State of New Jersey
DEPARTMENT OF THE PUBLIC ADVOCATE
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JON S. CORZINE
Governor

RONALD K. CHEN
Public Advocate

July 21, 2006

Stephen W. Townsend, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 Market Street, CN 970
Trenton, New Jersey 08625-0970

Re: ***Opinion 705,***
Advisory Committee on Professional Ethics

Dear Mr. Townsend,

Attached please find an original and nine copies of the petitioner's Brief and Appendix in the above matter and a Certification of Service.

Respectfully submitted,

Jo Astrid Glading
Acting Public Advocate
State of New Jersey

c: Hon. Zulima V. Farber

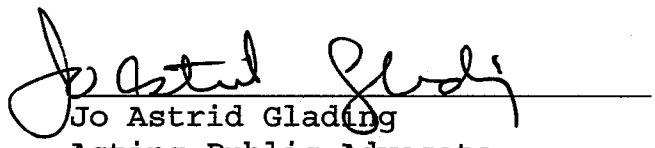
CERTIFICATION OF SERVICE

I hereby certify that on July 21, 2006, the original and nine copies of petitioner's Brief and Appendix in support of the petition for review of Opinion 705 were hand delivered for filing with the Clerk, Supreme Court of New Jersey, Hughes Justice Complex, 25 West Market Street, Trenton, New Jersey, 08625.

I hereby further certify that on this date two copies of petitioner's Brief and Appendix were hand delivered to:

Hon. Zulima V. Farber
Attorney General
Hughes Justice Complex
25 Market Street
Trenton, N.J. 08625

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



Jo Astrid Gladding
Acting Public Advocate

Dated: June 5, 2006

SUPREME COURT OF NEW JERSEY
ADVISORY COMMIITTEE ON
PROFESSIONAL ETHICS

IN RE: ADVISORY COMMITTEE ON PROFESSIONAL ETHICS OPINION 705	On Petition From A Published Opinion By The Advisory Committee On Professional Ethics

BRIEF AND APPENDIX ON BEHALF OF PETITIONER NEW JERSEY PUBLIC ADVOCATE

JO ASTRID GLADING
ACTING PUBLIC ADVOCATE
Petitioner
Department of the Public Advocate
240 West State Street
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Procedural History

Pursuant to R. 1:19-2, the Advisory Committee on Professional Ethics (ACPE) was asked whether the Conflicts of Interest Law, N.J.S.A. § 52:13D-12 to 27 (2006 ('the Act'), must yield to the provisions of Rule of Professional Conduct 1.11(c)(2006)('RPC'), when the Rule would permit a law firm to represent a client but the Act would prohibit such representation.

New Jersey Statute § 52:13D-17 imposes certain post-employment restrictions on state employees. Specifically, the statute provides:

> No State officer or employee or special State officer or employee, subsequent to the termination of his office or employment in any State agency, shall represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, or agree to represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, whether by himself or through any partnership, firm or corporation in which he has an interest or through any partner, officer or employee thereof, any person or party other than the State in connection with any cause, proceeding, application or other matter with respect to which such State officer or employee or special State officer or employee shall have made any investigation, rendered any ruling, given any opinion, or been otherwise substantially and directly involved at any time during the course of his office or employment. Id.

The prohibition on representation thus effectively extends to the entire partnership, firm or

corporation in which the former State employee has an interest. Indeed, the statute imposes criminal sanctions against those who violate its proscriptions.

The imputed disqualification of the former employee's firm, however, is in conflict with the more permissive provisions of RPC 1.11(c), which allows a law firm to undertake such representation if the firm provides notice to the government agency and if the disqualified lawyer is screened from any participation in the matter and receives no portion of the resulting fee.

On May 15, 2006, the ACPE published Opinion 705 that concluded "Supreme Court rules governing the conduct of attorneys should prevail over state statutes in these circumstances," absent a decision by the Court to defer to the statute under principles of comity. (Pa12-13)[1].

On June 5, 2006, pursuant to R. 1:19-8, the Department of the Public Advocate, through and in the name of the Acting Public Advocate,[2] filed a Notice of Petition for Review by the Supreme Court of Opinion 705. (Pa1-6). On June 13, 2006, the Department of the Public Advocate filed a Verified Petition With Consent Seeking a 30-day

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[1] "PA" denotes Petitioner's Appendix.

