judges appointed by the governor. These sentiments were again proffered in 1969 by then Administrative Director of the Courts Edward McConnell, in 1971 via an outside consultant who urged a similar restructuring, and, finally, in 1979 by then Chief Justice Richard J. Hughes, who further proffered that if the Legislature refuses to take initiative, the Court could do so as a "last resort." (Appendix G, pp. 241-242; Appendix H).

These and other recommendations for change, however, never gained the necessary public support needed for implementation. Former Chief Justice Robert N. Wilentz analyzed these early attempts and noted that the failure to restructure the municipal system was due in part to "a strong tradition of local self-government ... the people who have the power to make the appointment want to keep the power to make the appointment." (Appendix I). The Judiciary has instead been left to repeatedly urge and recommend that municipalities consider consolidation as it is authorized within the current legislative framework. Most recently, in 2010, Chief Justice Stuart Rabner distributed a report to the Governor and legislative leaders in the Senate and the Assembly. That report, titled the Municipal Court Consolidation Plan, provided a recommended blueprint to be followed by municipalities considering the establishment of either a joint court or shared court. (Appendix J).

Despite these obstacles, in the years since the 1983 Task Force, the Municipal Courts have continuously made statewide improvements to the operation of New Jersey's Municipal Courts. New Jersey remains on the forefront in regard to technological advancements, utilizing one of the United State's few unified systems based on a physically connected network. This has been accomplished through a number of statewide initiatives to support

the Municipal Courts, including upgraded networks and support systems; continuous enhancements to ATS/ACS; the roll-out of the Judiciary's online payment system, NJMCdirect.com; email; the provision of and continuous upgrade to computers for all users; printers; and the presence of internet access in all Municipal Courts.

Additionally, the AOC, through its Municipal Court Services Division, now provides oversight and assistance to the operation and administration of all local Municipal Courts. This ensures consistent statewide policy development and includes centralized training for both Court Administrators and Municipal Court judges. Further local oversight is provided by the vicinage Presiding Municipal Court Judge and Municipal Division Manager. Specifically, the Presiding Municipal Court Judge and Municipal Division Manager work together to provide crucial training, mentoring, oversight and support to the Municipal Court judges and staff in the vicinage, on behalf of the vicinage Assignment Judge.

There have likewise been significant reforms led by the Legislature. In 1997, the Legislature passed a law requiring each municipality to appoint at least one public defender, N.J.S.A. 2B:24-1 to -17, and in 1999, passed legislation requiring municipal prosecutors in every municipal court. N.J.S.A. 2B:25-1 to -12. To ensure the professionalism of Municipal Court staff, in 2006 a law was passed requiring the mandatory certification of Municipal Court Administrators. N.J.S.A. 2B:12-11. In 2011 this was complemented by a court rule requiring Deputy Court Administrators and Court Directors to hold the credential of accreditation. R. 1:41-3.

Over the past several years, there has been an increasing public focus on the impact of monetary court penalties on individuals, particularly those of limited income. (Appendix K). This focus culminated with the Department of Justice's 2015 investigation of the Ferguson, Missouri Police Department and Municipal Court, and was later addressed in the subsequent, since-retracted, Department of Justice "Dear Colleagues" letter to state Supreme Court Justices and state Court Administrators in the United States. (Appendix A-1, A-2). This scrutiny has included local media coverage of Municipal Court practices in New Jersey, with a concern regarding the high levels of fines and fees, and the court practices and use of enforcement tools to collect them. (Appendix L). This led to a legislative call for investigation into the Municipal Courts and reform, (Appendix B-2), but also inspired Judiciary-led efforts to document and address these concerns, both before and after distribution of the "Dear Colleagues" letter.

Preceding the Department of Justice's investigation and "Dear Colleagues" letter, the Municipal Conferences of the Judiciary created the Contempt of Court Working Group, which consisted of Municipal Presiding Judges, Municipal Division Managers, and AOC staff. That group reviewed the long-standing Municipal Court practice of imposing monetary sanctions on defendants who fail to appear or fail to pay penalties imposed after conviction. Such amounts—colloquially referred to as "contempt of court" amounts—are distributed to the municipality, entered into ATS/ACS with that notation, and have at times

called into question the independence of the Municipal Courts. Moreoever, the Contempt Working Group determined that the procedures required by R. 1:10-1, Contempt in Presence of Court; R. 1:10-2, Summary Contempt Proceedings on Order to Show Cause or Order for Arrest, and R. 1:2-4, Sanctions; Failure to Appear; Motions and Briefs, the only legal mechanisms for the imposition of contempt sanctions, are by all accounts not fully followed.

The Working Group completed a report capturing these findings, which was ultimately submitted to the Municipal Court Practice Committee during the 2015-2017 rule cycle. The Committee recommended that the Supreme Court adopt rule changes that would place financial caps on court sanctions for failure to appear, failure to pay, and contempt. (Appendix M). Further, upon issuance of those conclusions and notification to Municipal Court judges of the contempt amounts collected, significant internal effort has been made to decrease the oftentime unnecessary assessment of contempt amounts. (A more detailed discussion appears at pages 31-33). Assignment Judges and Municipal Presiding Judges have become increasingly involved in these efforts, monitoring and shepherding their Municipal Courts through the process. As a result of those efforts, between calendar year 2015 and 2017, the Judiciary reduced its total contempt assessments by 27%:

TOTAL MUNICIPAL COURT FILINGS	CASES WITH CONTEMPT ASSESSMENTS	TOTAL CONTEMPT ASSESSED	PER CASE AVERAGE
2015			
5,719,650	**125,105**	**$8,433,180.61**	**$67.41**
2016			
5,907,289	**112,672**	**$7,727,945.94**	**$68.59**
2017			
6,141,628	**99,173**	**$6,161,177.16**	**$62.13**

[(Appendix N.)]

Following receipt of the "Dear Colleagues" letter, in May of 2016 the Municipal Conferences established the Equal Justice Working Group. The Equal Justice Working Group generated materials that together comprised an educational campaign for court users and Municipal Courts regarding the availability of sentencing alternatives. Prepared materials that have either been implemented or are still being finalized include a revised opening statement; an informational poster intended to be displayed in municipal court; a

bench card for judge use; and suggested court notice language changes that include an expansion of response dates.

More recently, Chief Justice Stuart Rabner issued an April 17, 2018 memorandum to all judges of the Municipal and Superior Courts regarding fines and penalties in Municipal Court. (Appendix O). In that memo, Chief Justice Rabner highlighted two recent events that demonstrate the precise conduct this Committee was convened to address. The first was a Municipal Court judge who "diverted fines against defendants in a way that generated more revenue for municipalities and less for the county." (Appendix O, p. 948). That Municipal Court judge pled guilty to a fourth-degree crime of falsifying records, and is barred from ever holding public office. (Appendix O, p. 948; Appendix P). The second relates to a Municipal Court judge who opened a 2014 court session "by announcing that any fines imposed were due that day, and that any defendants who refused to pay would be sentenced to county jail." (Appendix O, p. 948). The judge later fined a defendant $239, including court costs, and when that defendant was unable to make a payment, the judge sentenced him to five days in jail and had him arrested. (Appendix O, p. 948; Appendix Q; Appendix R).

In his memorandum, the Chief Justice issued a reminder to all judges of "certain basic principles and features of our justice system." (Appendix O, p. 948). They include the unique position of authority held by a judge, a judge's responsibility to ensure that justice is provided in each case based on the merits as opposed to any "outside pressures," and that any punishment imposed relate to the defendant's conduct and history. (Appendix O, p. 949). Chief Justice Rabner went on to highlight the "equally straightforward" principle that "defendants may not be jailed because they are too poor to pay court-ordered financial obligations." (Appendix O, p. 949). Summarizing relevant case law, the Chief Justice concluded: "[I]n a modern system of justice, people should not be sent to jail because they are too poor to pay a fine and do not have access to other resources." (Appendix O, p. 949). Although these sage words were issued near the completion of the Committee's work, they capture the goal of many of the Committee's efforts.

The Committee has carefully considered the charge from the Chief Justice, Municipal Court reform efforts, both successful and unsuccessful, that have preceded it, as well as recent efforts to address the administration of justice concerns in crafting this report and its recommendations.

III. GUIDING PRINCIPLES FOR THE MUNICIPAL COURTS

During the course of its work, in addition to an analysis of current practices in Municipal Courts, the Committee reviewed a number of reform-minded policy papers and reports from other similarly-charged committees. (Appendix K, S, T, U). From that review, the Committee developed core principles that captured the driving ethos of prior Municipal Court improvement efforts, guided the refinement of current practices, and would be crucial to the development of recommendations in line with the forward-looking charge of Municipal Court reform. Those principles, presented below, were used as guideposts in the honing and finalization of the recommendations that follow them.

PRINCIPLE 1 – PURPOSE OF COURTS: New Jersey Municipal Courts are a forum for the fair, just, and independent resolution of disputes in order to preserve the rule of law and protect the individual rights and liberties of all that come before them.

The judicial system is the branch of government that upholds the rule of law and is central to the doctrine of separation of powers. Our courts provide the forum in which disputes are resolved, laws are both tested and enforced, and justice is provided. All of this must be accomplished in a fair and rational manner, independent from the other branches of government, and through means that are transparent, readily accessible, and understood by the public. Each principle below addresses a crucial piece of what makes New Jersey courts able to perform their true purpose, and it is for this reason that this principle is listed first.

PRINCIPLE 2 – OVERSIGHT OF COURTS: Municipal Courts must operate under the authority and supervision of the judicial branch in a manner that ensures an independent Judiciary and enhances the public trust, and all operations and facilities must continue to be separate from law enforcement and prosecution activities.

An independent Judiciary is central to the Judiciary's duty to the public. It ensures that decisions made are solely in the pursuit of justice, and that every actor within the court operates without outside influence. Maintaining systematic integrity through independent judges ensures that decisions are made without regard for their effects beyond justice in

the individual case. Critical to accomplishing this is ensuring that Municipal Courts are managed in the same way as other courts in New Jersey—by the judicial branch.

This is not a new endeavor for the Judiciary. The AOC and vicinages currently provide significant oversight to the Municipal Courts. Much of this is accomplished by the direct support and oversight provided by the vicinage Municipal Presiding Judge and Municipal Division Manager, who report directly to the vicinage Assignment Judge. In addition to this local oversight and support, there is a formalized training process for all new Municipal Court judges comprised of five days of classroom instruction, as well as direct one-on-one training provided by the Municipal Presiding Judge; structured court session visits and mentoring for all new judges by the Presiding Municipal Court Judge; and an annual Municipal Court Judges' training conference.

For court staff, there is a 25-day training program (referred to as the Principles of Municipal Court Administration or POMCA required of all Municipal Court Directors, Court Administrators and Deputy Court Administrators, and which is made available to all other municipal court staff. Further, there are numerous other AOC and vicinage sponsored training events; a formal in-session visitation program that focuses on the activities of the judge and court staff at the municipal court session; and a formal visitation program that focuses on the overall health of the municipal court and whether the court is complying with state and Judiciary requirements.

Recommendations made in pursuit of this principle, including Recommendations 34 and 35, pp. 61-62, seek only to enhance AOC and vicinage involvement with Municipal Courts, and provide further assurances that the court remains both independent and separate from police and prosecution.

PRINCIPLE 3 – JUDICIAL SELECTION AND RETENTION: Municipal Court judges shall be selected and reappointed in an objective and transparent manner using methods that are consistent with an independent Judiciary. Appointment and reappointment shall never be based on the revenue a Municipal Court judge generates for a municipality.

New Jersey's Municipal Courts handle six million cases each year. In light of this significant volume and use, they are often referred to as the face of the Judiciary, and "are critical to our judicial system. [Indeed, m]ore cases are processed annually through those courts than any other brand of the judicial system." In re Samay, 166 N.J. 25, 43 (2001). "For many citizens, it is their only exposure to the courts and judges of this State. Accordingly, the entire system is measured by their experience in the municipal court." In re Horan, 85 N.J. 535, 538 (1981). "[M]unicipal courts, from the standpoint of contact,

observation and acceptance by the public, are in a preeminent position for the sustaining of universal respect for the administration of justice." In re Yengo, 72 N.J. 425, 434 (1977).

Municipal Court judges, in turn, are the face of the Municipal Courts. State v. McCabe, 201 N.J. 34, 42 (2010)("[M]unicipal court judges are the face of the Judiciary."). They are the first point of contact for many court users, and set the tone for the courtroom experience. Recent and prior news reports, as well as the 2017 report of the New Jersey State Bar Association's Subcommittee on Judicial Independence in the Municipal Courts, have suggested waning public confidence in the integrity and impartiality of Municipal Courts. (Appendix V). This perception—that Municipal Courts operate with a goal to fill the town's coffers—is contrary to the purpose of the courts. Indeed, under no circumstances should judicial performance be measured by, or judicial or court staff compensation tied to, revenue generation. A judge's decision to impose a court-ordered financial obligation must be detached from, and unrelated to, any decision concerning the use to which revenues from such obligations should be attributed. This disconnect between the articulated public perception and the driving forces of the courts must be addressed, and improving confidence in those judicial officers ultimately held accountable by the public is thus crucial.

