

EXHIBIT "AA"

COLLECTIONS & THE PERSONAL CONNECTION

By Ruby Cochran, NJ Lawyers' Fund for Client Protection

The New Jersey Fund is fairly aggressive about recovering money from the Respondents that we have paid claims against. Once we have a judgment against a Respondent, it is my job to try to collect on those judgments. Usually the Respondents tell us they have limited income, in part due to the fact that many of them are felons. Some times the only income the Respondent has is social security disability or retirement income. Others have moved out of state, and once we track them down we have to convince them to cooperate and send payments on the judgments. How do we do that?

It helps that I was not involved in the process of obtaining the judgment because I can separate the collection process I'm engaged in from the judgment process in the mind of the Respondent. The point of this is that I am able to transcend the previously existing adversarial relationship more easily. You may have to work harder at that if you were involved in obtaining the judgment. I refuse to argue with the Respondent about the underlying issues that support the judgment. I state that it is my job to collect on the judgment and nothing more, and that I am not looking for a lump sum payment, no matter how small the amount due appears to be. I understand that even several hundred dollars can appear burdensome if you have to pay it all at once. I would like to work out a payment plan that they feel comfortable with and that they can actually comply with. I also state that there is really no need for us to have an adversarial relationship and that I want to work with them. When I clearly state that at the very beginning of the conversation, it seems to relieve some of their fears. It's important to relieve their fears because they will be less defensive; people will act as much on their feelings as they will on rational thought.

Once we work out a payment plan, how do I get them to actually send the money? I've found that the technique that works best for me is to try to make a personal connection between the Respondent and myself. If the job of a trial attorney is to get the jury to like their client, then your job doing collections is to get the debtor to like you. It really doesn't matter what their situation is. If you show that you can relate to it in some way, you can get that check. As an example, I contacted an individual who had been dodging us for several years. He knew that since his only income was a disability check that any payment he made to the Fund had to be voluntary, although he did not state that fact to me. In an effort to explain why he had never made payments to the Fund and to gain my sympathy, he stated that his disabilities arose from injuries he sustained in Viet Nam. I'm sure he assumed that I could not relate to his situation. The poor man could not have foreseen what came next.

I asked him when he served in Viet Nam. When he told me, I told him that my father was serving in Viet Nam at the same time and that one of my best friends had run the Red Cross warehouse in Saigon for two years and was there during the entire time the

Respondent was in Viet Nam. I told him my father's rank and asked what rank he served at. He informed me that he had been an officer. We talked about life in the military. Later I asked him if he'd send this Army brat a payment and he laughed and said that he would. I then jokingly asked if he swore on that, and he said yes. Then I asked if he swore on his honor as an officer and there was silence on the other end of the phone. In a very serious tone he answered yes. His account was paid in full within two months.

Most people like to talk about themselves. Many times this can be quite annoying but you can also use it to your advantage to tailor your appeal to the Respondent's needs. If you listen, they will tell you what is important to them. If you let them vent their feelings they will believe that their input is being given proper consideration. While reason must be part of every persuasive appeal, most people can be swayed more easily by someone who shares similarities with them. Sometimes a personal connection can be made very quickly; other times you need to remember that you may need to invest time into the relationship you want to develop between yourself and the Respondent. Even if you don't get a payment plan or a check out of the first conversation you are building a foundation for future success.

Let them talk while you do other routine things, like signing form letters, but pay close attention and take notes for your files of things they say that may be helpful later. You are gaining their trust by letting them talk and not being judgmental or argumentative, or even insisting on a payment plan. They'll usually tell you of their plans to turn their current situation around. If you are convinced that they are not lying to you and that you won't get any money from them today, just tell them you understand and wish them the best of luck and tell them you'll call them back in two months to see if things have improved. You have already begun to establish a relationship with them and your call will stand out in their minds from all the others vying for their attention and their funds. I have not forgotten that your main goal is to collect money, but sometimes you need to slow down, step back and focus on rapport building which can lead to future success. Think about their situation and see if you can help them or offer them advice in your next call.

I bet you're wondering why would you want to help these crooks or offer them advice? Because by helping them you're actually helping yourself and helping your Fund. You gain credibility and the Respondent will gravitate toward you when they have the ability to make a payment to any of their creditors, and push the others aside. Would you like an example? One of our Respondents moved out of state and he thought the distance would protect him from our collection efforts. The physical distance may be great but now the emotional distance is very small. We never got any money from him as he claimed he had no money left to send to us after paying his bills. He is collecting disability payments because of psychological problems he developed after his wife committed suicide with a gun – right in front of him. How do you respond to that?

I told him I was so sorry for what he went through and that I couldn't begin to imagine how he felt or what it must have been like to go through that. I ended the call on a note of sympathy. In another call we talked about his job search efforts and I tried to appear

supportive. In a later call he talked about his rather unsuccessful efforts to get counseling since he lacked money and I knew I could make the connection. I informed him that when I was going through a divorce, which was nothing like what he experienced but it was a loss, I read a book about how to deal with loss and perhaps it might help him in some way. He took my advice and got the book, and now I get somewhat sporadic payment checks. Without the personal connection I got nothing.

The book is called "Seven Choices" and it deals with the stages of grief that people go through when they experience a loss. Any kind of loss qualifies – a death, divorce, losing your career. Many of our Respondents are mourning for the career they lost and they don't even know it. I have recommended this book to many of my personal friends who experienced a loss and now I recommend it to the Respondents when they open up to me. Why? Because another Respondent, who started reading the book based on my recommendation, recently told me that I had been so helpful and understanding that he would feel guilty if he didn't send me the promised payments. Prior to this human connection he had sent us nothing.

The collection lawyer must be astute and notice when one approach is not working, and then alter the approach in order to get the desired result. This requires flexibility and good listening skills. It also requires humility and that you set your own ego aside. Although there were times when I've been frustrated by the evasive tactics of the Respondents, including bounced checks, I don't permit myself to lose sight of my goal of getting those payments in the door. If I come across in a conversation with a Respondent as being disappointed in them, rather than angry with them, I usually get a better result in the long run.

These are just examples of how I used my own personal experiences to make an emotional connection with the Respondents which resulted in payments to our Fund. But what happens when you can't get through to the Respondent because they have another person act as a gate-keeper? In one instance a Respondent was living with a friend as a tenant and he paid over his disability check to her and she was to make monthly payments to our Fund. I was able to send him an analysis and copies of our records to prove that she had not turned over all of the money he had given her to send to us. He failed to see the irony that he was disbarred due to stealing from his clients and now his "landlady" was stealing from him. But I got the money.

Usually the gate-keeper is the wife of the Respondent. In this case I find it is beneficial that I'm a divorced female. I always tell the wife that I'm divorced and that I admire her strength in "standing by your man". That breaks down a lot of resistance. Usually the wife is very protective because the Respondent is in poor physical or emotional health and money is tight as a result. The wives also seem to expect to receive a demand for the full amount due and are usually greatly relieved to hear that I want to work out a payment plan. Even if we can't reach an agreement in that first conversation at least I know they will think about it and be conscious of the debt to the Fund while paying bills and reviewing their budget. I frequently end the first call with a sense that she has my sympathy, that I hope the Respondent gets well, and that I'll call back in a month or two.

Before I call back I review my notes, I always ask for the wife and ask how she's doing. Then I ask her how the Respondent is doing in his recovery from "X", and state what ever his problem had been when I last called. It seems that when I inquire about the Respondent's health first and know what was wrong, rather than asking about the missing payments, it shows the wife that I am concerned with the person first and the money second. That helps break down the resistance from the wife and I almost always get some money.

One of the requirements is to focus on one aspect that you may have in common with the Respondent. I use only one bit of common ground to get close but not too close. An example is the fact that I am diabetic like several of our Respondents. When they bemoan their physical limitations and diabetic complications I can admit that I'm diabetic too and ask for more details about what I may be facing in the future or commiserate with the limitations we both experience as a result of this condition. It's also easier to maintain that one common thread throughout several conversations if necessary than to maintain several connections.