[2] Because the Public Advocate of New Jersey, Ronald K. Chen, was Vice-Chairperson of the ACPE at the time this inquiry was received, he recused himself from this matter, and therefore the Assistant Public Advocate, Jo Astrid Glading, is the Petitioner within the meaning of R. 1:19-8.

extension in the period of time permitted for filing a Petition for Review. (PA7-10). On June 23, 2006, the Clerk of the Supreme Court issued a Consent Order extending the period of time for filing the Petition for Review to July 17, 2006. (Pa11). On July 8, 2006, Chief Justice Deborah Poritz issued an Order tolling time periods under the Rules of Court for the period of July 1, 2006 through July 8, 2006 because of the emergency closing of state offices during those dates. (Pa14-15).

SUMMARY OF ARGUMENT

The ACPE's conclusion that general ethical standards adopted by the Legislature are superseded by the Rules of Professional Conduct when an individual state employee happens also to be an attorney is fundamentally incorrect. If allowed to stand, this holding would improperly diminish the Legislature's ability and prerogative to establish uniform standards of conduct for all state employees.

Not only does the concept of "separation of powers" not mandate this result, but indeed it compels the conclusion that the Legislature has plenary power to regulate the conduct of state employees, just as this Court has plenary authority to regulate members of the Bar. Thus, when a person chooses both to be an attorney and also an employee of the State, he chooses to subject himself to both sets of rules, and is therefore bound by whichever rule is stricter.

LEGAL ARGUMENT

Point I

> The ACPE erred in applying the separation of powers doctrine to a matter in which the statute at issue did not seek to regulate attorneys, the administration of the courts, the practice and procedure in such courts, or the admission and discipline of attorneys.

At the outset, it should be noted that this petition does not involve substantive review of the wisdom of the alternative rules presented by N.J.S.A. § 52:13D-17 and by RPC 1.11(c) respectively. Whether a law firm should or should not be permitted to undertake a representation, with proper notice and screening, when a former state employee who was previously involved in the matter is now associated with the firm, is a debatable policy question. The fundamental issue here centers on who is the legitimate policy maker, not on which rule is better. Petitioner believes that the Legislature is fully empowered under our Constitution to make such policy.

It is undisputed that the New Jersey Constitution of 1947 granted this Court the authority to "make the rules governing the administration of all courts in the State" and the "practice and procedure in all such courts" and

"jurisdiction over the admission to the practice of law and the discipline of persons admitted." N.J. Const. art. VI, § 2, ¶ 3. It is well established law that this Court has construed this authority to be exclusive. Winberry v. Salisbury, 5 N.J. 240, 255 (1950).

These principles are unquestioned. In the present case, however, the ACPE misplaced its reliance on Winberry to support its conclusion that when there is a direct conflict between a substantive state ethics statute and the RPC, the Supreme Court rules governing the conduct of attorneys should prevail.[3] (Pa12). In reaching its findings the ACPE also incorrectly relied upon Knight v. Margate, 86 N.J. 374 (1981).

In Winberry, the statute in question sought to regulate the time period in which an appeal could be brought following a judgment rendered by a court. 5 N.J. 240, 243. The statute in question specifically sought to govern the practice and procedure in state courts, and the Court held that its rule-making power over practice,

[3] The ACPE's jurisdiction is limited to inquiries "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 . . . and other Rules of this Court governing the practice of attorneys." R. 1:19-2. It is therefore questionable whether the ACPE has jurisdiction to propound on the constitutional issues raised by the Winberry doctrine. This Court, however, clearly has such jurisdiction, and Opinion 705 was published and may therefore be relied upon by members of the Bar and district ethics committees unless corrected. R. 1:19-6. Petitioner urges this Court to address the constitutional issues in order to provide clarity.

procedure and administration of the courts is not subject to overriding legislation. Id. at 255.

Similarly, Knight involved a portion of the Conflicts of Interest Law that imposed a two-year, post-employment ban on certain State officials from employment with any firm or corporation that was involved with a holder of a casino license. 86 N.J. 374; 377 N.J.S.A. § 52:13D-17.1 et seq. The statute explicitly included "any full-time member of the Judiciary" as well as the municipal judge, municipal attorney, planning board attorney and zoning board attorney in a municipality in which a casino was located. Knight, supra, at 379; N.J.S.A. § 52:14D-17.1. Thus, in Knight, the Legislature specifically named judges and attorneys as the subject of the statute, and sought to regulate their post-employment conduct.

It is clear that both Winberry and Knight involved attempts by the Legislature to regulate expressly in an area that the Constitution reserves to this Court. The statutes at issue in both cases were not rules of general applicability, but rather statutes specifically targeted lawyers and the judiciary. In stark contrast, the Act here seeks to establish the ethical standards for all employees of the legislative and executive branches. Some of those employees happen to be attorneys, but the

legislation in no manner singles out attorneys for regulation, and therefore does not seek to regulate in an area reserved to this Court.