To that end, the Committee's review of various policy papers revealed a number of best practices that foster judicial independence, many of which emphasize an objective appointment process. (Appendix K-1, K-4, K-10; Appendix T). The Committee recommends the development of a similarly impartial and transparent process for the appointment and reappointment of Municipal Court judges. (Recommendations 24 through 30, pp. 56-59). Crucially, the proposed evaluations will be free of inappropriate considerations such as revenue generation—a factor that has at times infiltrated the calculus in some Municipal Judge reappointments due to a years-long culture of imposing excessive financial penalties that are oftentimes not related to the fair administration of justice.

While the Committee highlights that there are many exceptional Municipal Court judges who serve with great distinction and independence, the perception and reality is that some judges are evaluated based on inappropriate considerations, which in turn impacts the independence of those judges. The proposed protocol intends to relieve judges of those pressures, improve public confidence in the impartiality of the Municipal Courts by ensuring that appropriately qualified judges are both appointed and retained, and, in the process, enhance judicial independence.

PRINCIPLE 4 – COURT-IMPOSED FINANCIAL OBLIGATIONS: The imposition of fines, fees, and other financial obligations shall only be based on the fair administration of justice, and not the generation of revenue for a municipality. The Municipal Courts, as part of the Judiciary, are separate from the Legislative and Executive branches and are not a revenue-generating arm of the government.

As a general principle, courts should be entirely funded from general governmental revenue sources to enable them to fulfill their mandates. Additionally, no court function should be directly tied to revenues generated by the imposition of court-imposed fines, fees, and other financial obligations. In New Jersey, this is structurally the case, as the Municipal Court budget is part of the larger municipal budget and funded by the general revenue of a municipality. The Municipal Courts must be a forum for the fair and just resolution of disputes in order to preserve the rule of law. The imposition of fines, fees, and other financial obligations should be made only in the pursuit of the administration of justice, and never with an intention to generate revenue. However, there are discretionary monetary penalties that judges may impose that create the potential for departure from this principle.

An example of one such penalty that has resulted in concern in New Jersey is the excessive use of discretionary contempt assessments in Municipal Courts. Those contempt assessments are imposed by Municipal Court judges, with all collected amounts going to the municipalities. As outlined in the charts below, between calendar year 2015 and calendar year 2017, a total of $22 million in these contempt amounts were assessed.

2015 CONTEMPT OF COURT ASSESSMENTS

COUNTY	TOTAL FILINGS	CONTEMPT CASES	TOTAL CONTEMPT	PER CASE AVERAGE
ATLANTIC	138,159	5,239	$338,791.07	$64.67
BERGEN	595,387	13,866	$412,038.00	$29.72
BURLINGTON	199,375	10,179	$1,127,556.01	$110.77
CAMDEN	345,738	7,297	$1,092,475.30	$149.72
CAPE MAY	78,719	1,301	$33,251.00	$25.56
CUMBERLAND	69,467	1,135	$86,570.70	$76.27
ESSEX	910,474	10,626	$475,589.88	$44.76
GLOUCESTER	125,051	4,880	$351,803.14	$72.09
HUDSON	986,992	11,544	$290,342.04	$25.15
HUNTERDON	56,409	533	$40,393.00	$75.78
MERCER	195,093	6,604	$580,642.07	$87.92
MIDDLESEX	393,685	12,011	$863,022.00	$71.85
MONMOUTH	330,268	11,894	$1,112,822.07	$93.56
MORRIS	205,172	5,181	$468,067.61	$90.34

OCEAN	183,849	2,686	$269,312.60	$100.27
PASSAIC	315,055	8,124	$251,577.50	$30.97
SALEM	26,054	574	$31,650.50	$55.14
SOMERSET	117,423	1,346	$72,834.95	$54.11
SUSSEX	32,072	976	$66,642.23	$68.28
UNION	369,910	7,596	$395,242.48	$52.03
WARREN	45,298	1,513	$72,556.46	$47.96
TOTAL	**5,719,650**	**125,105**	**$8,433,180.61**	**$67.41**

2016 Contempt of Court Assessments

COUNTY	TOTAL FILINGS	CONTEMPT CASES	TOTAL CONTEMPT	PER CASE AVERAGE
ATLANTIC	144,534	4,671	$264,112.30	$56.54
BERGEN	618,076	12,099	$380,714.50	$31.47
BURLINGTON	215,894	9,842	$1,075,836.92	$109.31
CAMDEN	341,480	4,945	$752,056.26	$152.08
CAPE MAY	74,607	1,242	$29,119.50	$23.45
CUMBERLAND	75,199	1,356	$112,632.42	$83.06
ESSEX	915,506	10,579	$857,000.51	$81.01
GLOUCESTER	133,283	4,551	$317,849.50	$69.84
HUDSON	1,067,443	11,609	$288,074.50	$24.81
HUNTERDON	55,309	396	$38,358.00	$96.86
MERCER	202,603	6,123	$583,842.75	$95.35
MIDDLESEX	417,893	10,222	$754,529.77	$73.81
MONMOUTH	344,023	11,029	$865,798.14	$78.50
MORRIS	209,561	4,373	$389,822.50	$89.14
OCEAN	178,259	2,239	$214,134.82	$95.64
PASSAIC	327,257	8,387	$265,402.50	$31.64
SALEM	25,209	607	$37,786.00	$62.25
SOMERSET	109,010	874	$64,259.50	$73.52
SUSSEX	30,801	798	$54,254.00	$67.99
UNION	379,451	5,855	$341,973.50	$58.41
WARREN	41,891	875	$40,388.05	$46.16
TOTAL	**5,907,289**	**112,672**	**$7,727,945.94**	**$68.59**

2017 Contempt of Court Assessments

COUNTY	TOTAL FILINGS	CONTEMPT CASES	TOTAL CONTEMPT	PER CASE AVERAGE
ATLANTIC	149,211	3,966	$217,225.05	$54.77
BERGEN	631,410	11,947	$402,310.00	$33.67
BURLINGTON	200,253	7,974	$880,957.93	$110.48
CAMDEN	338,368	3,933	$525,749.50	$133.68
CAPE MAY	75,530	860	$21,605.78	$25.12
CUMBERLAND	74,166	1,314	$105,699.60	$80.44
ESSEX	989,746	9,674	$449,528.80	$46.47
GLOUCESTER	130,046	4,132	$297,772.12	$72.06
HUDSON	1,138,304	11,908	$284,032.76	$23.85
HUNTERDON	59,986	382	$49,274.00	$128.99

MERCER	219,310	4,808	$484,284.45	$100.72
MIDDLESEX	425,335	8,926	$613,435.99	$68.72
MONMOUTH	351,125	9,574	$662,182.52	$69.16
MORRIS	207,738	4,004	$345,429.50	$86.27
OCEAN	175,644	1,253	$106,899.60	$85.31
PASSAIC	352,778	6,612	$254,813.50	$38.54
SALEM	26,787	417	$23,828.00	$57.14
SOMERSET	114,274	821	$62,367.00	$75.96
SUSSEX	31,541	510	$39,560.00	$77.57
UNION	401,941	5,377	$307,234.00	$57.14
WARREN	48,135	781	$26,987.06	$34.55
TOTAL	**6,141,628**	**99,173**	**$6,161,177.16**	**$62.13**

[(Appendix N.]

As discussed above, the Contempt of Court Working Group of the Municipal Conferences reviewed the Municipal Court's history of routinely imposing "contempt" amounts on defendants, pp. 25-26, and determined that the appropriate procedures required by R. 1:10-1, Contempt in Presence of Court; R. 1:10-2, Summary Contempt Proceedings on Order to Show Cause or Order for Arrest, and R. 1:2-4, Sanctions; Failure to Appear; Motions and Briefs, have not been fully followed. The Contempt Working Group's conclusions have resulted in a Judiciary-led movement to decrease or prohibit the collecting of both appropriate and inappropriate contempt monies. This effort continued with the creation of this Committee, and has come into even sharper focus. Assignment Judges and Municipal Presiding Judges have become increasingly involved in these pursuits, monitoring and shepherding their Municipal Courts through the process of decreasing the oftentime unnecessary assessment of contempt amounts. As shown in the chart above, these local efforts have resulted in a reduction in contempt assessments in nearly every vicinage for each of the past three years.

Although the Committee saw no need to disturb the careful procedural protections provided by R. 1:10-1 and R. 1:10-2, or to amend R. 1:2-4, more work needs to be done in this area. The Committee recommends that this ongoing process continue and makes proposals to limit the historical use of "contempt" by emphasizing monitoring, education, and establishing procedures that avoid the inappropriate use of contempt, as furthered by the use of technology. (Recommendations 1 and 46, pp. 39, 71-72.

PRINCIPLE 5 – SENTENCING: Judges shall set fair and reasonable penalties, including in the imposition of discretionary financial penalties. Judges shall consider all legally available sentencing alternatives where permitted. Driver's license suspensions shall be used as a last resort or when legally required.

Underpinning this principle, and its call for fair and reasonable penalties, are the core concepts that were outlined by the Chief Justice in his April 17, 2018 memorandum:

> It is the court's responsibility, in every case, to ensure that justice is carried out without regard to any outside pressures. That means that each defendant is entitled to have his or her case decided on the merits; that any punishment imposed should reflect the defendant's conduct and history; and that incarceration should only be ordered if the circumstances of the case require it.
>
> Certain related principles are equally straightforward. The imposition of punishment should in no way be linked to a town's need for revenue. And defendants may not be jailed because they are too poor to pay court-ordered financial obligations.
>
> [(Appendix O, p. 949).]

Thus, the initial setting of uniform, reasonable penalties, to the extent discretion is allowed by law, is crucial to ensuring a defendant's ability to satisfy the sentence. Disparate treatment from court to court and from judge to judge is a concern of the Committee. This disparate treatment is reflected in sentencing with respect to fines, periods of incarceration, license suspensions, and other penalties. Guidance for judges regarding sentencing options and alternatives is necessary to ensure the fair administration of justice, as "[r]andom and unpredictable sentencing is anathema to notions of due process. State v. Moran, 202 N.J. 311, 326 (2010) (citing United States v. Batchelder, 442 U.S. 114, 123 (1979) and New Jersey State Parole Bd. v. Byrne, 93 N.J. 192, 210-12 (1983)). "Vague laws violate due process by failing to 'provide adequate notice of their scope and sufficient guidance for their application.'" Moran, 202 N.J. at 311 (quoting State v. Cameron, 100 N.J. 586, 591 (1985)). In this regard, the Committee seeks guidance from the Court in the Municipal Court's setting of discretionary sentences.

The Supreme Court has made clear its position that indigent defendants be provided the opportunity to pay fines in installment payments. State v. De Bonis, 58 N.J. 182, 199 (1971) ("If a defendant is unable to pay a fine at once, he shall, upon a showing of that inability,

be afforded an opportunity to pay the fine in reasonable installments...."); In re Broome, 193 N.J. 36 (2007) (finding that a Municipal Court judge that opened his court sessions by advising court users that fines of less than $100 would have to be paid in full had "disregarded the De Bonis rule of law, which clearly mandates that indigent defendants be provided the opportunity to pay fines in installment payments.") (Appendix R).

Further, for those defendants that are unable to satisfy their sentences or default on their time payments, the Committee acknowledges the robust state of legislatively-available sentencing alternatives. These alternatives, some available at the time of sentencing and some only available following default, include long and short-term time payment plans, modification of a time payment plan, community service, revocation of the unpaid fine, a reduction or suspension of the sentence, consensual modification of the sentence, credit for any jail time served as a result of the default, and "any other alternative permitted by law in lieu of payment of the penalty." N.J.S.A. 2B:12-23; 2B:12-23.1; 39:4-203.1. The AOC has provided guidance as to the application of these sentencing alternatives via Administrative Directive 02-10, "Implementation of L. 2009, c. 317, Authorizing Municipal Courts to Provide Payment Alternatives" (March 2, 2010), and a May 9, 2011 memorandum from Judge Grant. (Appendix W).

The Committee also recognizes that despite the availability of this broad spectrum of alternatives, those most regularly used are for the granting and modification of time payment plans. This almost exclusive reliance on time payments was also identified by the Equal Justice Working Group of the Municipal Conferences, which in response developed materials to initiate an educational campaign regarding the full panoply of sentencing alternatives. Those materials are intended to inform both court users and court personnel of the various sentencing alternatives that are available for request and use. They include additions to the municipal court opening statement, the promulgation of a poster posted prominently in courthouses to advise members of the public of the availability of sentencing alternatives, revisions to existing court notices, as well as a bench card available to judges to easily ascertain whether a sentencing alternative is available for a defendant. The Committee endorses all of these materials, each of which has either been implemented or is in development.