I know all of the above makes me appear to be a very calculating person, but the truth is that I love people and I am genuinely interested in their stories. I have to admit that in the beginning it was difficult to put aside my personal feelings about the wrongs that they had done to their clients. But once I did I found out that they are truly fascinating. As my boss, Ken Bossong says, "You can't make this stuff up." The fact that I am really interested makes it easier for me to make that connection between my own experiences and the Respondents. Simplicity is a key element when the goal is to make the Respondent comfortable with you by sharing personal experiences.

There are times when being "sweet" just is not effective and you have to fall back on other collection methods. To that end, the New Jersey Fund has recently become involved in another collection program called SOIL. SOIL stands for Set Off of Individual Liability and it is operated under the NJ Department of the Treasury, Division of Revenue. This set-off program provides the NJ Fund, as a state government entity, to seize the state income tax refunds and property tax rebates that are payable to the Respondents. There are limits as to who we can enroll in the program based in part on what information we have available about the Respondents and what the results of our previous collection efforts were. If your Fund is considered to be part of your state judiciary or any other state entity, for instance if it was formed under your state Supreme Court, you may be eligible to participate in your state's program. It is worth making the inquiry.

This is the first year the NJ Fund is participating in the program and we have entered 65 Respondents into the program. Thus far we have collected four checks totaling about \$6,000 on behalf of five Respondents and we anticipate receiving several more checks. In addition, we may be able to apply set-off money against one Respondent's outstanding debt in spite of the fact that she has recently filed for bankruptcy. For more information regarding set-off, government entities and bankruptcy go to www.usdoj.gov and type "setoff" in the search field.

EXHIBIT "BB"

**IMPORTANT NOTICE
PLEASE READ CAREFULLY**

**New Jersey Lawyers Fund for Client Protection
Richard J. Hughes Justice Complex
25 West Market Street, P. O. Box 961
Trenton, NJ 08625-0961
Ruby D. Cochran, Deputy Counsel
(609) 633-2434**

NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION-CIVIL PART MERCER COUNTY
	:	
PLAINTIFF,	:	DOCKET NO. :Ind./Acc. I-285912-91 and MER-L-1512-98
	:	
v.	:	JUDGMENT NO.: DJ-146895-00; J-9514-01
	:	
PATRICK J. SHANNON	:	CIVIL ACTION CPF-468
	:	
DEFENDANT	:	INFORMATION SUBPOENA

THE STATE OF NEW JERSEY TO:

Mr. Patrick J. Shannon
500a Chestnut Street
Glendora, NJ 08029-1210

Judgments were entered against you in the Superior Court of New Jersey on July 11, 2000 and January 3, 2001 in the amounts of \$9,584.31 and \$1,449.20, plus any applicable interest and costs, and the liens were recorded in the amounts of \$9,584.31 and \$1,449.20 on July 31, 2000 and January 11, 2001 under the docket number(s) referenced above. The amount of \$8608.35 remains due and outstanding, plus any applicable interest and costs.

Attached to this Information Subpoena is a list of 17 questions that court rules require you to answer within 14 days from the date you receive this subpoena. If you do not answer the attached questions within the time required, the opposing party may ask the court to conduct a hearing in order to determine if you should be held in contempt. You will be compelled to appear at the hearing and explain your reasons for your failure to answer.

If this judgment has resulted from a default you may have the right to have this default judgment vacated by making an appropriate motion to the court. Contact any attorney or the clerk of the court for information on

making such a motion. Even if you dispute the judgment you must answer all 17 of the attached questions.

You must answer each question giving complete answers, attaching additional pages if necessary. False or misleading answers may subject you to punishment by the court. However, you need not provide information concerning the income and assets of others living in your household unless you have a financial interest in the assets or income. Be sure to sign and date your answers and return them to the address in the upper left hand corner within 14 days.

Dated: January 31, 2008.

Ruby D. Cochran
Ruby D. Cochran, Esq.
New Jersey Lawyers' Fund for
Client Protection

Theodore J. Fetter
Theodore J. Fetter, Acting Clerk
Superior Court of New Jersey

VIA FIRST CLASS MAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED

1. Full name _____
2. Address _____

3. Birthdate _____
4. Social Security # _____
5. Driver's license # and expiration date _____

6. Telephone # _____
7. Full name and address of your employer _____

(a) Your weekly salary: Gross _____ Net _____
(b) If not presently employed, name and address of last employer.

8. Is there currently a wage execution on your salary?
Yes _____ No _____
9. List the names, addresses and account numbers of all bank accounts on which your name appears.

10. If you receive money from any of the following sources, list amount, how often and the name and address of the source:

<u>Type</u>	<u>Amount & Frequency</u>	<u>Name & Address Source</u>
Alimony	_____	_____
Loan Payments	_____	_____
Rental Income	_____	_____
Pensions	_____	_____
Bank Interest	_____	_____
Stock Dividends	_____	_____

11. Do you receive Social Security benefits?
 Yes _____ No _____

12. Do you own the property where you reside?
 Yes _____ No _____ If Yes, state the following:
 (a) Name of the owner or owners _____
 (b) Date property was purchased _____
 (c) Purchase price _____
 (d) Name and address of mortgage holder _____
 (e) Balance due on mortgage _____

13. Do you own any other real estate?
 Yes _____ No _____ If Yes, state the following for each property:
 (a) Address of property _____
 (b) Date property was purchased _____
 (c) Purchase price _____
 (d) Name and addresses of all owners _____
 (e) Name and address of mortgage holder _____
 (f) Balance due on mortgage _____
 (g) Name and addresses of all tenants and monthly rental paid by each tenant. _____

14. Does the present value of your personal property which includes automobiles, furniture, appliances, stocks, bonds, and cash on hand, exceed \$1,000?

Cash on hand: \$ _____

Other personal property: (Set forth make, model and serial number. If financed, give name and address of party to whom payments are made).

Item	Date Purchased	Purchase Price	If Financed Balance Still Due	Present Value

15. Do you own a motor vehicle?
 Yes _____ No _____ If Yes, state the following for each vehicle owned:
 (a) Make, model and year of motor vehicle _____
 (b) If there is a lien on the vehicle, state the name and address of the lienholder and the amount due to the lienholder _____
 (c) License plate # _____
 (d) Vehicle identification # _____

16. Do you own a business?
 Yes _____ No _____ If Yes, state the following:
 (a) Name and address of the business _____
 (b) Is business a Corporation _____, sole proprietorship _____ or partnership _____?
 (c) The name and address of all stockholders, officers and/or partners _____
 (d) The amount of income received by you from the business during the last twelve months _____

17. Set forth all other judgments that you are aware of that have been entered against you and include:

<u>Creditor's Name</u>	<u>Creditor's Attorney</u>	<u>Amount Due</u>	<u>Name of Court</u>	<u>Docket #</u>

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

Patrick J. Shannon

Dated: _____

EXHIBIT "CC"

*** CURRENT THROUGH P.L. 2005 CHAPTER 227 ***
*** ANNOTATIONS CURRENT THROUGH SEPTEMBER 30, 2005 ***

TITLE 2B. COURT ORGANIZATION AND CIVIL CODE
CHAPTER 19. COMPREHENSIVE ENFORCEMENT PROGRAM FUND

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

N.J. Stat. § 2B:19-1 (2005) § 2B:19-1. Short title

Sections 1 through 9 of this act shall be known and may be cited as the "Comprehensive Enforcement Program Fund Act."

HISTORY: L. 1995, c. 9, § 1.