The ACPE points to the Court's holding in Knight in which the court reaffirmed the Winberry principle but, as a matter of comity, yielded to the Legislature's action regarding post-employment casino restrictions on certain members of the judiciary. (Pa12). In the present matter, the ACPE invites a similar petition to this Court pursuant to R. 1:19-8 to address questions of deference and comity. (Pa12-13).

No such invitation is necessary because the underlying statutes addressed in both Knight and Winberry are easily distinguished from the Act in question here. The Court in Knight specifically recognized that the statute at issue "affects the conduct of judges as public officials and as attorneys upon the termination of public office," and defined the question that was before it as "whether such legislative action can be reconciled with the Supreme Court's preeminent, exclusive and extensive constitutional powers over the judicial branch of government." Knight, 86 N.J. at 387. While the portion of the Act addressed in Knight did specifically single out members of the bench, the remainder of the Act, including

the provision at issue here, does not apply specifically to attorneys. Instead, the remainder of the Act imposes ethical standards on all employees of the legislative and executive branches of government, but in fact does not apply to the judicial branch. N.J.S.A. § 52:13D-13(a)(b)(c). This matter, therefore, does not raise a circumstance in which comity, i.e., the voluntary reconciliation by this Court of its rules with those proposed by the Legislature, is even at issue, since it is the Legislature that is in the first instance the legitimate and exclusive policy-making body.

This Court recognized in Knight that governmental checks and balances are "an integrated feature of our fundamental organic law" and observed:

> It is a constitutional axiom that each branch of government is distinct and is the repository of the powers which are unique to it; the member or representatives of one branch cannot arrogate powers of another branch. The constitutional spirit inherent in the separation of governmental powers contemplates that each branch of government will exercise fully its own powers without transgressing upon powers rightfully belonging to a cognate branch. Each branch of government is counseled and restrained by the constitution not to seek dominance or hegemony over the other branches.

Knight, 86 N.J. at 388. The Appellate Division embraced this principle in its ruling in Parker v. M & T Chemicals,

Inc., in which it held that an in-house attorney may make a claim for money damages under the State's Conscientious Employee Protection Act (CEPA) without violating the Supreme Court's exclusive power to regulate attorneys. 236 N.J.Super. 451, 458-460 (App. Div. 1989). The panel concluded that:

> [t]he doctrine of separation of powers is not violated if one branch of government which acts with respect to the province of another does not 'seek dominance or hegemony over the other branches ... but only attempts to share and exercise jointly responsibility and power such that 'the ultimately governmental objective is to be achieved.'

Parker, 236 N.J. Super. at 221, *citing* Knight, 86 N.J. at 388-389, 431.

It is beyond dispute that the Legislature has the authority - and indeed the obligation - to legislate concerning the ethical conduct of all employees of the legislative and executive branches. To carve attorneys out of the Conflicts of Interest Law, which applies equally to all employees of the legislative and executive branches, would create uncertainty and unequal treatment antithetical to the Act's purpose of ensuring all employees are held to a uniform and high standard of ethical conduct that engenders the trust of the public.

Point II

This Court has previously held that the Legislature is entitled to establish ethical tenets for its employees, regardless of whether they also happen to be attorneys, and has found that when there is a conflict between the RPC and a statute, the more stringent standard should govern.

This Court's discussion in In re Opinion 621 is instructive and offers clear guidance in the present matter. 128 N.J. 577, 608 (1992). The case involved an attorney who was engaged in private practice and was offered a part-time position as a legislative aide. Id. at 581. The attorney was considered a "special State officer or employee" under the Act. Id. at 581, citing N.J.S.A. § 52:13D-12. He sought an advisory opinion from the ACPE as to what limitations would be imposed on his legal practice if he also chose to work for a state legislator. In re Opinion 621, supra, at 583-584. The ACPE held that he would be precluded from representing any private clients before any State agencies. Id. at 583-584. The opinion by the ACPE also suggested that the attorney also would be prohibited from representing private clients in any case in which the State was an adverse party. Id. at 597-598.

Nevertheless, in its review this Court found that the ACPE opinion relied upon the RPC, not the Act. Id. at

596. Thus, the Court explicitly recognized that it was cast in the role of interpreting the application of the Court's own Rules of Professional Conduct, and it did not have to reach the issue of comity. Id. at 604. This Court found that the ACPE had relied largely on RPC 1.7 and had reached the "unrealistic" conclusion that the public would perceive the "entire state government" to be the client of the part-time legislative aide. Id. at 599.

But this court rejected the analysis of the ACPE, and declined to adopt a *per se* rule prohibiting part-time legislative aides from representing private clients in matters involving any State agencies. Id. at 597-598.