The Committee makes a number of recommendations that intend to build on that educational campaign, including the creation of systematic processes for courts to use to accurately and swiftly assess the appropriateness of sentencing alternatives, and propose additional sentencing alternatives that are either within the authority of the Judiciary to initiate or require legislative change. (Recommendations 3-4, 6-7, 9-11, pp. 41-42, 43-46). All of these recommendations rely on the judgment and discretion of our Municipal Courts in their application and are based on the belief that with knowledge, the appropriate granting of one of a variety of sentencing alternatives is inevitable.

Finally, the Committee acknowledges that for many residents of the State of New Jersey, possession of a driver's license is a geographical necessity. A suspension can quickly place an otherwise secure defendant on a dangerous path of escalating consequences, affecting not only a defendant, but families and dependents as well. (Appendix E, pp. 203-206). The Committee strongly encourages the State of New Jersey to conduct a full review of the use and impact of license suspensions. The Committee also recommends that the Judiciary consider the development of a policy that would reinstate certain licenses that were suspended either for delinquencies related to minor offenses or for failure to pay a nominal financial obligation.

In recognition of the potential impact of this enforcement tool and its widespread, unintended consequences, and in acknowledgement that there are instances when suspension is needed, the Committee strongly cautions against the routine issuance of a discretionary license suspension. The Committee thus recommends that discretionary license suspensions be used both deliberately and sparingly. The avoidance of maxims and absolutes here by the Committee is deliberate. The Committee believes, as with the use of sentencing alternatives, that some amount of judicial discretion, predicated on the particulars of a given case, is fundamental to the fair administration of justice.

PRINCIPLE 6 – ENFORCEMENT OF COURT-IMPOSED FINANCIAL OBLIGATIONS: Courts shall not incarcerate a defendant for nonpayment absent a determination of a willful failure to pay. When a defendant has not paid a penalty, courts shall consider a defendant's ability to pay in setting a payment schedule or looking at sentencing alternatives.

The United States Supreme Court has made clear that courts may not incarcerate a defendant for an inability or failure to pay a court-ordered financial obligation unless the court first holds a hearing and makes a finding that the failure to pay was willful and not due to an inability to pay. Bearden v. Georgia, 461 U.S. 660 (1983). Said another way, a court may not jail a person for failure to pay unless there is a finding that the person is able to pay without manifest hardship and has not made good faith efforts to comply.

In Municipal Court, there are two potential paths to incarceration for nonpayment. The first is via the issuance of a bench warrant for failure to pay, when coupled with an incidental arrest and incarceration upon an inability to make bail. The second is through the contempt mechanisms provided by New Jersey Court Rules 1:10-1 and 1:10-2. Upon careful review, the Committee saw no need to disturb the careful procedural protections provided by R. 1:10-1 and R. 1:10-2. Therefore, the Committee's recommendations in this regard instead rely on a proposed balanced approach to bench warrants for failure to pay that will

incorporate an ability-to-pay hearing as a precursory step. (Recommendation 12, pp. 47-49).

While the Committee notes that the recommendations made do not diminish a Municipal Court's authority to issue a bench warrant for a failure to appear, the Committee takes the position that such a powerful enforcement tool should not be used indiscriminately for a failure to appear for minor offenses or for failures to pay when the amount owed is minimal. These proposed limitations to the use of bench warrants will be discussed further in Recommendations 13 and 14, pp. 49-50.

PRINCIPLE 7 – ENCOURAGE COMPLIANCE: Municipal Courts shall employ practices that provide notices to defendants in plain language that promote voluntary appearances and encourage compliance.

The encouragement of voluntary court appearances by defendants will prevent failures to appear and failures to pay, which would otherwise trigger the escalating court responses that result in, at a minimum, additional fees and, at worst, a driver's license suspension or bench warrant. Such enforcement mechanisms can quickly launch a defendant on a trajectory that may take years to escape. The Committee is confident that the utilization of compliance gaining measures will be crucial to prevent the cycle of poverty that so many indigent defendants who have contact with the court find themselves in, while also benefiting all court users and stakeholders.

To that end, the Committee proposes a number of simple, common sense noncompliance remedies that have been put forth by various policy papers. (Appendix X). They include, but are not limited to, providing technological reminders of upcoming significant dates to court users and revising notices to provide court users with the information they need. (Recommendations 19 and 20, pp. 53-54). These recommendations have a common theme: providing the public ready access to critical information that advises them to either fulfill their obligation to the court, or to contact the court if they are unable to do so.

The Committee also endorses the various materials that have been developed by the Equal Justice Working Group of the Municipal Conferences. Those materials include proposed revisions to current delinquent notices that provide more time to respond; a poster to be prominently posted in Municipal Courts advising defendants of the availability of time payments and time payment alternatives; and a bench card that summarizes the statutes governing time payments and time payment alternatives as sentencing options. Each of these developed materials emphasize a multi-pronged educational campaign regarding the availability of time payments and time payment alternatives in the event of an inability to

pay, as well as suggested modifications to court practices that will encourage court appearances and timely payments.

The recommendations developed by the Committee and the draft materials developed by the Equal Justice Working Group are designed to benefit all defendants equally, regardless of economic status, while encouraging defendants to contact the court if they have issues with making an appearance or payment.

PRINCIPLE 8 – ENHANCE ACCESS TO COURTS: Access to the Municipal Courts should be enhanced through the expansion or adjustment of traditional hours and the use of technology.

Increased access to Municipal Courts is crucial to ensuring that defendants do not become delinquent. (Appendix K). While perhaps the easiest method of enhancing access is via the expansion or adjustment of traditional court hours, in recognition that Municipal Courts may not have the budget to accommodate such a change, the use of technology provides alternatives.

The Committee has developed a number of recommendations that envision these technological enhancements to be based on the significant expansion of cases that can be resolved remotely. The proposals recommend the creation of an online portal that will allow defendants to initiate certain actions related to their cases. (Recommendation 36-39, pp. 63-67). This will provide a means for defendants to comply with their legal obligations while at the same time continue to work or satisfy other family obligations, and increase the likelihood of defendants responding to a complaint or court order, all while reducing the number of defendants who have to come to court.

Those recommendations emphasize improving the quality and amount of relevant case-related data that is made available, while integrating and expanding case management programs to further benefit the courts and the public. They will provide stakeholders in the Municipal Court system the benefit of a vastly improved flow of information through case management programs. It is the belief of the Committee that these recommendations, taken together, will be felt equally by all Municipal Court users, regardless of economic status.

IV. RECOMMENDATIONS

The recommendations of the Committee, based on the preceding principles, follow.

FAIR SENTENCING AND THE USE OF SENTENCING ALTERNATIVES

The concept of fair and equitable sentencing encompasses all aspects of a sentence that is imposed by the Municipal Court—including fines, fees, penalties, and sanctions—as well as the availability of sentencing alternatives in the event a defendant is unable to satisfy a financial penalty. The issue of contempt is one that is ripe for reform, as it remains on the forefront of Judiciary endeavors despite the significant reduction in total contempt assessments.

The recommendations that follow intend to enhance fairness and equity in sentencing in the Municipal Courts in two important regards: 1 further decreasing the unnecessary or improper assessment of contempt amounts; and 2 ensuring the provision of uniform, reasonable penalties, to the extent discretion is allowed by law, including through the provision of a variety of sentencing alternatives.

RECOMMENDATION 1	**Develop a Judiciary policy to monitor the imposition of contempt of court financial assessments by Municipal Court judges to avoid the inappropriate use of contempt of court, to require compliance with court rules, and to require justification on the record and a separate court order.**

Upon its creation, the Committee prepared and provided contempt reports detailing contempt amounts collected in each county and in a county's individual municipalities to Assignment Judges. This information has been utilized by the Assignment Judges to monitor and limit the inappropriate use of contempt in their Municipal Courts. As a result of these efforts and review, as of the writing of this report, all Assignment Judges have issued an order that requires Municipal Court judges in their vicinage who wish to impose a contempt sanction to not only follow the procedural protections outlined in R. 1:10, but to also place "findings of fact and conclusions of law on the record and provide a written copy of those determinations to the Assignment Judge." The Committee approves of this practice and the system of checks that it places on contempt, a judicial tool of last resort.

Additionally, the Committee recommends that the AOC's Municipal Court Services Division continue to provide necessary support to assist in the continued monitoring of the use of contempt, be it in the form of preparing future reports on imposition of contempt or otherwise, to the Assignment Judges.

RECOMMENDATION 2 **Develop a Judiciary policy establishing guidelines that Municipal Court judges are to follow when the corresponding statute or ordinance provides for a range of possible financial penalties, and requiring a Municipal Court judge to state on the record his or her reasons for ordering that amount.**

The Supreme Court has long recognized that "there can be no justice without a predictable degree of uniformity in sentencing." State v. Hodge, 95 N.J. 369, 379 (1984). "Disparate sentencing undermines public confidence in the fairness of our justice system." Moran, 202 N.J. at 326. "The dominant goal of the Code of Criminal Justice was uniformity in sentencing, State v. Kromphold, 162 N.J. 345, 352 (2000), replacing 'the unfettered sentencing discretion of prior law with a structured discretion designed to foster less arbitrary and more equal sentences[.]'" Id. (citing State v. Roth, 95 N.J. 334, 345 (1984); N.J.S.A. 2C:1-2(b) (listing "general purposes of the provisions governing the sentencing of offenders," including "[t]o safeguard offenders against excessive, disproportionate or arbitrary punishment" and "[t]o give fair warning of the nature of the sentences that may be imposed on conviction of an offense")).

The majority of offenses heard in Municipal Court have set statutory fines. To the extent there are sentences that include discretionary ranges, R. 7:9-1(b) mandates that Municipal Court sentences for Title 2C violations include a statement of reasons from the judge for the imposed sentence, including findings under N.J.S.A. 2C:44-1(a) (aggravating factors) and 2C:44-1(b) (mitigating factors). New Jersey Court Rule 7:9-1(c) provides that for non-criminal code cases that involve a consequence of magnitude, the court shall also provide its reasons for imposing sentence at the time of sentencing. However, no such guidance exists for the sentencing of traffic or local ordinance offenses that carry discretionary, ranged sentences.

The Committee recommends the creation of a policy regarding the establishment of discretionary, ranged monetary sentences, including factors that should be considered in the imposition of any such sentence. The Supreme Court has the constitutional authority to address the disparate treatment of defendants in our Municipal Courts. N.J. Const. art. VI, § 2, ¶ 3; Moran, 202 N.J. at 328 ("To ensure uniformity in sentencing, and that defendants similarly situated are-to a reasonable degree-similarly treated, we draw on our constitutional powers, N.J. Const. art. VI, § 2, ¶ 3, to set standards for our municipal court and Law Division judges in exercising their discretion under N.J.S.A. 39:5-31."). The Committee additionally suggests that any developed policy require that the court place on the record the reasons for imposing the sentence selected. The Committee believes that developed guidelines will provide judges with appropriate direction in the setting of fair sentences while furthering the Judiciary's goal of uniformity in sentencing.

The development of such a policy would be consistent with prior actions of the Supreme Court, which has historically taken "affirmative steps to ensure that sentencing and disposition procedures, whether authorized by statute or court rule, will not produce widely disparate results for similarly situated defendants." Moran, 202 N.J. at 326 (citing State v. Brimage, 153 N.J. 1, 22-25 (1998) (ordering Attorney General to promulgate plea offer guidelines to eliminate inter-county disparity in sentencing); State v. Yarbough, 100 N.J. 627, 643-44 (1985) (adopting six criteria as general guidelines for judges in determining whether to impose concurrent or consecutive sentences), cert. denied, 475 U.S. 1014 (1986); State v. Leonardis (Leonardis I), 71 N.J. 85, 97-98, 109 (1976) (requiring pretrial intervention programs be implemented according to formal, uniform guidelines and instituting procedures for judicial review to "alleviate existing suspicions about the arbitrariness of given decisions"), aff'd on reh'g, State v. Leonardis (Leonardis II), 73 N.J. 360, 388 (1977)). In requesting the establishment of guidelines for discretionary sentences, particularly for traffic and local ordinances, the Committee asks the Court to do the same here.

This will also address a particular practice of which the Committee has significant concern. In some Municipal Courts, there is a common practice of amending charges to an offense that carries a discretionary fine, with the understanding that any fine imposed will be on the higher end of the spectrum. Often, the amended charge is a local ordinance, which carries a higher maximum monetary penalty than the original State charge. N.J.S.A. 40:49-5. In such instances, as well as for petty disorderly persons offenses and disorderly persons offenses, the entirety of the collected fine goes to the municipality. N.J.S.A. 2C:46-4(c). The Committee believes that the promulgation of sentencing guidelines will address this practice.