N.J. Stat. § 2B:19-2 (2005)

§ 2B:19-2. Findings and declarations

The Legislature finds and declares that:

- a. The Judiciary routinely enters judgments and court orders setting forth assessments, surcharges, fines and restitution against litigants pursuant to statutory law.
- b. The enforcement of court orders is crucial to ensure respect for the rule of law and credibility of the court process.
- c. Despite monitoring of judgments and court orders by probation divisions and other segments of the Judiciary responsible for doing so, many orders are not complied with because there is a lack of central coordination, funding, automation, and control.
- d. The Judiciary has successfully developed a hearing officer program in child support enforcement and a pilot criminal enforcement court project, which is in the process of being expanded, that have demonstrated significant increases in collections and compliance.
- e. The Governor's Management Review Commission has reviewed the collections process in New Jersey and made recommendations supporting the establishment and funding of a Statewide comprehensive enforcement program operated by the Judiciary.
- f. Upon passage of this act, the Supreme Court and the Chief Justice will establish a Statewide comprehensive enforcement program which will provide for the enforcement of court orders and oversee collection of court-ordered fines, assessments, surcharges and judgments in the civil, criminal and family divisions, the Tax Court and in municipal court as provided in section 6 of P.L. 1995, c. 9 (*C. 2B:19-6*). The comprehensive enforcement program will provide for the collection of certain surcharges administratively imposed by the Division of Motor Vehicles as provided in section 6 of P.L. 1995, c. 9 (*C. 2B:19-6*). The comprehensive enforcement program will utilize the child support hearing officer model and the pilot project criminal enforcement court model, supported by a Statewide automation system designed to increase collections, compliance and accountability.

HISTORY: Amended 1997, c. 280, § 1; 2001, c. 421, § 1.

N.J. Stat. § 2B:19-3 (2005)

§ 2B:19-3. Comprehensive Enforcement Program Fund

There is established as a separate fund in the General Fund, to be administered by the Administrative Office of the Courts, a "Comprehensive Enforcement Program Fund." This fund shall be the depository for the deductions from collections and the enforced community service fees described in sections 4 and 5 of this act for the purpose of operating the comprehensive enforcement program, the computer system established pursuant to P.L.1992, c.169, enforced community service and any subsequent programs or methodologies employed to enforce collection of court ordered financial obligations.

HISTORY: L. 1995, c. 9, § 3.

N.J. Stat. § 2B:19-4 (2005)

§ 2B:19-4. Deduction of collections to fund program

a. Subject to the approval of the Director of the Division of Budget and Accounting, the Administrative Office of the Courts is authorized to deduct an amount up to 25% of all moneys collected through the comprehensive enforcement program, except for victim restitution and for Victims of Crime Compensation Board assessments, for deposit in the "Comprehensive Enforcement Program Fund" established pursuant to section 3 of P.L.1995, c.9 (*C.2B:19-3*) to fund the comprehensive enforcement program, the CAPS computer system, enforced community service, and other programs employed to collect court ordered financial obligations. The Administrative Office of the Courts shall promulgate a schedule for the deduction of collections to be deposited in the "Comprehensive Enforcement Program Fund."

b. (Deleted by amendment, P.L.1997, c.280).

HISTORY: L. 1995, c. 9, § 4; amended 1997, c. 280, § 2.

N.J. Stat. § 2B:19-5 (2005)

§ 2B:19-5. Labor assistance program established by county; enforced community service program by probation services

a. The governing body of each county, through the sheriff or such other authorized officer, may establish a labor assistance program as an alternative to direct incarceration to be utilized by the comprehensive enforcement program as a sentencing option. An enrollment fee of \$ 25.00 shall be paid by each person who is sentenced to a labor assistance program. Additionally, each person so sentenced shall pay a fee of \$ 8.00 per day for each day originally sentenced to the labor assistance program. Labor assistance program fees shall be paid to the county treasurer for use by the county.

b. In counties that do not establish a labor assistance program, the probation services division shall establish an enforced community service program as an alternative to direct incarceration, to be utilized by the comprehensive enforcement program as a sentencing option. An enrollment fee of \$ 25.00 shall be paid by each person who is sentenced to the enforced community service program. Additionally, each person so sentenced shall pay a fee of \$ 8.00 per day for each day originally sentenced to the enforced community service program. Enforced community service fees shall be deposited in the "Comprehensive Enforcement Program Fund" and specifically used to fund the enforced community service programs.

c. (1) As used in this section, "labor assistance program" means, a work program, established by the county under the direction of the sheriff or other authorized county officer, which rigorously supervises offenders providing physical labor as an alternative to incarceration.

(2) As used in this section, "enforced community service" means a work program, established and supervised by the probation division, which directly and rigorously supervises offenders providing physical labor as an alternative to direct incarceration in those counties which have chosen not to create a labor assistance program.

HISTORY: L. 1995, c. 9, § 5; amended 2000, c. 120, § 2.

N.J. Stat. § 2B:19-6 (2005)

§ 2B:19-6. Unresolved money collection matters; DMV surcharges; public defender liens

a. All matters involving the collection of moneys in the Superior Court and Tax Court which have not been resolved in accordance with an order of the court may be transferred, pursuant to court rule, to the comprehensive enforcement program for such action as may be appropriate.

b. (1) A municipal court may request that all matters which have not been resolved in accordance with an order of that court be transferred to the comprehensive enforcement program in accordance with the provisions of section 9 of P.L. 1995, c. 9 (C. 2B:19-9) for such action as may be appropriate. All moneys collected through the comprehensive enforcement program which result from the enforcing of orders transferred from any municipal court shall be subject to the 25% deduction authorized pursuant to section 4 of this act except for moneys collected in connection with the enforcement of orders related to parking violations.

(2) Nothing contained in this act shall prevent any municipal court from contracting the services of a private collection agency to collect any moneys which have not been remitted in accordance with an order of that court.

c. The Director of the Division of Motor Vehicles may refer matters of surcharges imposed administratively under the New Jersey Merit Rating Plan in accordance with the provisions of section 6 of P.L. 1983, c. 65 (C. 17:29A-35) which have not been satisfied to the comprehensive enforcement program in accordance with the procedures established pursuant to section 4 of P.L. 1997, c. 280 (C. 2B:19-10) to be reduced to judgment and for such additional action as may be appropriate. All moneys collected through the comprehensive enforcement program which result from the collection of these surcharge moneys shall be subject to the 25% deduction authorized pursuant to section 4 of P.L. 1995, c. 9 (C. 2B:19-4).

d. (1) At the request of the Public Defender, the Clerk of the Superior Court shall refer every unsatisfied lien, filed by the Public Defender, to the comprehensive enforcement program for collection. All moneys collected through the comprehensive enforcement program which result from the collection of these liens shall be subject to the deduction authorized pursuant to section 4 of P.L. 1995, c. 9 (C. 2B:19-4).

(2) Upon satisfaction of a public defender lien through the comprehensive enforcement program, the comprehensive enforcement program shall notify the Clerk of the Superior Court within 10 days of satisfaction and the satisfaction of the lien shall be entered in the Superior Court Judgment Index.

HISTORY: L. 1995, c. 9, § 6; amended 1997, c. 280, § 3; 2000, c. 120, § 3; 2001, c. 421, § 2.

N.J. Stat. § 2B:19-7 (2005)

§ 2B:19-7. Transfer of disobeyed community service matters

All matters involving the imposition of a sentence of community service by either the Superior Court or a municipal court which have not been complied with by the offender shall be transferred, by the sentencing judge to the comprehensive enforcement program for such suitable compliance sanctions as may be appropriate, including incarceration, participation in a labor assistance program, enforced community service, imposition of a financial sanction, or a combination of these sanctions or such other alternative as may be appropriate.

HISTORY: L. 1995, c. 9, § 7.

N.J. Stat. § 2B:19-8 (2005)

§ 2B:19-8. Inability to fulfill financial obligations of sentence; procedure

a. At any time after a person has completed the total sentence to a labor assistance program or enforced community service program, the comprehensive enforcement hearing officer may determine that the payor is financially unable to

comply with the financial obligations initially imposed by the sentencing court. The comprehensive enforcement hearing officer may then:

- (1) Accept the participation in a labor assistance program or enforced community service in lieu of payment of the remaining court ordered financial obligations;
- (2) Impose additional hours in a labor assistance program or enforced community service in lieu of payment of the remaining court ordered financial obligations;
- (3) Impose a term of imprisonment in lieu of paying the remaining court ordered financial obligations; or
- (4) Docket the total amount due as a judgment in the Superior Court.

b. When the comprehensive enforcement hearing officer has exhausted all of the steps enumerated in this section and any additional hours of a labor assistance program or enforced community service or any term of imprisonment have been completed, the person may be terminated from probation supervision and the total amount owed may be removed from probation records and deducted from outstanding and uncollectable amounts owed. These actions notwithstanding, whenever a judgment is docketed in the Superior Court, the person remains liable to pay the outstanding debt as originally imposed by the sentencing court.

c. Notwithstanding the foregoing, the comprehensive enforcement hearing officer may not relieve the person of the obligation to pay the VCCB assessment or restitution to a victim.