It should be noted that in its ruling this Court did not interpret the Conflicts of Interest statute, but instead limited its analysis to the Rules of Professional Conduct. In fact, the Court observed that nothing within the Act prohibited attorneys who were part-time legislative aides from appearing before state agencies. Id. at 596. Thus, In re Opinion 621 does not directly address which rule governs when there is a conflict between the RPC and a State statute concerning the conduct of lawyers. Nevertheless, In re Opinion 621 is instructive in the present case for several reasons.

First, the Court acknowledged that the Legislative or Executive branches of government have a legitimate interest in establishing ethical guidelines for their employees. The Court in fact acknowledged that "it may be true that the Legislature is normally the proper branch for establishing minimal ethical tenets for employees (and officeholders) of the Legislative branch." In re Opinion 621 at 591.

Secondly, In re Opinion 621 is instructive because this Court explicitly accepted the premise that an attorney, who also happens to be employed by the State, is subject to both the RPC and the Act:

> We are asked by appellant to tell him what he may do and what he may not do, and in certain ways we are able to answer. But to the extent that the question asks us to list every restriction that may apply to him because he is a lawyer, the answer is either impossible to find or not very helpful. The general answer, of course, is that he may not do anything that violates the ethical standards applicable to all attorneys, subject also to whatever additional restrictions are imposed by the Act. 128 N.J. at 592. (emphasis added).

In discussing the Act in general terms, the Court observed:

> The purpose of the Act is to maintain the public's confidence in government and its officers and employees. In pursuit of that goal, the Act's restrictions, applicable to all State

> employees, not just legislative aides or other special State employees, attempt to ensure that public servants do not, either in fact or in appearance, use their official positions to earn money unfairly, especially at the expense of the public. Those restrictions, in the case of lawyers, are in addition to whatever restrictions apply by virtue of our Rules of Professional conduct (RPC), applicable to all Attorneys. Id. at 581-582 (emphasis added).

The Court found that under some circumstances, the RPC might limit the legislative aide's private practice. Indeed, if the influence of the legislator in a particular area of government was so pervasive and significant, the RPC might limit who that lawmaker's aide could represent in his private legal practice. Id. at 601. Given that the statute was silent on the question, but the Rule of Professional Conduct was more stringent, the Court held that the stricter ethical standard must govern:

> [W]hen the employee or officeholder is a lawyer, the Legislature's ethical mandate becomes a floor, not a ceiling. Ultimately, it is the Court that establishes the ethical standards to which an attorney is held, and neither the Legislature nor the Executive can diminish them. In re Opinion 621 at 591.

Notably, the Court did not suggest that the Legislature is prohibited from establishing ethical standards for

employees or officeholders who may also be lawyers. Instead, the Court held that if the legislated ethical standards are less restrictive than the RPC, then the RPC should govern, because the Legislature cannot diminish the ethical standards that the Court sees fit to impose on attorneys through the RPC. Id. at 591.

This illuminates the central question in the present case. Given that this Court has recognized the Legislature's legitimate role in regulating the ethical conduct of legislative and executive branch employees, should the Judiciary then be empowered to lessen the ethical standards on employees who also happen to be attorneys, thus holding attorneys to a weaker standard than their non-attorney colleagues?

Consider the hypothetical case of an engineer for a State agency whose responsibilities include a road construction project in which a private engineering company is also involved. The Act would preclude that engineer from leaving state employment to join the engineering company. This provision guards against any appearance that the engineer received any improper benefit as a result of his involvement with the project as a public official. In the present case, however, under the ACPE opinion the deputy attorney general who was assigned to advise the

state engineer on legal issues concerning the same project could pass through the revolving door that the Act seeks to close. The state attorney could join the law firm that represents the engineering company, provided the firm properly screened the attorney from involvement with the road project and notified the State agency. Likewise, if the engineer also happened to be an attorney, the engineer also could leave State government to join the law firm, even though he could not go to work for the engineering company. If the purpose of the Act, ensuring public confidence in government, is to be served, then both the engineer and the attorney must be treated equally and subject to the same potential penalties for violating a uniform ethics code.

Our courts have previously upheld the authority of the Legislature and the Executive branch to promulgate standards for employees who also are attorneys. In Exec. Com'n. on Ethical Standards v. Byrne, the Appellate Division acknowledged that an executive branch agency has the authority to promulgate a code of ethics prohibiting employees who also are attorneys from engaging in the private practice of law. 238 N.J.Super. 84, 89 (App. Div. 1990). The Byrne court also recognized that the Executive Commission on Ethical Standards had broad investigative

powers to enforce the state agency's ethics rules, including investigating whether employees were improperly rendering legal services. Id. at 92.