RECOMMENDATION 3	**Develop a Judiciary policy providing Municipal Court judges guidelines for consideration of all available sentencing alternatives both at time of sentencing and as part of post-sentencing enforcement.**

The Committee determined that although there are numerous sentencing alternatives available legislatively, very few are regularly utilized by the courts. To encourage the use of the full panoply of sentencing alternatives, and building on the educational materials developed by the Equal Justice Working Group, the Committee recommends that the AOC develop guidance for Municipal Court judges to assist them in determining when various sentencing alternatives should be considered.

RECOMMENDATION 4	**Develop policy and tools that would assist the Municipal Courts in establishing payment plans, determining defendant eligibility for other post-disposition sentencing alternatives, and making ability-to-pay determinations.**

The Committee is cognizant of the volume of matters Municipal Courts hear, the lengthy nature of many court sessions, and the impact increased consideration of sentencing alternatives may have on those sessions. To balance those legitimate administrative concerns, the Committee recommends that efforts be made to streamline these determinations, including the collection of information for a Municipal Court judge to utilize in making the determination. The Committee recommends that consideration be given to the development of an ability-to-pay tool that may be based in part on the Financial Questionnaire to Establish Indigency, (Appendix Y); a payment plan calculator that establishes a payment plan based on factors such as income, expenses, and outstanding fines and fees; and publicly available forms that would allow a defendant to apply for waiver or a reduction in sentence, mirroring the practice currently used when an incarcerated defendant requests relief, pursuant to R. 7:7-2(d). (Appendix Z). Taken together, these tools will both formalize the largely ad hoc process —the only exception being for applications for time payment plans— and encourage the expeditious review of requests for sentencing alternatives.

RECOMMENDATION 5	**Municipal Court judges and staff should regularly be provided ongoing training in the following areas:** **1) The serious ramification of license suspensions and bench warrants;** **2) The scope of their discretion in the issuance of bench warrants and license suspensions;** **3) The full range of sentencing alternatives available, including the vacating of financial obligations; and** **4) That with just cause, and within the operational needs of the court, courts should be relatively liberal in granting adjournments.**

The Committee recommends regular training for Municipal Court judges and staff that emphasizes both the real-life consequences of the issuance of bench warrants and license suspensions, and the scope of judicial discretion in the use of those enforcement tools. These training modifications should be made available as part of the regular training

offered to Municipal Court judges and staff, as well as in training for newly-appointed judges.

RECOMMENDATION 6	**Encourage the creation and expansion of diversionary programs wherein participating defendants who perform volunteer services or complete appropriate treatment services have matters against them dismissed.**

The Committee acknowledges the informal practice in a number of municipalities wherein the municipal prosecutor will refer a defendant to perform volunteer services or complete a treatment program as a condition of the prosecutor making a motion to the court for dismissal. Such services fall outside the purview of probation and are oftentimes not conducted at official Judiciary community service sites. The Committee seeks to formalize and expand this process to provide similar opportunities to eligible defendants.

The Committee thus recommends the creation and expansion of programs that would have participating defendants perform volunteer services at local service providers or receive appropriate treatment for mental health issues, addiction, or other counseling needs at program providers. When satisfactorily performed, the prosecutor would then initiate the dismissal of the charges against that defendant. The Committee envisions that the referral process will be similar to that done in the Veteran's Diversion Program, N.J.S.A. 2C:43-23 et seq. The Committee notes that such efforts would benefit from communication with the New Jersey Department of Health, the county Mental Health Board, and the Addiction Services Board, all of which may be useful in identifying appropriate service providers.

RECOMMENDATION 7	**Develop a vicinage-wide, community-led program similar to the model used in Atlantic/Cape May Vicinage that would seek to encourage the voluntary appearance and safe surrender of defendants with outstanding bench warrants.**

Currently, there are nearly 2,500,000 outstanding bench warrants for failure to appear and failure to pay. (Appendix AA). This number is cumulative, increasing since the inception of both database systems, 1986 for ATS and 1993 for ACS, and must be regarded in the context of the six million matters the Municipal Courts handle annually. Nonetheless, the Committee is united in the position that there must be both a review process for existing warrants, and the establishment of mechanisms that allow for the review and cancellation of existing warrants where appropriate.

In addition to the other recommendations contained in this report that call for the review of existing warrants, limiting the issuance of warrants, and the anticipated statewide plan

for the cancellation of pending bench warrants, the Committee recommends that each vicinage develop and implement an ongoing vicinage-led program that would seek to encourage the voluntary appearance of defendants who have outstanding, unpaid time payment orders. This would provide Municipal Courts with the opportunity to resolve open detainers, rescind warrants, and to set new payment plans where appropriate, for these defendants. This is consistent with other Judiciary-led incentive programs, including those used in Atlantic/Cape May Vicinage, that encourage persons wanted for non-violent, less serious offenses to voluntarily surrender to law enforcement in neutral settings. However, this differs from fugitive safe surrender programs, as those initiatives are based on statewide jurisdiction. The proposal here is to be led by the local vicinage, and limited to the vicinage's jurisdiction. Finally, this recommendation is meant to only supplement local efforts approved by the Assignment Judge.

RECOMMENDATION 8	**Develop procedures consistent with N.J.S.A. 2B:12-26 and N.J.S.A. 39:8-73a to automate the collection of significant Municipal Court debt in the Superior Court.**

The Committee determined that in an effort to move away from the routine issuance of bench warrants for failures to pay, alternative collection methods should be pursued. The Committee recommends that in instances where appropriate, reducing an outstanding fine to a judgment and pursuing enforcement in the Superior Court should be considered. Members suggested that appropriate automation and protocols for this process be developed and piloted, with consideration being given to the potential assessment and exploration of the waiver of Superior Court docketing fees. Currently, by statute, outstanding Title 39 sentences can be docketed in Superior Court without the assessment of any fee. N.J.S.A. 39:8-73a. This would address concerns regarding a cost-benefit analysis for a municipality to seek civil relief, as well as the Committees concerns about habitual warrant issuance.

LEGISLATIVE PROPOSALS

The below recommendations consist of recommendations developed by the Committee linked to fairness in sentencing by way of sentencing alternatives that would require legislation to implement.

RECOMMENDATION 9	**Allow defendants to receive credit towards a legal financial obligation for hours spent in clinical treatment, including participation in recovery Drug Court, N.J.S.A. 2C:35-14, that is related to the underlying offense(s).**

Literature has shown that in some instances an underlying cause for criminal behavior can be identified, including, but not limited to, a mental health concern, substance abuse issue, or combination of both. The Committee recommends that in those instances, and where the offense is non-violent and otherwise lesser/petty, the legislature should permit that defendants to receive credit towards their fines and fees for hours spent in treatment in a substance abuse/mental health program/individual or group therapy, including Drug Court, so long as the treatment is related to the commission of the underlying offense. Such defendants should be rewarded for successful completion of treatment or Drug Court by being provided a mechanism to eliminate or substantially reduce any related outstanding financial obligations. This will further create an incentive for their participation in appropriate treatment programs. The Committee believes that this sentencing alternative could be captured in amendments to N.J.S.A. 2B:12-23, N.J.S.A. 39:4-203.1, and N.J.S.A. 2C:46-2(a)(2). As part of this recommendation, and Recommendation 6, the Committee urges the legislature to review and consider the availability of appropriate clinical programs, particularly for people of lesser means.

RECOMMENDATION 10 **The enactment of legislative alternatives to license suspension, such as the denial of renewal of a driver's license or vehicle registration, or the creation of a restricted use driver's license.**

In recognition of the potentially catastrophic outcome that may result from a license suspension, as tempered by the fact that the threat of a license suspension is a municipal court's strongest tool for enforcement, the Committee determined that an alternative should be considered to provide Municipal Courts with a full panoply of sentencing options. The Committee recommends that the legislature consider an alternative penalty that would prevent a defendant from renewing a driver's license or a restricted use driver's license for drivers, while providing defendants notice prior to renewal. Either would give defendants the ability to continue to work as they strive to satisfy their financial obligations, and would complement the municipal collection of enforcement mechanisms. Additionally, it should be noted that a high percentage of license suspensions are not court ordered, but rather are the result of defendants not paying MVC surcharges or otherwise not complying with certain MVC administrative requirements. The Committee believes that these areas are also worthy of review by the legislature.

RECOMMENDATION 11 **Legislatively establish and update an incarceration conversion rate to reflect the actual costs of incarceration.**

The current minimum incarceration conversion rate is $50 a day. N.J.S.A. 2C:46-2(a)(2); N.J.S.A. 39:5-36. Defendants that are incarcerated, or opt to convert their fine to a jail term, are eligible to receive a credit of $50 a day towards their outstanding financial obligations.

Committee members determined that this is unfair to both defendants and the State of New Jersey in that it is not reflective of the true cost of incarceration. To address this deficiency, the Committee recommends that consideration be given to support legislation setting the incarceration conversion rate more in line with the actual cost of incarceration, and that this number should either be reviewed periodically or contingent on an evolving threshold, similar to the way the Federal Poverty Guidelines are used to determine indigency. N.J.S.A. 39:4-203.1, Indigents; Fine for Traffic Offense; Payment in Installments.

PROCEDURAL SAFEGUARDS FOR DEFENDANTS UNABLE TO PAY A FINE

The recommendations that follow are intended to both satisfy and expand upon the United States Supreme Court's maxim in Bearden—that courts may not incarcerate a defendant due to an inability to pay a court-ordered financial obligation. 461 U.S. 660. To satisfy Bearden, the Committee recommends that a defendant who is delinquent in paying a financial penalty be automatically scheduled for an ability-to-pay hearing. To expand upon Bearden, the Committee proposes severely limiting the use of bench warrants in instances of both failure to pay and failure to appear. Recommendations in alignment with these intentions follow.

RECOMMENDATION 12 **No bench warrant or license suspension shall be issued against a defendant who becomes delinquent on time payments unless an ability-to-pay hearing is scheduled on proper notice to the defendant.**

Currently, a Municipal Court may issue a bench warrant following a court user's failure to pay a legal financial obligation and the issuance of a single notice. To ensure that any incarceration resulting from a failure to pay bench warrant is not due to a court user's lack of financial resources, as prohibited by Bearden, 461 U.S. at 667-69, the Committee recommends the discontinuation of the practice of issuing such bench warrants for defaulting defendants without first scheduling an ability-to-pay hearing. The delinquent court user should instead be scheduled to appear before the court to answer for the nonpayment, and given until that date to satisfy the arrears. This would provide defendants who fail to pay an opportunity to explain the reason to the court, to seek a sentence alternative, if applicable, and for the Municipal Court to conduct an ability-to-pay hearing, if necessary.

In those instances when a defendant is incarcerated due to an executed municipal bench warrant, the Committee recommends the prompt review of the matter before a court, but in no case later than 48 hours after arrest. The Committee recommends that, absent a statewide protocol, each Vicinage develop a local protocol to ensure that defendants unable to post bail are not spending an undue amount of time waiting for a court event. The Committee highlights current ongoing practices in some Vicinages that will allow for this review period to be met, including the use of video appearances, the practice of requiring the immediate release of defendants whose bail is set below $500, and allowing the warrant review process to be handled by a cross-assigned central judicial processing municipal court judge.

In the event a defendant is brought before a court due to an inability to satisfy bail, at the time of his or her court appearance, the court user can articulate the reason(s for the failure to pay, seek a sentencing alternative, or articulate an inability to pay. This will allow the court to make an ability-to-pay determination if need be, and closely mirror the current practice captured in Administrative Directive 15-08, "Use of Warrants and Incarceration in the Enforcement of Child Support Orders" (November 17, 2008), which requires an ability-to-pay hearing prior to the use of incarceration for the enforcement of child support orders. (Appendix BB).

Additionally, license suspensions are a legislatively-authorized Municipal Court response to a defendant's failure to pay that requires in some instances notice of the intention to suspend, and in others no such notice.[12] To ensure that delinquent defendants do not suffer the consequences of a license suspension during the pendency of their ability-to-pay hearing, the Committee recommends that any license suspension related to a failure to pay occur only after an ability-to-pay hearing has been scheduled. If a defendant fails to appear at that ability-to-pay hearing, the Municipal Court retains the authority to utilize the enforcement tool of a license suspension, as referenced in Recommendation 13, p. 49.

The practices proposed above would be in addition to current procedural protections provided to delinquent defendants, as well as the proposed revisions to notice language proposed by the Committee in Recommendation 20. Such revisions include the advisement that a defendant will not be incarcerated for an inability to pay. Taken together, these measures will ensure that any incarceration resulting from a failure to pay will only occur when that failure is willful, and that a defendant will not be subjected to a license suspension while awaiting an ability-to-pay hearing.