HISTORY: L. 1995, c. 9, § 8.

N.J. Stat. § 2B:19-9 (2005)

§ 2B:19-9. Recommendation of hearing officer; approval

Any recommendation by a comprehensive enforcement hearing officer shall be in conformity with court rules and shall be approved by:

- a. a judge of the Superior Court for Superior Court matters and for any municipal court matters in which a final judgment has been docketed in the Superior Court; or
- b. a judge of the municipal court, designated by the Assignment Judge of the vicinage, for municipal court matters in which a final judgment has not been docketed with the Superior Court.

HISTORY: L. 1995, c. 9, § 9; amended 2001, c. 421, § 3.

N.J. Stat. § 2B:19-10 (2005) § 2B:19-10. Referral of uncollected DMV surcharges

The Director of the Division of Motor Vehicles and the Administrative Office of the Courts shall develop procedures for the referral of uncollected surcharges imposed administratively by the Division of Motor Vehicles under the New Jersey Merit Rating Plan pursuant to section 6 of P.L. 1983, c. 65 (C. 17:29A-35). These procedures shall include, but shall not be limited to, the following:

- a. The total dollar amount of uncollected surcharges imposed on a driver and the number of months of delinquency which may result in referral pursuant to section 6 of P.L. 1995, c. 9 (C. 2B:19-6) including procedures for installment payments, procedures for negotiating and implementing new schedules for installment payments and surcharges deferred until the end of a policy term of an automobile insurance policy as permitted by section 6 of P.L. 1983, c. 65 (C. 17:29A-35);
- b. The interval of referral between the Division of Motor Vehicles and the comprehensive enforcement program such as monthly, quarterly or semi-annually and the method of referral such as through the municipal court where the Title 39 violation occurred or directly to the Superior Court;

c. The form of notice to be provided by the Division of Motor Vehicles when a surcharge is imposed indicating that an unpaid surcharge may be referred to the comprehensive enforcement program; and

d. Procedures for payment to the Division of Motor Vehicles of moneys collected and the billing and accounting methods to be used.

HISTORY: L. 1997, c. 280, § 4.

N.J. Stat. § 2B:19-11 (2005)

§ 2B:19-11. Additional duties of program concerning public defender liens

In addition to the duties set forth in P.L. 1995, c. 9 (*C. 2B:19-1 et seq.*), the comprehensive enforcement program shall provide for the collection of moneys due the State by way of reimbursement for services rendered by the Public Defender and filed as liens in the Office of the Clerk of the Superior Court.

HISTORY: L. 2000, c. 120, § 4.

**SUPPLEMENTAL STANDARDS FOR THE NEW JERSEY LAWYERS' FUND FOR
CLIENT PROTECTION PILOT PROGRAM**

ADOPTED by the SUPREME COURT on 1/5/00

Introduction

The New Jersey Lawyers' Fund for Client Protection (hereafter the "Fund") has petitioned the Supreme Court of New Jersey for permission to enforce financial orders for penalties and restitution through the use of the Comprehensive Enforcement Program as a limited pilot project from the time of approval through October 1, 2000. It is agreed that CEP reimbursement will be suspended for the duration of the pilot program, and the Fund and CEP will issue a report on same to the Supreme Court on or about November 1, 2000 regarding the cases addressed, the actions taken, and the results accrued along with an evaluation of the efficacy of using CEP as an enforcement strategy for fostering compliance with the orders of the court in these cases. This pilot project would be operated under the general "Standards for the Comprehensive Enforcement Program" adopted by the Supreme Court on January 30, 1995 and amended on July 12, 1995. The following is intended to supplement those guidelines as additional standards to be applied only to this pilot for the limited time specified.

The New Jersey Lawyers' Fund for Client Protection collection pilot creates no new substantive rights or remedies through the use of the Comprehensive Enforcement Program to enforce existing Court Orders and Judgments.

1. Judicial Oversight

The hearings will be conducted exclusively in the Mercer County Vicinage and will be presided over by a Superior Court judge designated by the Assignment Judge.

Discussion:

When the Enforcement Program liaison judge signs the recommendation of the hearing officer, it then becomes an official order of the court.

2. Jurisdiction

The Comprehensive Enforcement Program shall have jurisdiction over those cases referred by the Fund who are either in arrears on established repayment obligations or from whom the Fund has been previously unable to secure repayment. The Fund will hold a judgment against and/or be the beneficiary of court-ordered restitution from each of the identified respondents.

3. Disposition Alternatives

Under existing law, the failure to pay court-ordered financial obligations may result in: suspension of driver's licence or the nonresident reciprocity driving privilege; income withholding, binding on current and future income sources; docketing of a civil judgment; documented employment search; relist for return to court; enrollment in an enforced community service program or labor assistance program and/or incarceration in the county jail until there is compliance with financial obligations.

Discussion:

Fund counsel will prepare forms of orders as necessary to correspond with the dispositions outlined above including:

- a. Orders for respondents failing to adhere to the repayment plans, rescheduling the matter and notifying respondent that an arrest warrant may be issued;
- b. Repayment plan for respondents with whom such plans have been devised;
- c. Continuance, setting subsequent hearing date for respondents who are unemployed and/or without means to make payments to the Fund.

If, based on clear and convincing evidence, the Enforcement Program finds that the respondent failed to comply with financial obligations and that such default was willful, the respondent may be subject to court-ordered contempt proceedings. In appropriate cases, the court may order participation in a program of enforced community service or Labor Assistance Program in lieu of incarceration.

4. The Fund Staff Involvement

- a. **The Fund staff shall screen cases individually to determine their appropriateness for hearing.**

Discussion:

The Fund staff will prepare all paperwork, case summaries, calendars, and notices. The CEP will provide all necessary form letters, notices, and orders utilized by the Program.

- b. **Fund counsel will appear at each hearing involving a Fund respondent and will present the matter to the CEP hearing Officer.**

Discussion:

Fund staff will present the case, supply pertinent information as needed regarding the case and the status of the respondent, and record the recommendations of the hearing officer.

Fund staff will prepare reports on the outcomes of the hearings which summarize lump sums ordered and paid, new payment schedules entered, enrollment in enforced community service, and like matters.

Fund staff will monitor compliance with Enforcement Program orders and regularly issue reports of results. Fund staff will initiate appropriate action when continued non-compliance is noted.

- c. A Fund staff person will collect money and issue receipts in the hearing room.**

Discussion:

The Fund staff person will safeguard the funds in the hearing room and transmit the money collected to a cashier for recording and processing under standards established by the Administrative Office of the Courts.

5. Negotiated Settlements

- a. Those individuals ordered to show cause shall have the opportunity to correct deficiencies in compliance with financial obligations prior to the hearing.**

Discussion

If this is done to the satisfaction of the Fund staff prior to the scheduled hearing date, the case will be removed from the court calendar, and the individual will not be required to appear.

- b. On the day of the hearing, those summoned shall be given the opportunity to reach agreement with the Fund officials on a plan of action for payment or compliance.**

Discussion:

The purpose of this conference will be to attempt to reach a mutually agreeable settlement on a way to ensure satisfactory compliance with the conditions of the court orders. Using this form of alternative dispute resolution, the Fund staff will strive to develop a plan for payment of the money.