Similarly, other state statutes address actual or potential conflicts of interest on the part of attorneys who are also executive branch employees. Under N.J.S.A. § 2A:12-2, the director and employees of the Administrative Office of the Courts are prohibited from the direct or indirect practice of law. N.J.S.A. § 52:17A-9 provides that no member of the Department of Law and Public Safety may act as an attorney or as counsel in any controversy in which the State has an interest, except in his or her official capacity. N.J.S.A. § 52:17A-10 strictly limits employees of the Department of Law and Public Safety from earning compensation outside their regular salary for any service performed for the State or any local government.

The Legislature adopted the Act in order to "ensure propriety and preserve public confidence," and the Act's post-employment prohibition applies equally to all state employees. N.J.S.A. § 52:13D-12. Yet, if the ACPE's reasoning was accepted, there would be another significant consequence that would undermine the ethical regulation of legislative and executive branch employees. The Act requires every State agency and the Legislature to

promulgate a code of ethics imposing and prohibiting behavior that creates even an appearance of a conflict of interest:

> No State officer or employee or special State officer or employee should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his acts that he may be engaged in conduct violative of his trust as a State officer or employee or special State officer of employee. N.J.S.A. § 52:13D-23(e)7.

Similarly, the findings section of the Act indicates public officials must avoid conduct which "creates a justifiable impression among the public that such a trust is being violated." N.J.S.A. § 52:13D-12(a). This is similar to the "appearance of impropriety" provisions that were previously part of RPC 1.7(c)2 and RPC 1.11(b)but which were eliminated by this Court following recommendations in 2002 by this Court's Commission on the Rules of Professional Conduct. Yet if we followed the ACPE's reasoning, it would mean that this provision of the Act concerning appearances of improper conduct also would be negated by the RPC if the legislative or executive branch employee in question also happens to be an attorney.

The ethical standards to which legislative and executive branch employees are held, and the decision of whether to lessen those standards, clearly lies within the purview of the Legislature. It stands to reason that just as the Legislature cannot diminish the ethical standards imposed by the RPC on attorneys, the Court also cannot diminish the ethical standards that have been imposed by the Legislature on the employees of the legislative and executive branches of State government.

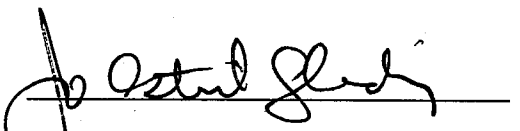
Conclusion

The opinion by the ACPE in the present case would significantly undermine the ability of the Legislature to determine the ethical standards for legislative and executive branch employees. The panel relied upon the separation of powers doctrine in reaching its findings. It is respectfully urged, however, that the ACPE's reasoning violates that very doctrine, which this Court has so carefully adhered to in its rulings in this area. The statute in question does not seek to regulate the operation of the courts, attorneys or members of the judiciary. Through the Act, the Legislature instead seeks to impose uniform ethics rules on employees of the legislative and executive branches, some of whom also happen to be attorneys.

This Court has recognized the Legislature's authority to establish ethics standards for legislative and executive branch employees, including those employees who also are attorneys. This Court has stated clearly that such legislative and executive branch employees who also are attorneys are subject to both the RPC and the Act. When provisions of the RPC and the Act conflict, this Court

has held attorneys to the higher and more stringent standard. Nothing less, and nothing more, is advocated here. For these reasons, the ruling by the ACPE should be reversed.

Respectfully Submitted,



Jo Astrid Glading
Acting Public Advocate

Dated: July 21, 2006

SUPREME COURT OF NEW JERSEY

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SUPREME COURT
CLERK'S OFFICE

IN RE: ADVISORY COMMITTEE ON PROFESSIONAL ETHICS OPINION 705	NOTICE OF PETITION FOR REIVEW

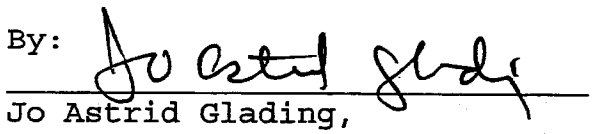
NOTICE OF PETITION FOR REVIEW

To: Stephen W. Townsend, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 Market Street, CN 970
Trenton, New Jersey 08625-0970

PLEASE TAKE NOTICE that Jo Astrid Glading, Assistant Public Advocate for the State of New Jersey, hereby provides notice of a petition for review of Opinion 705 of the Advisory Committee on Professional Ethics by the Honorable Justices of the Supreme Court of New Jersey, pursuant to R.1:19-8. Petitioner Department of the Public Advocate is authorized pursuant to N.J.S.A.52:27EE-57 to represent the public interest in administrative and court proceedings as the Public Advocate deems shall best serve the public interest.