As noted earlier, the United States Supreme Court has made clear that courts may not incarcerate a defendant for an inability or failure to pay a court-ordered financial obligation unless the court first holds a hearing and makes a finding that the failure to pay was willful and not due to an inability to pay. Bearden, 461 U.S. 660. Said another way, a court may not jail a person for failure to pay unless there is a finding that the person is able to pay without manifest hardship and has not made good faith efforts to comply.

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[12] N.J.S.A. 2C:46-2 (providing that a defaulting defendant may be subjected to a license suspension following "notice and an opportunity to be heard on the issue of default."); N.J.S.A. 2B:12-31 (if a defendant fails to pay a court-ordered financial obligation, the court may order the suspension of a defendant's driver's license with notice of the intention to suspend and the provision to the defendant of the opportunity to contest the validity of the suspension); N.J.S.A. 39:4-203.2 (for Title 39 offenses, the court may order the suspension of a defendant's driver's license upon a failure to comply with any term of an time payment order).

In Municipal Court, there are two potential paths to incarceration for nonpayment. The first is via the issuance of a bench warrant for failure to pay, when coupled with incidental arrest and incarceration upon an inability to make bail. The second is through the contempt mechanisms provided by New Jersey Court Rules 1:10-1 and 1:10-2. Upon careful review, the Committee saw no need to disturb the careful procedural protections provided by R. 1:10-1 and R. 1:10-2. Therefore, the recommendations that follow demonstrate the Committee's balanced approach to bench warrants for failure to pay that will incorporate an ability-to-pay hearing as a precursory step to issuance.

While the Committee notes that the recommendations made do not diminish a Municipal Court's authority to issue a bench warrant for a failure to appear, the Committee takes the position that such a powerful enforcement tool should not be used indiscriminately for a failure to appear for minor offenses or for failures to pay when the amount owed is minimal. These proposed limitations to the use of bench warrants will be discussed below.

RECOMMENDATION 13 **Bench warrants should only be authorized for defendants who fail to appear for an ability-to-pay hearing where the outstanding fines and fees owed by that defendant equal or exceed $250.**

The Committee recommends that in the event a noticed defendant fails to appear, and the outstanding monies owed is less than $250, the Municipal Court should only issue a bench warrant if required in the interest of justice. Vicinage management should establish protocols for monitoring compliance with such an established policy. The Committee cautions that this authority should not be read as mandating issuance when the amount exceeds $250. This threshold is consistent with the Committee's proposal in Recommendation 14, pp. 49-50, to limit the use of failure to appear bench warrants to certain, serious offenses. For those defendants with outstanding fines that do not meet the proposed threshold, Municipal Courts retain the authority to utilize other enforcement tools.

RECOMMENDATION 14 **Develop a policy limiting the issuance of failure to appear bench warrants to certain, serious offenses, taking into account the following: the seriousness of the offense charged; the age of the case; and other relevant factors.**

The Committee acknowledges that the concerns regarding incidental incarceration from failure to pay bench warrants remain for failure to appear bench warrants. To balance the use of this powerful enforcement tool with the potential for incarceration, the Committee recommends the development of a policy limiting the use of failure to appear bench warrants to certain, serious offenses. The Committee acknowledges that, as of the drafting

of this report, all vicinages have issued a local court order limiting the use of bench warrants for failures to appear in traffic cases to enumerated, serious offenses. In the pursuit of parity in the treatment of defendants across the State of New Jersey, the Committee recommends that a universal policy (i.e. Administrative Directive or Court Rule) be promulgated.

RECOMMENDATION 15	**Develop a policy formalizing the process for the recalling of existing bench warrants for failure to pay for complaints that have been disposed, taking into account the following: the age of the bench warrant; the seriousness of the conviction; the amount owed; and any other relevant factors.**

Building on the issues identified in Recommendations 13 and 14, pp. 49-50, the Committee recommends the development of a statewide policy that would provide a systematic way for courts to review the approximately 300,000 outstanding bench warrants that have been issued by municipal courts for failure to pay. This total includes all outstanding failure to pay bench warrants that have been issued from 1986 until the end of the 2017 calendar year. It is worth noting that 42,000 of those 300,000 outstanding bench warrants were issued during calendar year 2017. It is also worth noting that these totals need to be considered in the context that the Municipal Courts handle approximately 6 million cases annually. (Appendix AA). Any developed protocol should consider critical factors, such as the age of the case, the seriousness of the original charge(s), the remaining balance, and other relevant factors. As part of that protocol, strong consideration should also be given to identifying situations where the remaining balances should be vacated in the interest of justice, consistent with R. 7:9-4 and N.J.S.A. 2B:12-23.1.

The Committee recommends that the process to review and recall existing failure to appear warrants begin promptly, with an emphasis on rescinding warrants for defendants convicted of minor offenses or who have minimal outstanding legal financial obligations. As an intermediary option pending review of outstanding warrants, vicinages may issue standing orders providing for the immediate release of defendants arrested on municipal failure to pay bench warrants when the bail amount owed is under a certain threshold, generally $250 to $500 dollars. In those instances, the defendant is released and provided a date to appear before the court.

Finally, the Committee recommends that in instances where a bench warrant is recalled, the matter be scheduled for court to determine whether a defendant needs to make new arrangements or avail himself/herself of sentencing alternatives. The Committee urges the consideration of revocation of the fine in full or in part, if appropriate, and strongly

encourages municipalities to develop or avail themselves of existing collection programs or processes, such as private collections, to avoid reliance on bench warrants and license suspensions as the primary means of collection.

RECOMMENDATION 16	**Develop a policy formalizing the process for dismissal of old complaints that have not been disposed, taking into account the following: the seriousness of the offense charged; the age of the case; and other relevant factors.**

Municipal Court judges may dismiss open cases in instances governed by R. 7:8-9(f), Dismissal of Parking Tickets. The Committee is also aware of current discussions within the Judiciary regarding the statewide dismissal of certain less serious, outstanding municipal court matters that have an open, active failure to appear bench warrant. The Committee thus recommends that additional court rules or policy be developed to further encourage or mandate the dismissal of old, open cases based on the following principles: the age of the case; the seriousness of the charge; the current status of the matter; and other relevant factors.[13] In many instances, these outstanding matters may have active warrants and license suspensions attached to them, but have little likelihood of resulting in a guilty finding if the matter was brought to trial. The ongoing utilization of these enforcement methods in the face of an unlikely prosecution must be addressed.

For that reason, the Committee suggests that a court rule or policy be developed to provide for the dismissal of certain complaints by the municipal court that are over ten years old, with notice given to the prosecutor. The Committee hopes that creating a clear process for final resolution will remove the risk of potential unintended consequences caused by these open matters, while giving the prosecutor an opportunity to object. This process will also clear court backlog and provide some finality to these old, open cases. The Committee envisions that matters falling outside of any newly-established threshold will remain subject to the procedures captured in R. 7:8-5, which authorize dismissal of a Municipal Court complaint "by the court for good cause at any time on its own motion, on the motion of the State, county or municipality or on defendant's motion." Id.

[13] The ATS/ACS system was implemented statewide as of January 1, 1997. Although many open municipal court complaints that pre-date statewide implementation were entered into the ATS/ACS system, many outstanding complaints were not. The Committee recommends that any policy that is developed encompass these unlogged complaints.

RECOMMENDATION 17 **The AOC should develop additional tools and procedures for Municipal Court judges and staff to determine whether a defendant who has failed to appear or pay is incarcerated before a bench warrant or license suspension is issued.**

Currently, to determine whether a defendant is incarcerated in county jail, court staff must do a state-wide search through the County Corrections Information System (CCIS). To determine whether a defendant is incarcerated in state prison, court staff can search for the defendant on the Department of Correction's online Offender Search Form.[14] To minimize the risk that defendants are issued warrants or license suspensions for failure to appear or pay when they are incarcerated and physically unable to do so, particularly for larger Municipal Courts that do not have resources to allocate towards individual looks-ups for each delinquency, the Committee recommends that Municipal Courts be provided the appropriate technological tools to more easily and swiftly determine whether a defendant is incarcerated.

The Committee acknowledges that implementation of this recommendation would require significant updating of the County Corrections Information System database, and to the databases used by the New Jersey Department of Corrections. It would also require reconciliation of the complaint-driven nature of the Municipal Court computer system to better capture the State Bureau Identification (SBI) number that is used for defendants who are incarcerated.

RECOMMENDATION 18 **Municipal Courts should recall bench warrants or rescind driver's license and vehicle registration suspensions when a defendant makes a subsequent good faith effort to report to court or to satisfy a legal financial obligation.**

The Committee determined that a common practice across Municipal Courts is to allow a judicial officer (Municipal Court judge or authorized Court Administrator or Deputy Court Administrator) to recall a bench warrant when the defendant contacts the court. Similarly, many courts will rescind a driver's license suspension when a defendant makes a good faith effort to either report to court or to pay a portion of the outstanding payment balance. The Committee approves of this practice and recommends that courts apply it liberally, where appropriate. Additionally, the Committee recommends that this practice be highlighted and encouraged via training and however else deemed appropriate by the AOC. This will ensure that this approach to delinquency shifts from being commonplace in various Municipal Courts to being universally and consistently practiced.

[14] The URL for that portal is https://www20.state.nj.us/DOC_Inmate/inmatefinder?i=I.

VOLUNTARY COMPLIANCE WITH COURT-ORDERED APPEARANCES AND LEGAL FINANCIAL OBLIGATIONS

The following recommendations emphasize encouraging court user compliance with Municipal Court obligations. The recommendations share the objective of providing court users with access to critical information that will both advise of an obligation to the court and encourage court contact if that obligation cannot be met.

RECOMMENDATION 19	**Establish a system for automated text, email, and/or telephonic reminders to defendants of upcoming or missed court dates and upcoming or missed legal financial obligation due dates.**

Several studies reviewed by the Committee concluded that reminder notifications are a significant factor in reducing failures to appear and failures to pay. (Appendix X). For that reason, the Committee recommends implementation of text, email, and/or telephonic notifications to municipal defendants regarding upcoming or missed court appearances and payment due dates. The Committee also recommends that information regarding possible sentencing alternatives and links to online case management or resolution options be incorporated into any developed reminders. The Committee envisions this recommendation will build on the auto-notifications developed for defendants participating in criminal justice reform's pretrial monitoring.

For implementation, the Committee proposes that consideration be given to establishing procedures to ensure the voluntary collection of cell phone, email, and/or phone information from defendants to facilitate automated reminders through: 1) the modification of Judiciary-issued charging documents and forms; 2) the creation of an online portal for self-registration; and 3) direct court contact to opt in to receive reminders.

RECOMMENDATION 20	**Modify court notices to advise defendants in plain language that: 1) inability to pay will not result in incarceration; 2) defendants can contact the court to seek alternative ways to meet their financial obligations; and 3) the failure to appear or respond to notices may result in additional monetary penalties, license suspension, and/or issuance of a warrant for arrest that may lead to incarceration.**

Although current notices encourage defendants to contact the court, their formality and brevity fail to properly advise defendants of the availability of sentencing alternatives, in

part because of the current outdated dot matrix printing process, as well as space and character limitations of the notices. This is to the detriment of both the defendant and the court, as members of the Committee agreed that in many instances of a failure to appear or failure to pay, defendants were unable to satisfy a fine or time payment, but were fearful of contacting the court due to that inability.

The Committee thus proposes building on the notice revisions recommended by the Equal Justice Working Group of the Municipal Conferences, and significantly revising the scheduling and delinquent notices. Those revisions should include an advisement to court users that an inability to pay will not result in incarceration and instructions that a court appearance is required to determine the availability of sentencing alternatives.

Such revisions will reinforce to defendants the need to contact the court to schedule an appearance in the event of any inability to pay, and give defendants information regarding the availability of sentencing options. Taken together, the proposed revisions should assist defendants that are otherwise fearful of contacting the court by providing them with information on their options. The Committee additionally recommends that consideration be given to translation of the revised notices into other commonly-used languages where practicable.

A failure to satisfy the installment payments would result in a court date being scheduled, Recommendation 12, pp. 47-49. At the time of that court appearance, the judge – as currently is the case – can assess the defendant's ability-to-pay and potentially modify the sentence.

RECOMMENDATION 21 **Centralize and modernize Municipal Court notice generation and printing to improve the quality and functionality of notice processing and to take advantage of high volume printing and postage discounts for courts across the state.**

New Jersey Municipal Courts generate in excess of 10 million official court notices through the existing automated case management systems annually. In addition, Municipal Courts manually generate tens of thousands of non-automated notifications to defendants. This high volume of notifications is currently handled locally, requiring each court to manage its notice and printing supplies and its postage budget based on its volume and usage. The Committee recommends consolidating and centralizing this process, significantly reducing expense, overhead, staffing, and postage costs to each court. This centralization will also facilitate the updating of the physical notice to a new, more dynamic form which will significantly improve its appearance and clarity, benefiting the defendant receiving the notice.