- c. At the hearing, the hearing officer shall review the agreement reached, if any, between the defendant and the Fund staff.**

EXHIBIT "DD"

NE JERSEY LAWYERS' FUND
FOR
CLIENT PROTECTION

TRUSTEES

JEAN M. RAMATOWSKI, CHAIR
TINA E. BERNSTEIN, VICE CHAIR
EMMETT E. PRIMAS, JR., TREASURER
SUSAN E. LAWRENCE
JAMES H. LASKEY
LUIS R. SANCHEZ
FRANK C. FARR

ASSISTANT TREASURER
CHRISTINA P. HIGGINS

STREET ADDRESS:
25 WEST MARKET STREET
5TH FLOOR, NORTH WING
TRENTON, N.J. 08625



RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 961
TRENTON, N.J. 08625-0961

DIRECTOR & COUNSEL
KENNETH J. BOSSONG

DEPUTY DIRECTOR
DANIEL R. HENDI

SENIOR COUNSEL
EDWARD T. EHRLER

DEPUTY COUNSEL
RUBY D. COCHRAN

(609) 984-7179
CLAIMS: (609) 292-8008
BILLING (609) 292-8079
FAX: (609) 394-3637

January 31, 2008
VIA FIRST CLASS AND CERTIFIED MAIL, R.R.R.

Mr. Patrick J. Shannon
500A Chestnut Street
Glendora, NJ 08029-1210

Re: **New Jersey Lawyers' Fund for Client Protection v. Patrick J. Shannon**
Docket/Judgment No. Ind./Acc. I-285912-91 and MER-L-1512-98; DJ-146895-00;
J-9514-01; Our File CPF-468

Dear Mr. Shannon:

Our review of your account indicates that you are delinquent in making payments on the repayment plan to which you consented under the Comprehensive Enforcement Program (CEP). The payments in arrears as of January 31, 2008 are set forth on the enclosed Notice of Delinquency. I have calculated the deficiency by comparing payments due versus payments received since you entered the repayment agreement.

You must cure the arrears or contact me at 609-633-2434 to make appropriate arrangements on or before **Wednesday, February 13, 2008**, or I shall issue you a Summons to appear for the enforcement hearing scheduled for **Monday, March 24, 2008**.

If you have not completed an Information Subpoena under R. 4:59-1(e) within the last (6) months, you must complete the enclosed Information Subpoena. Please answer the questions fully and not merely by reference to your prior subpoena. **The Information Subpoena must be returned before we can excuse you from the Hearing even if a payment has already been made and you have cured your arrearages.**

Very truly yours,

Ruby D. Cochran
Ruby D. Cochran

RDC:sjb

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**SUPERIOR COURT OF NEW JERSEY
COMPREHENSIVE ENFORCEMENT PROGRAM
NOTICE OF DELINQUENCY**

January 31, 2008
Cmpt./Acc./Dkt. Ind./Acc. I-285912-91 and
MER-L-1512-98
Judgment # DJ-146895-00; J-9514-01
Financial Account # CPF-468

Patrick J. Shannon
500A Chestnut Street
Glendora, NJ 08029-1210

Last Payment:	\$50
Last Payment Date	10/19/2007
Total Owed in Arrears	7/28/06 - 1/28/08 - \$500.00

The New Jersey Lawyers' Fund for Client Protection has referred your debt to the Comprehensive Enforcement Program (CEP) for collection. **YOUR RESTITUTION OBLIGATION IS IN ARREARS. THE NEXT LETTER YOU RECEIVE WILL BE A COURT SUMMONS TO AN ENFORCEMENT HEARING. You may be able to avoid a Court appearance on Monday, March 24, 2008 by doing ALL of the following ON OR BEFORE Wednesday, February 13, 2008:**

proposing a payment plan and/or curing the arrears
executing a Consent Order prepared by the Fund
making a lump sum payment and a monthly payment; and
returning the enclosed Information Subpoena

ALL PROPOSALS FOR PAYMENT ARE SUBJECT TO APPROVAL BY THE BOARD OF TRUSTEES. If your failure to pay is found to be willful noncompliance, one or several of the following may happen:

- your wages may be garnished;
- your personal assets may be seized;
- your tax refund, lottery or gambling winnings may be attached;
- a judgment may be docketed against you. This will act as a lien against any real estate that you own and may adversely affect your ability to obtain loans or other forms of credit;
- involuntary enrollment in either the Sheriff's Labor Assistance or Enforced Community Service Program as alternative to detention. (Cost to you: \$15 enrollment fee and \$2 per day fee.)
- your driving privileges may be suspended

YOU MAY BE ABLE TO AVOID THESE ACTIONS IF YOU FOLLOW THE STEPS OUTLINED ABOVE. Please put your account number (CPF #) on any payment that you mail in to receive proper credit. Payments in the form of a check or money order can be mailed to the address on our letterhead. Payments can be made at New Jersey Lawyers' Fund for Client Protection between 8:30 a.m. and 4:30 p.m., Monday through Friday.

If you wish to discuss your case to make payment arrangements or if good reason exists for your failure to pay, please contact Ruby D. Cochran, Esquire at the New Jersey Lawyers' Fund for Client Protection within five (5) days of receipt of this notice at (609) 633-2434.

Sincerely,
Thomas Bartlett
Thomas Bartlett, Chief of
Collections, Administrative Office of the Courts

PLEASE NOTIFY OF DISABILITY/INTERPRETER ACCOMMODATION NEEDS

EXHIBIT "EE"

**NEW JERSEY LAWYERS' FUND
FOR
CLIENT PROTECTION**

TRUSTEES

JEAN M. RAMATOWSKI, CHAIR
TINA E. BERNSTEIN, VICE CHAIR
EMMETT E. PRIMAS, JR., TREASURER
SUSAN E. LAWRENCE
JAMES H. LASKEY
LUIS R. SANCHEZ
FRANK C. FARR

ASSISTANT TREASURER
CHRISTINA P. HIGGINS

STREET ADDRESS:
25 WEST MARKET STREET
5TH FLOOR, NORTH WING
TRENTON, N.J. 08625



RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 961
TRENTON, N.J. 08625-0961

DIRECTOR & COUNSEL
KENNETH J. BOSSONG

DEPUTY DIRECTOR
DANIEL R. HENDI

SENIOR COUNSEL
EDWARD T. EHLE

DEPUTY COUNSEL
RUBY D. COCHRAN

(609) 984-7179
CLAIMS: (609) 292-8008
BILLING (609) 292-8079
FAX: (609) 394-3637

March 3, 2008

VIA FIRST CLASS AND CERTIFIED MAIL- R.R.R.

Mr. Patrick J. Shannon
500A Chestnut Street
Glendora, NJ 08029-1210

Re: New Jersey Lawyers' Fund for Client Protection v. Patrick J. Shannon
Docket No.: Ind./Acc. I-285912-91 and MER-L-1512-98;
Judgment No.: DJ-146895-00; J-9514-01; Our File CPF-468

Dear Mr. Shannon:

As I explained in my January 31, 2008 letter to you, the New Jersey Supreme Court has granted the New Jersey Lawyers' Fund for Client Protection the authority to enforce your obligation to pay the referenced Judgment through the Comprehensive Enforcement Program established by N.J.S.A. 2B:19-1 et seq.

You have responded to the Notice of Delinquency forwarded to you via first class and certified mail. We had an agreement, but we have not received any of the payments which you proposed; therefore, I am required to send to you an original and one (1) copy of a Summons that directs you to appear on **Monday, March 24, 2008 at 9:00 a.m.** before a Hearing Officer of the Superior Court of New Jersey, in **Courtroom 1A**, at the **Mercer County Civil Courthouse, 175 South Broad Street, Trenton, New Jersey**, for a Hearing to enforce your payment obligation.

Very truly yours,

Ruby D. Cochran
Ruby D. Cochran

RDC/sjb
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SUPERIOR COURT OF NEW JERSEY
COMPREHENSIVE ENFORCEMENT PROGRAM
P. O. BOX 987
TRENTON, NJ 08625

March 3, 2008

NEW JERSEY LAWYERS' FUND FOR CLIENT
PROTECTION,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MERCER COUNTY

PLAINTIFF,

Case Number CPF-468

Ind./Acc./Dkt. # DJ-146895-00; J-9514-01

Complaint #Ind./Acc. I-285912-91 and MER-L-1512-98

v.