In support of this notice, the Department of the Public Advocate relies on the Certification of Jo Astrid Glading, filed herewith.

Respectfully submitted,
DEPARTMENT OF THE PUBLIC ADVOCATE

By: 

Jo Astrid Glading,
Assistant Public Advocate
DEPARTMENT OF THE PUBLIC ADVOCATE
240 West State Street, 16th Floor
Post Office Box 851
Trenton, New Jersey 08625
(609)826-5090

Date: June 5, 2006

PA 2

SUPREME COURT OF NEW JERSEY

RECEIVED
2006 JUN -5 PM 3: 11
SUPREME COURT
CLERK'S OFFICE

IN RE:
ADVISORY COMMITTEE ON
PROFESSIONAL ETHICS
OPINION 705

NOTICE OF PETITION FOR REIVEW

NOTICE OF PETITION FOR REVIEW

To: Stephen W. Townsend, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 Market Street, CN 970
Trenton, New Jersey 08625-0970

CERTIFICATION OF JO ASTRID GLADING
IN SUPPORT OF NOTICE OF PETITION FOR REVIEW
OF OPINION 705
OF THE ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

DEPARTMENT OF THE PUBLIC ADVOCATE
STATE OF NEW JERSEY
240 West State Street, 16th Floor
P.O. Box 851
Trenton, NJ 08625-0851
(609) 826-5090

JO ASTRID GLADING, deposes and says:

1. I am an attorney admitted to practice in this State, and am the Assistant Public Advocate of New Jersey pursuant to P.L. 2005, c.155, N.J.S.A. § 52:27EE-1 et seq. (Public Advocate Restoration Act of 2005). I make this certification in support of my Notice of Petition for Review of Opinion 705 of the Advisory Committee on Professional Ethics.

2. On May 31, 2006, Public Advocate Ronald K. Chen recused himself from involvement in any matter concerning Opinion 705 of the Advisory Committee on Professional Ethics because he served as Vice-Chair of the Advisory Committee at the time the inquiry that led to Opinion 705 was received by the Advisory Committee.

3. On the aforementioned date, I was designated by Public Advocate Ronald K. Chen to take all responsibility and authority for any involvement by the Department of the Public Advocate regarding Opinion 705.

4. The Public Advocate is authorized to intervene in any administrative or court proceedings in order to represent the public interest. N.J.S.A. § 52:27EE-57. The public interest is defined as "an interest or right arising from the Constitution, decisions of court, common law or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens." N.J.S.A. § 52:27EE-12.

5. Opinion 705 places in question the validity of significant statutory provisions governing the ethics of current and former state employees if those individuals also are attorneys subject to the Rules of Professional Conduct.

6. The issue presented in this matter, i.e. whether a state ethics statute should govern the conduct of former and current state employees who also are attorneys, or whether those individuals should be governed by a less stringent provision under the Rules of Professional Conduct, directly involves the public's interest in holding public employees to a high standard of ethical conduct.

7. This matter also involves the proper and effective allocation of roles and authority among various branches of state and local government. The legal issues presented are therefore also of public importance.

8. I am aware that if any statements made herein are willfully false, I am subject to punishment.

By: Jo Astrid Glading

Jo Astrid Glading,
Assistant Public Advocate
DEPARTMENT OF THE PUBLIC ADVOCATE
STATE OF NEW JERSEY
240 West State Street, 16th Floor
Post Office Box 851
Trenton, New Jersey 08625
(609)826-5090

Date: June 5, 2006

PA5

CERTIFICATION OF SERVICE

I hereby certify that on June 5, 2006, the original of this Notice of Petition for Review and Certification in Support of the Notice of Petition for Review were hand delivered for filing with the Clerk, Supreme Court of New Jersey, Hughes Justice Complex, 25 West Market Street, Trenton, New Jersey, 08625.

I hereby further certify that on this date a copy of this Notice of Petition for Review was hand delivered to:

Hon. Zulima V. Farber
Attorney General
Hughes Justice Complex
25 Market Street
Trenton, N.J. 08625

RECEIVED
2006 JUN -5 PM 3:1
SUPREME COURT
CLERK'S OFFICE

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

Jo Astrid Glading
Assistant Public Advocate

Dated: June 5, 2006

SUPREME COURT OF NEW JERSEY

IN RE: ADVISORY COMMITTEE ON PROFESSIONAL ETHICS OPINION 705	Petition for Review

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2006 JUN 13 PM 3:44
SUPREME COURT
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VERIFIED PETITION WITH CONSENT

To: Stephen W. Townsend, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 Market Street, CN 970
Trenton, New Jersey 08625-0970

PLEASE TAKE NOTICE that Jo Astrid Glading, Assistant Public Advocate for the State of New Jersey, with the consent of respondent Attorney General Zulima V. Farber, hereby petitions the court for a 30-day extension in the period of time permitted for filing a Petition for Review in the above matter for the reasons set forth in the attached affidavit.