RECOMMENDATION 22 **The AOC shall develop policies expanding the use of video and telephonic appearances in appropriate instances in Municipal Courts.**

The availability of video and telephonic appearances encourage court appearances when such appearance would be a hardship, inconvenient, or impractical. This can facilitate the continuous and swift resolution of municipal matters by avoiding adjournments. Currently, Municipal Courts have varying policies on the use of video and telephonic appearances. This variation can be explained by a number of factors, including local budgetary limitations or the preferences of the Municipal Court judge. The Committee recommends that the AOC develop policies and procedures to encourage the greater use of technologies allowing for remote appearances, including for those defendants that are incarcerated. This would involve collaboration on technical issues with the Department of Corrections and county jails. Any procedures developed should be cognizant of the budgetary issues that may otherwise discourage a Municipal Court from allowing the use of these technologically-enhanced appearances.

RECOMMENDATION 23 **The AOC should explore the establishment of a uniform online adjournment request process.**

Currently, there is no uniform adjournment request protocol for Municipal Court matters. Consequently, the requirements for a defendant to request an adjournment vary amongst the vicinages and Municipal Courts. To address this, and simultaneously enhance court access, the Committee recommends that the AOC explore the establishment of a uniform online adjournment request process that would be implemented through a customer service portal added onto NJMCdirect.com – the existing page where defendants can pay traffic tickets online. This would allow court users, on their own behalf or through counsel, to request adjournments online, to more easily access the court, and to avoid possible failure to appear penalties.

The Committee further recommends that any portal which is developed indicate to the requestor that the submission of the request for an adjournment does not guarantee its approval by the court, and that proof of the court's receipt of the request be provided to the requestor. The Committee also suggests that the AOC require that requests be submitted on a timely basis, to ensure there is sufficient time to give the prosecutor an opportunity to review and object, and to allow for court review.

INDEPENDENCE OF THE MUNICIPAL COURTS

An independent Municipal Court is central to the Judiciary's ability to serve the public. To enhance the independence of the Municipal Courts, the Committee makes a collection of recommendations that together create two new processes: 1) a voluntary qualification process for the appointment and reappointment of Municipal Court judges; and 2) an evaluation process for sitting Municipal Court judges. The former will provide an impartial and transparent process for the appointment and reappointment of qualified judges, free from inappropriate considerations such as revenue generation. The latter will enhance the already-present AOC and vicinage involvement and oversight of the Municipal Courts, and provide further assurances that the Municipal Court remains both independent and separate from police and prosecution. Recommendations describing both processes follow.

VOLUNTARY QUALIFICATION PROCESS FOR THE APPOINTMENT AND REAPPOINTMENT OF MUNICIPAL COURT JUDGES

The recommendations below put forth the proposed qualification process for the appointment and reappointment of Municipal Court judges. Statutorily, the local or state executive branch appoints Municipal Court judges. N.J.S.A. 2B:12-4. Therefore, although the qualification process will be led by the Judiciary, because it is the municipality that retains the final authority to appointment, the municipality must choose to voluntarily participate in the qualification process. These recommendations are proposed as a group, and for that reason should be read together.

RECOMMENDATION 24	**Establish a statewide uniform and transparent process to assess the qualifications for the appointments and reappointments of all Municipal Court judges.**
RECOMMENDATION 25	**All appointing authorities and municipalities shall be encouraged to participate in an appointment and reappointment qualifications process. Participating municipalities retain the authority to appoint Municipal Court judges.**
RECOMMENDATION 26	**Utilizing guidelines of the Administrative Office of the Courts, establish a Municipal Judge Qualifications Committee (Qualifications Committee) to evaluate and assess the qualifications of attorneys being considered for appointment or reappointment to Municipal Court judgeships.**

RECOMMENDATION 27 The composition of the Qualifications Committee shall include: 1) the Presiding Judge of the Municipal Courts of the Vicinage wherein the municipality sits, or a designee selected by the Assignment Judge, who will serve as chair of the committee; 2) a member of the appointing municipality or municipalities, or their designee; 3) two members of the county bar association who have extensive municipal court practice, one with defense and one with prosecuting, as appointed by the Assignment Judge of the Vicinage; and 4) a non-attorney citizen from the county.

RECOMMENDATION 28 All participating municipalities shall submit their candidates for appointment or reappointment as a Municipal Court judge to the Qualifications Committee for evaluation. After carefully reviewing the background and qualifications of the Municipal Court judicial candidate, the Qualifications Committee shall promptly issue a report to the Assignment Judge. It is further recommended that a sitting Municipal Court judge who is up for reappointment may, with the permission of the Assignment Judge, submit his or her name to the Qualifications Committee for review. All materials created by the Qualifications Committee during the course of their review of a candidate are confidential.

RECOMMENDATION 29 When a Municipal Court judge candidate is deemed not qualified by the Qualifications Committee, the Assignment Judge will first notify the candidate and then the town solicitor. If appropriate, the Assignment Judge will request that another candidate be submitted for consideration by the Qualifications Committee.

RECOMMENDATION 30 **When a Municipal Court judge candidate is deemed qualified, the Assignment Judge will notify the governing body, town solicitor, and the President of the County Bar Association. The notice will trigger the municipal governing body to vote or promptly take action on the candidate.**

The Committee proposes the creation of a qualification process for the appointment and reappointment of Municipal Court judges. The process will be based on an objective analysis of a candidate's qualifications, as assessed by a committee representing stakeholders in the municipal court—the local Qualifications Committee. Because municipalities retain the ultimate appointing authority, participating in the qualifications evaluation process will be voluntary, although strongly encouraged. Thus, the processes articulated in the above recommendations are made with full acknowledgement that they do not disturb the inherent authority of the governing body or Assignment Judge.

To conduct the qualification evaluation, the Committee proposes the establishment of a local Qualifications Committee. Each local committee would be established by the Assignment Judge, and will be comprised of the following:

1) The Presiding Judge of the Municipal Courts of the Vicinage wherein the municipality sits, or a designee selected by the Assignment Judge, to serve as chair of the committee;
2) A member of the appointing municipality or municipalities, or their designee;
3) Two members of the county bar association that have extensive Municipal Court practice, one with defense and one with prosecution, as appointed by the Assignment Judge of the Vicinage; and
4) A non-attorney citizen from the county.

As part of the qualifications review process, participating municipalities shall submit their candidates for appointment or reappointment as a Municipal Court judge to the Qualifications Committee for evaluation. Additionally, a sitting Municipal Court judge, with the prior approval of the Assignment Judge, may be allowed to submit his or her own name to the Qualifications Committee of a participating municipality, in the event that it was not submitted by the municipality. This proposed procedure will enhance the independence of sitting Municipal Court judges who are qualified, and address concerns raised by testimony provided during the public hearings held by the New Jersey State Bar Association Subcommittee on Judicial Independence in the Municipal Court. (Appendix V-1, p. 1106)("The testimony was that towns rely on the revenues that Municipal Courts generate to assist with their budgets, allowing them to not raise taxes on their citizens. Towns often will review the revenues generated by a Municipal Court judge prior to deciding whether a judge will be reappointed.").

The Qualifications Committee will examine the background and qualifications of a candidate, as well as quantitative and qualitative data from sources such as the evaluation report discussed in Recommendation 34, p. 61, prior to preparing a report for the Assignment Judge. Although the proposal allows for the Qualifications Committee to rely on confidential and non-confidential materials in preparing its report, any materials created by the Committee during the course of its review of a candidate will be regarded as confidential. The recommended qualification process will simply be a determination of whether a candidate is qualified or not qualified to sit as a Municipal Court judge, and will not include a comparison of potential candidates. That ultimate determination is left to the appointing authority.

In the event the Committee determines that the candidate is qualified, the Assignment Judge shall notify the appropriate stakeholders: the governing body, the town solicitor, and the President of the County Bar Association. In the event a candidate is found to not be qualified, the Committee recommends that the Assignment Judge first notify the candidate and then the town solicitor. The Assignment Judge will then, if no other candidates were submitted and deemed qualified or if otherwise appropriate, request that another candidate be submitted. The Committee is hopeful that participating municipalities, through membership on the Qualifications Committee, will be engaged with the process, and find it to be useful in evaluating a candidate for a Municipal Court judgeship.

The qualifications procedure will ensure that only qualified candidates are appointed to serve while also protecting qualified sitting Municipal Court judges. Candidates found to not be qualified will simply not gain the support of the Qualifications Committee. This procedure will enhance credibility to the appointment process, protect towns from criticism, assist towns in vetting candidates, and, ultimately, enhance the public trust in the courts. At the same time, it will bring to the forefront the need for statutory changes to insulate judges from local pressure and politics and increase the independence of those courts. A statewide improvement to the current selection and retention of all Municipal Court judges, as opposed simply for those judges in voluntarily participating municipalities, may be inevitable.

LEGISLATIVE PROPOSALS

As discussed previously, the basic structure of our municipal court system has been established by statute. In developing our recommendations, the Committee fully acknowledges that certain fundamental changes being suggested fall outside the scope of the current statutory structure. For that reason, the below series of recommendations, which fall generally within the purview of the other two branches of government, would best be implemented through legislative change.

RECOMMENDATION 31 **The legislature should consider modifying the current legislative scheme to mandate municipalities to participate in the proposed qualifications process for appointment and reappointment of Municipal Court judges.**

The Committee recommends that the legislature mandate municipal participation in the proposed voluntary qualification evaluation process for appointment and reappointment.[15] This will ensure statewide uniformity in the municipal bench while enhancing independence and trust in the municipal court system.

RECOMMENDATION 32 **The legislature should modify the current legislative scheme to increase the term of service for Municipal Court judges from three to five years.**

Municipal Court judge appointments are limited to three-year terms. N.J.S.A. 2B:12-4. Tenure is not available, and reappointment is at the discretion of the municipality. The Committee recommends a longer term of appointment, with membership agreeing that it will result in a more experienced bench and provide further stability to the leadership of a municipal court. It will also represent a shared commitment from all branches of government to provide additional protection to judicial integrity and independence. This commitment has preliminarily been demonstrated by its unanimous support from Committee members. This change in the term of service legislation will be even more meaningful if the qualifications process outlined in Recommendations 24 through 30, pp. 56-59, are also mandated by legislation, as is proposed in Recommendation 31, p. 60.

RECOMMENDATION 33 **The legislature should mandate the consolidation of small courts, taking into account factors such as total annual filings, frequency of court sessions, and geography.**

The Committee reviewed data relating to total court filings for municipal courts for the 2017 court year (July 1, 2016 to June 30, 2017). Of 515 municipal courts, 225 had less than 3,000 filings in the 2017 court year, 166 had less than 2,000 filings, and 105 had less than 1,000 filings. (Appendix U). Based on this data, and the benefits associated with consolidated municipal courts, the Committee recommends that consideration be given to legislatively-mandated consolidation. The Committee suggests that any mandate for

[15] Although the Committee acknowledges that the Court has the obligation and authority to ensure the integrity of the Judiciary and to preserve judicial independence, N.J. Const. art. VI, § II ¶ 3, alterations to the appointment and reappointment process for Municipal Court judges are best done through the legislature.

consolidation consider not only the annual filings, but also the number of court sessions and the geography of various municipal courts, which will ensure that there is no decrease in court access as a result of consolidation.

EVALUATION PROCESS FOR SITTING MUNICIPAL COURT JUDGES

The recommendations below put forth a proposed evaluation process for sitting Municipal Court judges that utilizes and builds on current evaluation methods used in the Municipal Court and Superior Court. These recommendations are proposed as a group and for that reason should be read together.

RECOMMENDATION 34	**Establish a Municipal Court judge evaluation process, similar to the evaluation process utilized for Superior Court judges. The Judicial Education and Performance Unit of the Administrative Office of the Courts will administer the aforementioned evaluation process.**

Superior Court judges are evaluated via the New Jersey Judicial Performance Program, adopted in 1986 and implemented the following year. That program provides anonymous questionnaires to attorneys who participate in cases before judges in the program. Attorneys are asked to evaluate judges on over 30 performance standards in areas such as legal ability, judicial management skills, and comportment. Appellate judges are also sent anonymous questionnaires, and asked to evaluate trial judges when their rulings are appealed. With a goal to improve judicial performance, education, and enhance the reappointment process, the results of the evaluations are shared with the individual judge, assignment judge, Supreme Court, Governor, Senate Judiciary Committee, and Judicial Evaluation Commission.

The Committee recommends that a process similar to the New Jersey Judicial Performance Program for Superior Court judges be developed to include Municipal Court judges, and to maintain and expand the current evaluation process of Municipal Court judges to include in-court observations by the Municipal Presiding Judge or an independent review of court session recordings, attendance at all required training sessions offered, compliance with guidelines, and an objective review of the imposition of penalties, including discretionary fines, contempt assessments, jail terms, and license suspensions assessed by the Municipal Court judge. Altogether, this will ensure the uniform and fair application of law and provide an objective measure by which the Judiciary can evaluate a sitting Municipal Court judge. This evaluation process will also serve to increase the independence of sitting Municipal Court judges. Any report generated as part of this evaluation process will be regarded as confidential.