Patrick J. Shannon
500A Chestnut Street
Glendora, NJ 08029-1210

COMPREHENSIVE ENFORCEMENT PROGRAM

**SUMMONS TO APPEAR FOR
ENFORCEMENT HEARING**

Dear Sir:

You are hereby notified that you have FAILED TO SATISFY A JUDGMENT ENTERED AGAINST YOU in the Superior Court of New Jersey. Your total BALANCE owed on this Judgment is \$8,608.35.

TAKE NOTICE: You may be charged with CONTEMPT OF COURT relative to your failure to make payments as directed toward your obligations. You are hereby summoned to appear in the Superior Court of New Jersey before a Hearing Officer, at the ENFORCEMENT COURT on **Monday, March 24, 2008 at 9:00 a.m.** The location is **Courtroom 1A, at the Mercer County Civil Courthouse, 175 South Broad Street, Trenton New Jersey.**

At this hearing, one or more of the following enforcement sanctions may be applied:

- your wages may be garnished;
- your personal assets may be seized;
- your tax refund, lottery or gambling winnings may be attached;
- a judgment may be docketed against you. This will act as a lien against any real estate that you own and may adversely affect your ability to obtain loans or other forms of credit;
- involuntary enrollment in either the Sheriff's Labor Assistance or Enforced Community Service Program as an alternative to direct incarceration. (Cost to you: \$25 enrollment fee and \$8 per day fee.)
- suspension of driving privileges pursuant to N.J.S.A. 2C:46-2.

You must appear at this hearing. Failure to appear may result in a Warrant for your arrest, or the entry of a default order for the relief requested by this application, or both. If you will need an interpreter during the hearing, call the New Jersey Lawyers' Fund for Client Protection at least two days before the hearing so that arrangements can be made to provide an interpreter for you.

You have the right to be represented by an attorney if you choose. **YOU ARE STRONGLY URGED TO BRING WITH YOU** any documents you feel may explain your failure to satisfy the above noted obligation and **BE PREPARED TO MAKE A PAYMENT AT THE TIME OF THE HEARING.** Any questions concerning the amounts owed, should be addressed by contacting **Ruby D. Cochran, Esq.**, at the New Jersey Lawyers' Fund for Client Protection, (609) 984-7179.

Sincerely,

Thomas Bartlett

Thomas Bartlett, Chief of

Collections, Administrative Office of the Courts

PLEASE NOTIFY COURT OF DISABILITY/INTERPRETER ACCOMMODATION NEEDS

EXHIBIT "FF"

**NJ / JERSEY LAWYERS' FUND
FOR
CLIENT PROTECTION**

TRUSTEES

JEAN M. RAMATOWSKI, CHAIR
TINA E. BERNSTEIN, VICE CHAIR
EMMETT E. PRIMAS, JR., TREASURER
SUSAN E. LAWRENCE
JAMES H. LASKEY
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STREET ADDRESS:
25 WEST MARKET STREET
5TH FLOOR, NORTH WING
TRENTON, N.J. 08625



RICHARD J. HUGHES JUSTICE COMPLEX
P.O. Box 961
TRENTON, N.J. 08625-0961

DIRECTOR & COUNSEL
KENNETH J. BOSSONG

DEPUTY DIRECTOR
DANIEL R. HENDI

SENIOR COUNSEL
EDWARD T. EHLER

DEPUTY COUNSEL
RUBY D. COCHRAN

(609) 984-7179
CLAIMS: (609) 292-8008
BILLING (609) 292-8079
FAX: (609) 394-3637

March 27, 2008

Mr. Patrick J. Shannon
500A Chestnut Street
Glendora, NJ 08029-1210

Re: New Jersey Lawyers' Fund for Client Protection v. Patrick J. Shannon
Docket No.: Ind./Acc, I-285912-91 and MER-L-1512-98
Judgment No.: DJ-146895-00 and J-9514-01; Our File No.: CPF-468

Dear Mr. Shannon:

Enclosed please find a copy of the Order from the Hearing of March 24, 2008 signed by the Honorable F. Patrick McManimon that sets forth your payment obligation to the New Jersey Lawyers' Fund for Client Protection. According to the Order, you are required to pay the sum of \$50.00 per month effective April 11, 2008. The Order also states that we will re-list this matter for the July hearing.

Please remit your payments timely each month. If you experience financial difficulties in paying your monthly obligation to the Fund, please contact me to discuss the matter. If you should have any questions concerning this matter, please do not hesitate to contact me. Thank you.

Sincerely,

Ruby D. Cochran
Ruby D. Cochran

RDC:sjb
Enclosure

COMPREHENSIVE ENFORCEMENT PROGRAM

A TRUE COPY

Ann Regan

SUE REGAN

Deputy Clerk of Superior Court

Superior Court of New Jersey
County of Mercer Civil Division



MAR 24 2008

JUDGMENT AND
CONSENT ORDER

NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION vs	Social Security # CPF- <i>468</i>
<i>Patrick Shannon</i>	Docket/Indictment/Accusation #: <i>Ind/Acc. I - 285912-91 and MER-L-1512-98</i>
Hearing Date: MARCH 24, 2008	Judgment #: <i>DI-146895-00; J-9514-01</i>

This matter has been opened to the Comprehensive Enforcement Program by the New Jersey Lawyers' Fund for Client Protection for an Order.

Service upon which this order is based:

- Certified Mail Signed by _____ Refused Returned Unclaimed
 Regular Mail Not Returned Returned Other

IT IS HEREBY ORDERED that the Defendant pay to the New Jersey Lawyers' Fund for Client Protection ("the Fund") the balance due of \$ 8,608.25 payable at \$ 50.00 per month effective 4/1/08.

The Defendant shall keep the Fund informed of any change in Defendant's financial circumstances. Defendant shall also advise the Fund of any change in Defendant's employment or residence.

If Defendant is thirty (30) days in arrears with any one (1) payment, then the whole balance becomes due and owing, and the Fund may use any and all available means to collect it.

Financial Obligation Fulfilled.

IT IS ALSO ORDERED THAT:

JUDGMENT WILL BE ENTERED this _____ day of _____ 2008 on Docket Number _____
 \$ _____ PAID AT HEARING: A LUMP SUM PAYMENT OF \$ _____ must be made by ____/____/____.
 INCOME WITHHOLDING is ordered, and is binding on current and future income sources.
 LIEN be entered against proceeds from any settlement.
 EMPLOYMENT SEARCH _____ contacts to be made per _____.
 _____ Days/hours county jail under the authority of the Labor Assistance Program or Enforced Community Service Program. Cost to Defendant: \$15.00 enrollment fee and \$2.00 per day fee. Total fee: \$ _____. Failure to comply may result in mandatory incarceration (\$ _____ Condition of release). Start Date: ____/____/____.
 OTHER _____
 RELIST for return to Comprehensive Enforcement Proceedings on July 2008.
 A BENCH WARRANT for the Defendant is hereby recommended/ordered. The Defendant was properly noticed for court appearance and failed to appear (service noted above). Defendant may be release from incarceration upon payment of \$ _____

I HEREBY DECLARE THAT I UNDERSTAND ALL PROVISIONS OF THIS RECOMMENDATION/ORDER.

Defendant: *Patrick Shannon*

This order is being entered in default. *PATRICK SHANNON*

Witness : _____

So recommended to the Court by the Hearing Officer.

Name: ~~Patrick Shannon~~ **Beverly Brown Schorr, Esq.**

Signature: *Beverly Brown Schorr*
~~Patrick Shannon~~ **Beverly Brown Schorr, Esq.**

SO ORDERED by the Court:

Name: F. PATRICK MC MANIMON, J.S.C.