Respectfully submitted,
DEPARTMENT OF THE PUBLIC ADVOCATE

By: Jo Astrid Glading

Jo Astrid Glading,
Assistant Public Advocate
DEPARTMENT OF THE PUBLIC ADVOCATE
240 West State Street, 16th Floor
Post Office Box 851
Trenton, New Jersey 08625
(609)826-5090

Date: June 13, 2006

AFFIDAVIT OF SERVICE

I hereby certify that on June 13, 2006, the original of this Verified Petition With Consent, supporting affidavit and proposed form of order were hand delivered for filing with the Clerk, Supreme Court of New Jersey, Hughes Justice Complex, 25 West Market Street, Trenton, New Jersey, 08625.

I hereby further certify that on this date a copy of this Notice of Petition for Review was hand delivered to:

Hon. Zulima V. Farber
Attorney General
Hughes Justice Complex
25 Market Street
Trenton, N.J. 08625

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

Jo Astrid Gladding
Assistant Public Advocate

Dated: June 13, 2006

SUPREME COURT OF NEW JERSEY

IN RE: ADVISORY COMMITTEE ON PROFESSIONAL ETHICS OPINION 705	PETITION FOR REIVEW

AFFIDAVIT
OF JO ASTRID GLADING IN SUPPORT OF VERIFIED PETITON WITH CONSENT

To: Stephen W. Townsend, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 Market Street, CN 970
Trenton, New Jersey 08625-0970

DEPARTMENT OF THE PUBLIC ADVOCATE
STATE OF NEW JERSEY
240 West State Street, 16th Floor
P.O. Box 851
Trenton, NJ 08625-0851
(609) 826-5090

JO ASTRID GLADING, deposes and says:

1. I am an attorney admitted to practice in this State, and am the Assistant Public Advocate of New Jersey pursuant to P.L. 2005, c.155, N.J.S.A. § 52:27EE-1 et seq. (Public Advocate

Restoration Act of 2005). I make this affidavit in support of my Verified Petition With Consent seeking a 30-day extension in time for filing a Petition for Review of Opinion 705 of the Advisory Committee on Professional Ethics.

2. On June 8, 2006, I spoke with Assistant Attorney General Patrick DeAlmeida, attorney for the respondent Attorney General Zulima V. Farber, who consented to a 30-day extension in time for filing a Petition for Review of Opinion 705 of the Advisory Committee on Professional Ethics.

3. I request this extension because additional time is needed to properly prepare our petition addressing these issues of significant public importance.

4. I am aware that if any statements made herein are willfully false, I am subject to punishment.

By: Jo Astrid Gladding

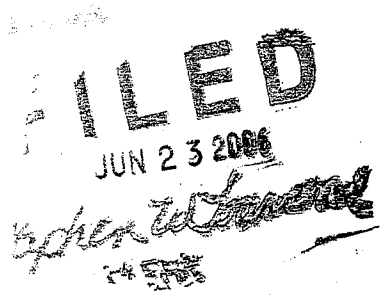
Jo Astrid Gladding,
Assistant Public Advocate
DEPARTMENT OF THE PUBLIC ADVOCATE
STATE OF NEW JERSEY
240 West State Street, 16th Floor
Post Office Box 851
Trenton, New Jersey 08625
(609)826-5090

S/S before

Attorney at Law
State of New Jersey

On this 13 Day of JUNE 2006.

SUPREME COURT OF NEW JERSEY



IN RE: ADVISORY ON PROFESSIONAL
ETHICS OPINION 705

CONSENT ORDER

This matter having been duly presented to the Court, and it having been represented by counsel for the Department of the Public Advocate that counsel for the Respondent consents to a 30-day extension in the time period for filing a Petition for Review in the above matter, it is ON THIS 23RD DAY OF JUNE, 2006, ORDERED that the Petition for extension of time is granted; said Petition to be filed and served by July 17, 2006.