RECOMMENDATION 35	**Any confidential evaluation report produced pursuant to Recommendation 34 shall be shared with the evaluated judge, the Assignment Judge, the Presiding Municipal Court Judge, and the county Municipal Judge Qualifications Committee as part of the qualifications process for appointment and reappointments.**

In acknowledgment of the benefit of an objective evaluation process, the Committee recommends that any evaluation report produced pursuant to the processes proposed in Recommendation 34 be shared with the individual judge, Assignment Judge, and Presiding Municipal Court Judge. A similar process is followed for evaluated Superior Court judges, with appropriate mentoring following distribution.

Additionally, the Committee recommends that when available, the evaluation report should be shared with the Qualifications Committee (as referenced in Recommendations 24 through 30, pp. 56-59) to be utilized in their determination as to whether a candidate is qualified or not qualified. Likewise, because the Qualifications Committee will have data that will include a sitting Municipal Court judge's use of contempt and the imposition of financial obligations, the Committee recommends that this data related to a judge's performance on the bench be included in the evaluation process.

IMPROVE ACCESS TO THE MUNICIPAL COURTS THROUGH TECHNOLOGY

The future of enhanced access to the Municipal Courts will be dependent on technology. Building further on current endeavors and improvements sought by the Municipal Courts, the Committee recommends a number of key enhancements that rely on the significant expansion of the use of NJMCdirect.com for both court users and court staff. This includes options for remote resolution of municipal matters and remote access to Municipal Courts. The recommendations that follow also include technological enhancements that will assist in the execution of other recommendations made by the Committee.

RECOMMENDATION 36	**Expand the opportunity for defendants to resolve Municipal Court matters remotely without court appearance via NJMCdirect.com or through plea by mail by:** **1) Expanding the scope of "payable offenses" that can be resolved on NJMCdirect.com;** **2) Expanding NJMCdirect.com to accept payments on all matters where a court appearance is not required, all time payments, and bail where permitted;** **3) Allowing for the online submission of an application for plea by mail, pursuant to R. 7:6-3 and R. 7:12-3; and** **4) Removing the requirement of hardship for plea by mail.**

Remote resolution of Municipal Court matters is available in two instances: 1) a guilty plea and concomitant payment of the fine that is established in the Statewide Violations Bureau Schedule, Administrative Office of the Courts, New Jersey Judiciary, available at https://www.njcourts.gov/attorneys/violations.html [16] pursuant to R. 7:12-4; or 2) resolution through the plea by mail protocols established in R. 7:6-3, Guilty Plea by Mail in Non-Traffic Offenses, and R. 7:12-3, Pleas of Not Guilty and Pleas of Guilty by Mail in Certain Traffic or Parking Offenses.

The Statewide Violations Bureau Schedule identifies statutes and administrative code violations that the Court has approved for resolution through the payment of an established

[16] Municipalities can also establish a Local Supplemental Violations Bureau Schedule. R. 7:12-4. Prior to promulgation, the schedule, and any additions after its creation, must first be approved by the vicinage Assignment Judge. Traffic ordinances on the local schedule can be paid through NJMCdirect.com as long as no court appearance is required and there is no open warrant.

fine that includes court costs and fees. These offenses are colloquially referred to as "payable offenses" in that they can be paid without a court appearance, unless required by law enforcement. For those defendants that wish to resolve payable traffic and parking tickets, the AOC offers the convenient alternative of using the NJMCdirect.com website instead of personally going to court to pay or mailing a payment. This option may also be used to satisfy time payment plans for traffic or parking matters.

Court rules also encourage remote resolution for matters where a court appearance is required by providing defendants with the opportunity to plea by mail in order to plead not guilty or guilty in traffic or parking cases, R. 7:12-3, or guilty in non-traffic cases, R. 7:6-3, if appearing in court would cause an undue hardship. Generally, defendants wishing to avail themselves of these procedures must make a written or telephonic request for the Plea by Mail (Statement in Mitigation or Defense by Certification (R. 7:12-3 and R. 7:6-3)) form. It is then sent to the defendant by the municipal court, and it must be completed and returned to the municipality by a date specified on the form. If the defendant fails to return the form by the date listed, or the court determines that an appearance is required, the defendant will be so notified.

To expand the availability of remote resolution, the Committee recommends that the Statewide Violations Bureau Schedule be reviewed and expanded to include additional appropriate offenses, including petty disorderly persons offenses, disorderly persons offenses, and other quasi-criminal matters. The Committee also recommends that the NJMCdirect.com website be enhanced to accept payments via credit card, debit card, and if possible, through bank account deductions. The availability of these payment methods should be expanded to the following (in addition to payable and ATS time payments as they are currently): 1) payable criminal complaint summons; 2) disposed criminal complaints where a Time Payment Order has been issued by the court; and 3) the posting of bail on traffic or criminal matters and application of bail waiver, where permitted. Further, for all time payments, the Committee recommends that NJMCdirect.com give defendants the option of establishing a monthly automatic charging or installment deduction process. As an example, a defendant that owes $250 dollars would establish a one-time agreement to have automatic monthly credit card charges of $25 for 10 months. This will allow defendants to pay their obligations on a regularized and efficient basis without the need for continual court reminders, and will likely reduce delinquent or missed payments.

Finally, the Committee recommends that R. 7:6-3 and R. 7:12-3 be amended to allow defendants charged with certain offenses to enter a plea through completion of an online form and without a showing of hardship. Expanding this process to allow for remote resolution will benefit both court users and the courts by allowing for resolution without the need for a potentially costly and time-consuming court appearance, thereby encouraging responsiveness from defendants.

RECOMMENDATION 37 **All Municipal Courts shall offer defendants the ability to pay fines with a credit card or debit card using NJMCdirect.com at the payment window.**

Currently, online payment through NJMCdirect.com is available only to defendants for payable offenses and for time payments. Although approximately half of the Municipal Courts in New Jersey accept credit and debit card payments, that arrangement is entirely dependent on an individual municipality's desire to engage in a contract with a vendor for credit card processing.

Consistent with recommendations regarding the significant expansion of NJMCdirect.com, the Committee thus proposes that the online portal be incorporated into front-end court processing to give defendants the ability to immediately, after a guilty finding, pay their fines, fees, and penalties at the court window using NJMCdirect.com. The widespread availability of NJMCdirect.com would allow court users to more easily and efficiently resolve their court obligations, thus avoiding time payment plans and possible failure to pay and/or failure to appear penalties. This process would also allow municipalities to avoid the costly necessity of contracting independently with credit card companies to offer credit card payment options to court users, as the contract would be negotiated by the state. The Committee notes that this initiative will likely require review and modifications to Administrative Directive 8-98, "Procedures for Credit Card and Electronic Payments of Municipal Court Fees and Financial Obligations" (November 17, 1998). (Appendix CC).

RECOMMENDATION 38 **Defendants shall be permitted to make partial payments on "payable offenses" without a court appearance.**

As discussed previously, the Supreme Court has approved a list of "payable" offenses which do not require a court appearance (unless required by the law enforcement officer) by the defendant in order to plead guilty and pay/resolve the matter without coming in to court. Each offense has been assigned a "payable amount" which falls within the statutorily-authorized range. These offenses are included on a statewide payable list referred to as the Statewide Violations Bureau Schedule. Additionally, each municipal court has created a list of "payable" local ordinances to which defendants may plead guilty and pay without coming to court. Presently, defendants are not permitted to make partial payments on these state or local payable offenses without first coming to court and then demonstrating an inability to pay a fine in full, and otherwise qualifying for a time payment order.

The Committee recognizes that many defendants may seek to plead guilty and take advantage of the remote resolution option made available for payable offenses, but have

limited available funds to satisfy the full payable amount. The Committee believes that many of these individuals would comply with their financial obligations if they were permitted to pay in partial payments without the need for a court appearance. The Committee thus recommends that defendants be given the opportunity to satisfy payable offenses in installments without a court appearance or determination of eligibility. These installment plans would be offered though NJMCdirect.com, by mail, and in person at the violations window, based on guidance promulgated by the Administrative Office of the Courts as to the specific parameters of installment schedules.

A failure to satisfy the installment payments would result in a court date being scheduled, Recommendation 12, pp. 47-49. At the time of that court appearance, the judge – as currently is the case – can assess the defendant's ability to pay and potentially modify the sentence.

RECOMMENDATION 39 **Enhancing customer service by allowing defendants to: 1) reschedule an initial court date, pursuant to policy promulgated by the AOC; and 2) apply online for a public defender.**

The date of a defendant's initial appearance in Municipal Court is established in one of two ways, depending on whether the defendant is charged on a summons or a warrant. A defendant in New Jersey who is charged on a warrant for committing a crime or disorderly persons offense is eligible for criminal justice reform. Those defendants will have their first appearance and determination of pretrial release conditions set in a vicinage's central judicial processing (CJP) court. The Committee believes that the current CJP procedures in place for scheduling the next court appearance for these defendants should continue without change.

The Committee, however, recommends some flexibility in the scheduling of the first appearance for defendants who are charged on a summons. Specifically, each of the summons charging documents generally includes the date by which the defendant is to come to court for his or her first appearance. To provide defendants with greater scheduling flexibility, and to encourage compliance with the initial court date, the Committee recommends giving defendants charged on a summons the limited flexibility to reschedule that initial first appearance date (e.g., move from Monday to Wednesday of the same week). This will likely reduce failures to appear due to personal/professional conflicts, and give defendants more control and ownership of the scheduled court date. Because of the limited frequency with which some municipal courts schedule their court sessions, it is recommended that the AOC develop strong guiding criteria and parameters for how this rescheduling would function to ensure that any new court date is timely. Moreover, the Committee recommends that consideration be given as to whether defendants charged with certain serious offenses, such as driving while intoxicated, should be excluded from this process to ensure that those defendants are promptly advised of the enhanced penalties.

To further expedite proceedings during the initial court date, the Committee recommends that defendants be given the ability to apply for a public defender online. Currently, defendants that seek to apply for a public defender must report to court, make their request, fill out a Financial Questionnaire to Establish Indigency, and pay an application fee of up to $200. An online application process would expedite not only the potential appointment of a public defender, but also the resolution of the Municipal Court matter. It would also allow the Judiciary to require that the form be completed in full, and would encourage accuracy on the part of the defendant, who could complete the form using appropriate documentation.

RECOMMENDATION 40 **Enhance the ability of all court users to easily access their outstanding Municipal Court obligations and pending matters across the state, and give Municipal Court judges and staff the ability to consolidate payments within the municipality through automation.**

Defendants will often owe fines and fees in numerous courts, which can translate to multiple time payment plans in various Municipal Courts. This can easily lead to confusion on the part of a defendant, ultimately contributing to failures to pay where a defendant puts money towards some, but not all, outstanding time payment plans due to lack of knowledge of all obligations.

In an effort to facilitate a defendant's ability to assess his or her outstanding fines, fees, and penalties, the Committee recommends that technology be developed to enable a defendant to effectively search for all of his or her matters, including pending and disposed charges, the status of each matter, total penalties assessed in each matter, and total amount owed for each charge. This information will facilitate a defendant's understanding of all municipal financial obligations, and allow a defendant to prioritize which matter to address.

The Committee additionally proposes that this information be made available to Municipal Court staff, as oftentimes the administrative burden of identifying for defendants these overlapping but jurisdictionally-distinct time payment plans is carried out by staff. The Committee realizes that Municipal Court Administrators spend significant amounts of time collecting payments from defendants, including determining the precise scope of a defendant's time payment plans. Finally, the Committee recommends that Municipal Court judges be provided access to this information following disposition only. An overall view of a defendant's outstanding time payments will greatly assist Municipal Court judges in developing appropriate and realistic time payments.

Further, in those instances where a defendant has multiple time payment orders within a municipality, the Committee recommends that technological enhancement be provided to allow the Municipal Court to easily identify, consolidate, and recalculate those payments. Multiple time payments within a court prove to be as difficult as multi-jurisdictional time payments for defendants to monitor and for court staff to identify. Allowing for the easy consolidation of multiple time payment orders will ensure that a defendant does not miss a payment and inadvertently become delinquent.

RECOMMENDATION 41 **Expand eCourts technology in the Municipal Courts to include all case-related documents and court filings, such as motions and orders, and to explore the availability of discovery through electronic means.**

eCourts is a web-based application that is designed to allow attorneys, in good standing, to electronically file documents with the courts. The Judiciary intends to implement eCourts in all trial court divisions, building on four essential functionalities:

- Electronic filing and information exchange between the court and attorneys;
- The creation of an electronic filing system;
- The establishment of an electronic case jacket;
- The maintenance of an electronic records management system that provides both attorneys and the public with access to case information.