Signature: *F. Patrick Mc Manimon*
F. PATRICK MC MANIMON, J.S.C

Date: 3/24/08

PLEASE NOTIFY COURT OF DISABILITY ACCOMMODATION NEEDS

EXHIBIT "GG"

**SUPERIOR COURT OF NEW JERSEY
COMPREHENSIVE ENFORCEMENT PROGRAM (CEP)**

**NEW JERSEY LAWYERS' FUND
FOR CLIENT PROTECTION**
Richard J. Hughes Justice Complex
P. O. Box 961
Trenton, New Jersey 08625-0961

Telephone: (609) 984-7179

NAME: _____

Date: _____

Case #: _____

**RE: NOTICE OF INTENT TO SUSPEND DRIVER'S LICENSE/REVOKE NONRESIDENT
DRIVING PRIVILEGE OR POSTPONE OBTAINING A DRIVER'S LICENSE**

Your driver's license *or* nonresident driving privilege will be suspended; *or* if you currently do not have a driver's license, obtaining a driver's license will be postponed in accordance with N.J.S.A. 2C:46-2 as a consequence of nonpayment of court ordered monetary obligations. A bench warrant for your arrest

- May be issued
- Has been issued.

To avoid these consequences, you must pay \$_____ by _____ at the New Jersey Lawyers' Fund for Client Protection listed above.

If your driver's license becomes suspended as a result of this action, when this obligation is paid in full, the New Jersey Lawyers' Fund for Client Protection will notify Motor Vehicle Services that you are eligible for restoration of your driver's license in regard to this matter. You will receive a copy of the Eligibility for Restoration of Driving Privilege Form. You are responsible for paying a \$50.00 restoration fee directly to the Motor Vehicle Division at the time you apply for restoration of the license.

For further information relating to having your driver's license restored, after the New Jersey Lawyers' Fund for Client Protection has determined your eligibility for restoration, please contact the State of New Jersey, Motor Vehicle Division, Driver Control Services, P.O. Box 134, Trenton, NJ 08666-0134; telephone number (609) 292-7500.

If your driver's license is suspended, and if you are convicted of operating a motor vehicle while suspended, you will be substantially fined and may also face a period of imprisonment.

Signature, Title

(4/98)AOC FORM CEP-41

EXHIBIT "HH"

*
**SUBCHAPTER 10. SETOFF OF INDIVIDUAL
LIABILITY**

18:35-10.1 Purpose

The purpose of this subchapter is to establish a policy and to provide a system whereby any claimant agency or institution of the State of New Jersey in conjunction with the Division of Taxation shall cooperate in identifying debtors who owe money to the State through its various agencies or institutions and who shall be entitled to any refund of Gross Income Taxes or to a Homestead Rebate from the Division of Taxation. It is also the intent of this subchapter to establish procedures for setting off against any such refund or rebate the sum of any debt owed to the State. The procedures contained in this subchapter are designed to comply with N.J.S.A. 54:50-8 and N.J.S.A. 54:50-9, the confidentiality provisions of the State Tax Uniform Procedure Law. They also afford the taxpayer opportunity to assert any other legal rights he may have prior to final setoff.

Recodified from N.J.A.C. 18:35-2.1 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

18:35-10.2 Definitions

"Claimant agency or institution" means and includes any agency or institution of the State Government. Although not necessarily limited thereto, a convenient organizational summary may be found in the current State of New Jersey, Official Directory, published annually by the New Jersey Secretary of State's Office and available therefrom.

"Consolidated Debtor File" means the consolidated listing of all debts owed the State as derived from the debtor files of each participating State agency.

"Debt" means any liquidated sum due and owing any claimant agency which has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum.

"Debtor" means any individual owing money to or having a delinquent account with any claimant agency or institution which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Debtor file" means a list of liquidated accounts for which the claimant agency has exhausted its collection methods. A minimum of \$25.00 for total debts per individual per claimant agency or institution will be established. This threshold amount is subject to change in future years by the Division of Taxation based upon experience. Accounts involving more than one debtor must be broken down individually, and the debt allocated to each individual by a claimant agency. The list must be supplied on magnetic tape, punched cards, or other input media as approved by the Division of Taxation and contain such information as

the Division may require in order to setoff with the beginning of the refund cycle in February. One update of this file will be permitted per agency prior to the homestead rebate cycle in June.

"Division" means the New Jersey Division of Taxation, Department of Treasury.

"Net proceeds collected" means gross proceeds collected through final setoff against a debtor's refund or rebate minus any collection fee charged by the Division to provide for any expenses of the collection effort.

"Rebate" means a homestead property tax rebate pursuant to P.L. 1990, c.61 (N.J.S.A. 54:4-8.57 et seq.).

"Refund" means a refund of an overpayment of taxes paid pursuant to the "New Jersey Gross Income Tax Act" (N.J.S.A. 54A:1-1 et seq.).

As amended, R.1984 d.62, effective March 19, 1984.
See: 15 N.J.R. 2031(a), 16 N.J.R. 556(a).

Definition of "Debtor file:" "50.00" changed to "\$25.00"; 1982 deleted.

Amended by R.1994 d.147, effective March 21, 1994.

See: 26 N.J.R. 5454(a), 26 N.J.R. 1373(a).

Recodified from N.J.A.C. 18:35-2.2 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

18:35-10.3 Procedure for setoff

(a) A claimant agency seeking to attempt collection of a debt through setoff shall notify the Division in writing and supply the Division with a debtor file containing information necessary to identify the debtor whose refund or rebate is sought to be setoff. Notification to the Division and the furnishing of identifying information must occur on or before a date specified by the Division.

(b) With prior approval of the Division, the debtor file may also contain liquidated debt information for every alleged debtor listed on the file, provided that the debtor file is accompanied by a certification of all debts listed on the debtor file.

As amended, R.1982 d.479, effective January 3, 1983.

See: 14 N.J.R. 705(b), 15 N.J.R. 37(b).

Added (b).

Recodified from N.J.A.C. 18:35-2.3 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

18:35-10.4 Matching

(a) Upon timely receipt of notifications and debtor files from participating claimant agencies, the Division will make continual comparisons of the consolidated debtor file with the Refund file and with the Rebate file. A complete match will result from a matching of two sets of identification information. A complete match affects the Gross Income Tax and Homestead Rebate systems by placing a hold code in the taxpayer's account which prevents a refund or rebate check from being sent out until initial certification.

(b) A partial match occurs from an incomplete match of the identification information used, and it results in the placing of the taxpayer's account on a contingent hold status for 15 days. During that period the Division and the claimant agency may make a review of the relevant identification information to determine if the incomplete match is the result of a clerical, transcription, or other error. If that is the case, the contingent hold code is removed, the account is placed on hold, and is treated as a complete match. If a reconciliation of the identification information cannot be made, the account is returned to the claimant agency or institution for investigation, and the refund/rebate check is released to the taxpayer. The claimant agency may resubmit the account at such time of updating the debtor file as the Division may direct.

(c) When a taxpayer requests a refund or rebate and that taxpayer has been identified through a complete match as an alleged debtor to a claimant agency, the Division does not have liquidated debt information on the debtor file, a three-part card will be sent to the claimant agency. Return of the proper card(s) to the division would certify the accuracy of the liquidated debt, advise whether the amount had been subsequently paid, and/or advise whether or not the doctor has requested a hearing or appeal in the matter.

(d) When a taxpayer requests a refund or rebate and that taxpayer has been identified through a complete match as an alleged debtor to a claimant agency, and the Division has liquidated debt information on the debtor file, the Division will generate a notice to the taxpayer in accordance with N.J.A.C. 18:35-10.5 and will also generate a two-part card to the agency. Return of the proper card(s) to the Division would advise whether the amount has been subsequently paid, and/or advise whether or not the debtor has requested a hearing or appeal in the matter.

Recodified from N.J.A.C. 18:35-2.4 and amended by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

Changed N.J.A.C. reference.

18:35-10.5 Notice to taxpayer

Within 10 days after identification of a potential refund or rebate due the taxpayer and receipt of certified liquidated debt information from the claimant agency, whichever is later, the Division shall notify the alleged debtor of the proposed setoff and inform the alleged debtor of the right to make a timely request to the claimant agency for administrative resolution or for a hearing on the alleged debt and the proposed setoff.

As amended, R.1982 d.479, effective January 3, 1983.

See: 14 N.J.R. 705(b), 15 N.J.R. 37(b).