Steven W. Townsend
Clerk of the Supreme Court

c: Jo Astrid Glading, Assistant Public Advocate
Patrick DeAlmeida, Assistant Attorney General
Anne Milgram, First Assistant Attorney General

184 N.J.L.J. 390

May 8, 2006

15 N.J.L. 1045

May 15, 2006

Advisory Committee on Professional Ethics

Appointed by the Supreme Court of New Jersey

- **Opinion 705**

Advisory Committee on Professional Ethics

Former Government Attorneys and State

Conflict of Interest Law Post-Employment Restrictions

You have inquired whether a provision of the general ethics law, *N.J.S.A.* 52:13D-17, which prohibits a law firm from representing a client when another member of the firm may be personally conflicted due to his previous involvement with the matter when he formerly was a government employee, must yield to the provisions of *RPC* 1.11(c), which expressly allows such representation through the use of screening and notification.

Your inquiry poses a situation where there is a direct conflict between a substantive state ethics statute and a Supreme Court Rule of Professional Conduct. Based on the reasoning in *Winberry v. Salisbury*, 5 *N.J.* 240 (1950), *cert.* denied 340 *U.S.* 877 (1950), it would appear that Supreme Court rules governing the conduct of attorneys should prevail over state statutes in these circumstances.

Similarly, in *Knight* v. *Margate*, 86 *N.J.* 374 (1981), the Supreme Court considered the validity of 1980 amendments to the Conflicts of Interest Law prohibiting judges from being involved with casinos. The Court reaffirmed the *Winberry* principle, but then as a matter of comity, decided to yield to the Legislature's action. In this case, there was no conflicting Supreme Court ethics rule. The Court noted that the statute acted "in a fashion that does not interfere with the Supreme Court's ... regulation of the judiciary and the legal profession." *Id.* at 394-95. The Court noted that it has "the overriding constitutional authority to adopt and fashion its own regulatory and ethical requirements for ... the practicing bar at any time it becomes appropriate to do so regardless of the Legislature's action." *Id.* at 394.

The opposite pattern was considered *In the Matter of Advisory Committee on Professional Ethics Opinion 621,* 128 *N.J.* 577 (1992). That case involved activities of an attorney who was a part-time legislative aide, and pitted a more permissive state statute and agency advisory interpretation against a more restrictive ethics opinion issued by this Committee. Because the Court found the ACPE opinion unduly restrictive, and struck down its *per se* rule, it concluded it did not have to reach the issue of comity which would have been posed by a direct clash between a Court-adopted ethics rule and a state statute.

In this inquiry, the statute is more restrictive and the Court's ethics rule in *RPC* 1.11(c) is more liberal, allowing attorneys to proceed in proper cases by screening and notification. Our reading of *Winberry* and *Knight* is that the Court's ethics rule should prevail in this case, absent a decision by the Court to defer to the statute under principles of comity. This Committee, however, does not view itself as having

the power to rule on such questions of deference and comity. Its role is to articulate the proper analysis of the inquiry under the Rules of Professional Conduct. If the inquirer or other affected attorneys seek final resolution of the apparent conflict between *RPC* 1.11(c) and *N.J.S.A.* 52:13D-17, they may do so by petitioning the Supreme Court for review pursuant to *R.* 1:19-8.

Supreme Court of New Jersey

Governor Corzine in Executive Order No. 19, issued July 8, 2006, having rescinded certain operative portions of Executive Order No. 17, which had declared a state of emergency and closed state offices for regular business except for essential services and functions, and having directed an orderly resumption of state government functions and services, it is ORDERED that (a) the July 3, 2006 Order retroactively closing the state courts as of July 1, 2006 except for emergent court matters and such other essential functions and supporting operations as may be determined by the Chief Justice, (b) the July 5, 2006 Order supplementing the July 3, 2006 Order and setting out additional essential functions, and (c) the July 6, 2006 Order supplementing the July 3, 2006 and July 5, 2006 Orders and adding further essential functions are hereby rescinded effective immediately, except as set forth in the following paragraphs; and

It is FURTHER ORDERED that for the period during which the state courts were closed pursuant to the July 3, 2006 Order – that is, from July 1, 2006 through the date of this Order – in the computation of time periods under the Rules of Court and any statute of limitations, each such day that the state courts were closed shall be deemed the same as a legal holiday, with the time periods and statutes of limitations tolled for state court matters; and

It is FURTHER ORDERED that the terms of those grand juries that were impaneled as of June 30, 2006, which terms were extended by the Orders of July

3, 2006 and July 5, 2006, shall continue until concluded by order of the respective Assignment Judge; and

It is FURTHER ORDERED that, as provided in the Order of July 5, 2006, all domestic violence Temporary Restraining Orders shall remain in effect until further order of the court in each individual matter.

/s/ Deborah T. Poritz

Chief Justice

Dated: July 8, 2006