Currently, municipal integration into eCourts is related exclusively to criminal justice reform and the electronic storage and transfer of criminal justice reform documents in the eCourts application.

To improve the efficiency and accuracy of case management and reduce the physical space demands of the local courts, the Committee endorses the expansion of eCourts functionality to capture all case-related documents within an electronic case file specific to each complaint or ticket. This will improve case lookups and save staff time, as well as reduce the overwhelming demand for file storage. This effort will require coordination with the Superior Court Clerk's Office who oversees court records retention and management. The Committee further recommends that the AOC be tasked with exploring the availability of exchanging discovery through eCourts, as well as any other expansion beyond that identified in this recommendation.

RECOMMENDATION 42 **To continue current efforts to modernize and integrate MACS and PromisGavel to improve case management coordination between the municipal and criminal courts.**

The Municipal Automated Complaint System (MACS was introduced in 2009 to replace the outdated mainframe ATS/ACS application. Whereas ATS/ACS utilized a series of key-prompt commands to navigate, MACS is a Windows-based system that is far more intuitive to the user. This change provided a major shift in the look, feel and capability of the system. Currently, MACS allows for inquiries into cases, complaint entry, ticket entry, and scheduling.

PromisGavel is the corresponding mainframe system used for criminal case management. It has been around in varying formats since 1973, but was fully rolled-out statewide in its present form in 1994. It utilizes a series of key-prompt commands to navigate and enter data, make inquiries into cases, and update information. It has yet to be updated to a Windows-based system, and it has not been integrated into MACS. There have been longstanding data quality and missing data issues related to municipal traffic and criminal cases transferred to the Superior Court for handling and disposition. These gaps have been further emphasized now that criminal justice reform technological system enhancements have been implemented. There is a heightened need to ensure that all case dispositions are correctly entered into the case management systems and reported nightly to the Computerized Criminal History system at State Police, as those offenses can have an immediate impact on a defendant's participation in criminal justice reform and the level of pretrial release that defendant receives.

To accomplish this, the municipal case processing functionality must be integrated with the PromisGavel functionality. A joint effort initiated by the Municipal and Criminal Divisions of the AOC has the immediate goal of bringing common case management functions together under a common system, taking advantage of the current MACS system as the host platform; and a long-term goal of ultimately replacing PromisGavel with MACS, much in the same way that MACS has replaced ATS/ACS.

The Committee fully endorses the work of this project to ensure that the computer systems of criminal and municipal communicate effectively and efficiently.

RECOMMENDATION 43	**The AOC shall continue to encourage the expansion of the eTicketing model to New Jersey municipalities. The AOC shall also develop eSummons technology to enable quick entry of Special Form of Complaint/Summons cases.**

eTicketing web services were introduced in 2009, and have been utilized by the State Police and local municipalities with increasing regularity since that time. eTicketing allows local municipality law enforcement to budget and contract with third party vendors to utilize vendor systems to connect with the AOC's computer systems. The vendor systems offer a modern, efficient and streamlined process for entry of traffic tickets into ATS. That process allows police officers in the field to scan an individual's driver's license, print the ticket, and automatically interface with the ATS case management system directly from their police cars. This eliminates the cumbersome paper-driven protocol, and ensures greater accuracy in the absence of handwriting deciphering issues, translating issues, and the system allowing for real-time editing. The reduction of errors increases efficiency for both law enforcement and the courts. Currently, as of the drafting of this report, just over 330 local police departments utilize eTicketing, and all New Jersey State Police vehicles are similarly equipped.

The Committee proposes that the AOC continue its endorsement of eTicketing and encourage municipalities to upgrade to the eTicketing system for a new, safer and more efficient option to the paper ticket books.

Building on the eTicketing model, the AOC is currently developing eSummons web services for the direct entry of Special Form of Complaint and Summons complaints. The Special Form of Complaint is a form regularly used by law enforcement and municipal courts to file disorderly persons and petty disorderly persons offenses, local ordinance violations, code enforcement actions, penalty enforcement proceedings, boating offenses, and select parking and traffic offenses. Vendors would develop a complementary software program for complaint entry. Much like eTicketing, this process would reduce paper complaints and improve accuracy and efficiency.

The Committee recommends that the AOC expedite the completion of this project, and develop the technical process to allow third party vendors to connect to the AOC Automated Complaint System database for the entry, docketing, and scheduling of the Special Form of Complaint and Summons matters by law enforcement and the entry of the summons for the various local code enforcement agencies within a municipality.

RECOMMENDATION 44 **Implement the WebFOCUS Reporting Software Upgrade for Municipal Courts for improved reporting and analytics.**

Reports on Demand is a computer function that provides statistics for all New Jersey Municipal Courts to use in managing their caseloads and tracking the progress of cases. At present, Municipal Courts use an outdated version of WebFOCUS software for their Reports on Demand functions.

However, other areas of the New Jersey Judiciary currently use a newer version of WebFOCUS that provides far greater reporting functionality and data analysis. Collection of accurate, useful analytical data is crucial to analyzing the success of current processes, and to encourage the refinement and development of existing and new policies. Upgrading the WebFOCUS software is crucial to ensuring that certain Municipal Court processes and policies can be more easily evaluated and will lead to greater efficiency and effectiveness. The Committee recommends that this pending upgrade be given a high priority for implementation.

RECOMMENDATION 45 **Establish minimum uniform requirements for all Municipal Court websites.**

As part of enhancing access to the courts, the Committee recommends that uniform standards be developed to ensure that important information is accurately packaged and presented on various local Municipal Court websites, should that municipality choose to have a webpage for their municipal court. This can include establishing web links on the municipality website to the State Judiciary website. This will ensure that key information is being disseminated in a consistent, uniform fashion to the public through Judiciary portals at both the state and local level. The Committee recommends that the AOC be tasked with identifying information that should be uniformly available on all Municipal Court websites, as well as information that is prohibited.

RECOMMENDATION 46 **Program ATS/ACS to technologically require compliance with R. 1:2-4.**

New Jersey Court Rule 1:2-4 currently permits a court to impose a monetary sanction on an attorney or party who, without just excuse, fails to appear for a court proceeding. The rule currently states that the amount should be paid to the "Treasurer, State of New Jersey." In light of this prohibition from municipal collection, the Committee recommends that ATS/ACS be hardcoded to ensure that the sanction amounts collected be distributed pursuant to the Rules of Court.

Additionally, the Committee notes that the Supreme Court Committee on Municipal Court Practice has recommended a court rule modification that would limit failure to appear sanctions to $25 for parking matters and $50 for all other matters, except for consequence of magnitude cases, Guidelines for Determining a Consequence of Magnitude, Pressler & Verniero, Current N.J. Court Rules, Appendix to Part VII (2018), where the aggregate sanction could not exceed $100. (Appendix M). The Committee supports the pending amendment as another step in imposing limitations on the excessive use of inappropriately imposed contempt amounts by Municipal Court judges, and recommends that in the event the Court adopts this proposed rule modification, the automated systems should be updated accordingly.

RECOMMENDATION 47 **Program ATS/ACS to allow court costs to be assessed only in statutorily-authorized instances.**

The bulk of assessed court costs are retained by the Municipal Court, and are intended to be used to fund its operation. The Judiciary has promulgated the policy that defendants who are acquitted or who have their matter dismissed cannot be assessed court costs unless such action is explicitly permitted by statute. (Appendix DD). The Committee recommends that the ATS/ACS system be hardcoded to allow court costs to only be assessed in permitted instances.

RECOMMENDATION 48 **Reaffirm the Judiciary's commitment to encouraging diversity in the judges and staff of the Municipal Courts and in the development of court policy and procedures to address the changing needs of the diverse population of New Jersey's court users.**

The Committee acknowledges the extensive diversity of the population of the State of New Jersey. The millions of litigants who come to the courts each year for a just resolution of their cases must believe they are being treated fairly, regardless of income, language barriers, disability, cultural diversity, or educational level. To address the shifting needs of various Municipal Courts in how services are provided to an ever-changing local population, the Committee reaffirms the Judiciary's commitment to respond to the needs of such populations in all aspects of court business. Such efforts include supporting recruitment of a more diverse bench and workforce, providing training on cultural competency, offering enhanced language access services, and the like.

RECOMMENDATION 49	**Establish a working group comprised of all three branches of government and key stakeholders to implement needed reform and statutory changes to the structure of the Municipal Courts and to create a forum for the discussion of additional relevant issues.**

To maintain the momentum of reform, the Committee recommends the creation of a working group composed of the three branches of government and key stakeholders to implement the recommendations made by the Committee. Many of the recommendations contained in the report are within the control of the Judiciary, and can be implemented through training, policy, administrative directive, or court rule. For those recommendations that fall outside the scope of the Judiciary's authority, the other branches of government should consider legislative changes.

The Committee engaged in exhaustive discussions regarding changing the structural foundation of the Municipal Courts as a means of ensuring judicial independence and improving their operation. Such changes to the statutory framework of the Municipal Court are an important and necessary step to achieve and implement reform, and have been the subject of prior unsuccessful reform efforts. Former Chief Justice Robert N. Wilentz analyzed these early attempts and succinctly framed the issue that the failure to restructure the municipal system was due in part to "a strong tradition of local self-government...the people who have the power to make the appointment want to keep the power to make the appointment." (Appendix I).

The Committee recommends, in addition to implementation of the other recommendations proffered in the report, that the working group address the following:

1. The creation of regional and/or county Municipal Courts;
2. The funding and efficiencies of consolidating Municipal Courts;
3. The shift from part-time Municipal Court judgeships [17] to full-time, tenured judgeships funded by the State of New Jersey's general fund;
4. Modifying the current legislative scheme for the appointment and reappointment process of Municipal Judges to enhance judicial independence;
5. Extending the term of municipal prosecutors and municipal public defenders from one to three years;
6. Discussing the expansion of subject matter jurisdiction for Municipal Courts;
7. Exploring the greater use of sentences that emphasize public safety and deterrence, as opposed to the current reliance on fines, surcharges, incarceration, and license suspensions;

[17] "Judgeship" refers to a judicial position available in a municipal court. Many Municipal Court judges have multiple judgeships in various municipal courts. Currently, the approximately 650 Municipal Court judgeships are satisfied by 314 Municipal Court judges.

8. The examination of the use of Motor Vehicle Commission surcharges, which are not subject to forgiveness or reduction, and their impact on indigent defendants;
9. The review of the excessive use of license suspensions;
10. Examining ways to further remove incentives for municipalities to turn to Municipal Courts to generate local revenue; and
11. Any other reforms identified by the working group that will lead to improving the Municipal Courts in New Jersey.

V. CONCLUSION

The prior accomplishments and reform efforts that have occurred within the New Jersey Municipal Courts are not to be understated. The committees, organizations, and institutions that have come before ours have done much to elevate the stature of our Municipal Courts. The Committee commends those efforts, and acknowledges the ongoing work of those close to municipal matters, including the Assignment Judges; AOC's Municipal Court Services Division; Presiding Municipal Court Judges; Municipal Division Managers; Municipal Court Judges; Municipal Court Administrators and Deputy Municipal Court Administrators; and all Municipal Court staff. The professionalism displayed by these key personnel on a daily basis, and particularly the expertise that was brought to Committee discussions, provided significant assistance in the findings and recommendations. They also know, as we do now, that despite all that has been done, there is still much more to do.

This need is evidenced not only by the Department of Justice's since rescinded "Dear Colleagues" letter, or even from persistent criticism from then-sitting Chief Justices of the very structure of the municipal court system as insufficient to protect the independence of Municipal Court judges. Articles from local press, (Appendix B, L), instances of judicial misconduct, (Appendix O, P, Q), and public hearings held by the New Jersey State Bar Association, (Appendix V-1), have all together laid out both the public perception and at times the unfortunate reality of the Municipal Courts as revenue-generators for the municipality, and reaffirmed the need for independence-enhancing reform. Committee members, cognizant of the above, were engaged in finding solutions to these issues, and at the same time the report challenges all stakeholders to engage in the important conversation required to achieve the necessary change.

The Committee anticipates that this report will provide a road map to improve Municipal Courts. Its proffer of principles and recommendations is made in an earnest attempt to enhance access and fairness to all litigants and court users, to increase the independence of the Municipal Courts, and to enhance public confidence in those courts, all done as a means of furthering the State of New Jersey's ongoing commitment to equal justice for all.

Respectfully Submitted,

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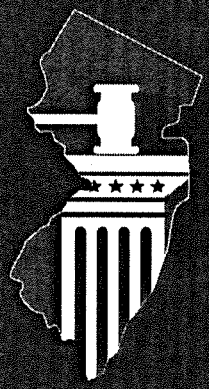

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