Added "identification of a potential refund ... from the claimant agency".

Recodified from N.J.A.C. 18:35-2.5 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

18:35-10.6 Administrative resolution; claimant agency proceedings

(a) No later than 45 days from the date of the Division's notice to the alleged debtor, of the proposed setoff, the claimant agency shall notify the Division of any request by the alleged debtor for administrative resolution or for a hearing or of the satisfaction of the alleged debt. Such information shall allow the Division to:

1. Maintain the account on a hold status if an administrative resolution or a hearing has been requested;
2. Setoff the alleged debt from the refund or rebate where the alleged debtor does not respond to the notice provided pursuant to N.J.A.C. 18:35-10.5 within 35 days of the notice date; or
3. Release the refund or rebate check to the debtor if the debt has been satisfied.

(b) Upon written request of the claimant agency, the Division shall extend the hold status of an affected check until a final decision by the claimant agency in order to accommodate the hearing process, where:

1. The Division has been notified that administrative resolution or a hearing has been requested pursuant to (a)1 above; and
2. Where a 30 day administrative resolution period provided pursuant to N.J.A.C. 1:1-5.4(b) has failed to result in a final agreement. The period for administrative resolution shall commence upon receipt by the claimant agency of a timely request for administrative resolution or for a hearing.

(c) After five days of the close of the period for administrative resolution, the Division shall automatically release the affected refund or rebate check unless notified in writing by the claimant agency that:

1. Administrative resolution of the matter has been accomplished pursuant to N.J.A.C. 1:1-5.4(a) and the agency has certified to the Division that the debtor has acknowledged the validity of the debt and setoff; or
2. The claimant agency has transmitted the matter as a contested case to the Office of Administrative Law pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and the Division has been notified of the docket number of the proceeding.

Recodified from N.J.A.C. 18:35-2.6 and amended by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

In (a)2, changed N.J.A.C. reference.

18:35-10.7 Agency procedure; hearing

(a) When an alleged debtor makes a timely request for administrative resolution for a hearing, the claimant agency shall initiate appropriate agency procedures pursuant to the "New Jersey Uniform Administrative Procedure Rules,

1980", N.J.A.C. 1:1-1.1 et seq. The issues in an administrative resolution effort or a hearing shall include whether the claimed sum asserted as due and owing is correct and any other relevant matters. A nondebtor who claims to be a joint recipient of a refund or rebate check shall have standing to establish that fact and to contest the proposed setoff. If the claimant agency finds that an apportionment should be made in a particular case with respect to a joint entitlement, the matter shall be referred to the Division of Taxation and it will be presumed that each party is entitled to one half of the joint entitlement.

(b) Pending final agreement or final determination of the validity of the debt asserted by the claimant agency, no action shall be taken in furtherance of collection of that alleged debt through the setoff procedure established by this subchapter.

(c) No issues may be considered at the hearing which have been previously litigated. In cases where a legal judgment is in effect, the alleged debtor shall seek relief by returning to the court which produced the judgment.

Amended by R.1982 d.479, effective January 3, 1983.

See: 14 N.J.R. 705(b), 15 N.J.R. 37(b).

Added that claims will be apportioned and presumed that each party is entitled to the joint entitlement. Old (c) deleted and new (c) added. Recodified from N.J.A.C. 18:35-2.7 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

18:35-10.8 Referral to Office of Administrative Law; hearing

(a) After completing administrative resolution efforts in a contested case, the matter shall be filed forthwith with the clerk of the Office of Administrative Law, pursuant to the requirements of the "Administrative Procedure Act", P.L. 1968, c.419 (C.52:14B-1 et seq.) and P.L. 1978, c.67 (C.52:14F-1 et seq.), as amended and supplemented and the "New Jersey Uniform Administrative Procedure Rules, 1980", N.J.A.C. 1:1-1.1 et seq.

(b) An appeal to be taken from a final determination of the division of Taxation involving a tax matter shall be taken to the Tax Court. The Office of Administrative Law shall not hear tax matters.

Recodified from N.J.A.C. 18:35-2.8 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

18:35-10.9 Finalization of setoff by claimant agency; finalization by setoff

(a) Upon either final determination of the debt due and owing the claimant agency and exhaustion of time in which an appeal may be filed or upon the debtor's and/or joint recipient's default for failure to timely request review of the asserted setoff, the claimant agency shall forthwith certify the finalized debt to the Division and in default thereof, the

Division shall no longer be obligated to hold the refund for setoff.

(b) Upon receipt by the Division of a certified finalized debt from the claimant agency, the Division shall finalize the setoff by transferring the net proceeds collected for credit or payment in accordance with the provisions of N.J.A.C. 18:35-10.12 and by refunding any remaining balance to the debtor as if setoff has not occurred.

(c) Where judicial review is sought from a final agency determination, the agency shall advise the Division of such appeal and its docket number within three days of the filing of the appeal.

Recodified from N.J.A.C. 18:35-2.9 and amended by R.1998 d.195, effective April 20, 1998.
See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).
In (b), changed N.J.A.C. reference.

18:35-10.10 Notice to debtor of final setoff

Upon the finalization of setoff through administrative or judicial action, the Division shall notify the debtor in writing of the action taken along with an accounting of the action taken on any refund or rebate. If there is an outstanding balance after setoff, the notice under this section shall accompany the balance when disbursed.

Recodified from N.J.A.C. 18:35-2.10 by R.1998 d.195, effective April 20, 1998.
See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

18:35-10.11 Priorities in claims to setoff

(a) Priority in multiple claims to refunds or rebates allowed to be setoff under the provisions of this subchapter shall be based upon the time at which debtor files are received by the Division from the claimant agencies in descending order or priority, the earliest being first.

(b) Notwithstanding the general rule for priority set forth in (a) above, the priorities for setoff are as follows:

1. With respect to homestead rebates:
 - i. A local property tax deficiency;
 - ii. Any unpaid child support;
 - iii. A State tax deficiency;
 - iv. Other agencies, including the Internal Revenue Service, by date of claim.
2. With respect to gross income tax refunds:
 - i. Any unpaid child support;
 - ii. A State tax deficiency;
 - iii. Other agencies, including the Internal Revenue Service, by date of claim.

Amended by R.1993 d.94, effective February 16, 1993.
See: 24 N.J.R. 1967(b), 25 N.J.R. 711(c).

Revised (b).
Recodified from N.J.A.C. 18:35-2.11 by R.1998 d.195, effective April 20, 1998.
See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

18:35-10.12 Disposition of proceeds collected; collection assistance fees

(a) Upon effecting final setoffs, the Division shall periodically either write checks or effect credits through other methods, approved by the Division of Budget and Accounting to the respective claimant agencies for the net proceeds collected on their behalf.

(b) From the gross proceeds collected by the Division through setoff, the Division shall retain 10 percent. On and after January 1, 1985 the Division shall retain five percent of such proceeds. The amount shall be charged to the respective claimant agency as a collection assistance fee and may be subject to adjustment based upon experience.

Amended by R.1984 d.62, effective March 19, 1984.
See: 15 N.J.R. 2031(a), 16 N.J.R. 556(a).

Gross proceeds retained from "15" percent to "10" percent by the Division.

Amended by R.1984 d.579, effective December 17, 1984.
See: 16 N.J.R. 2760(b), 16 N.J.R. 3481(a).

(b) Added: "On and after ... such proceeds. The".
Recodified from N.J.A.C. 18:35-2.12 by R.1998 d.195, effective April 20, 1998.
See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

18:35-10.13 Accounting to the claimant agency; credit to debtor's obligation

(a) Simultaneously with the transmittal of a check or credit for net proceeds collected to a claimant agency, the Division shall provide the agency with an accounting of the setoffs finalized for which payment is being made.

1. The accounting shall, whenever possible, include:
 - i. The full names of the debtors;
 - ii. The gross proceeds collected per individual setoff;
 - iii. The net proceeds collected per setoff; and
 - iv. The collection assistance fee charged per setoff.

(b) Upon receipt by a claimant agency of a check representing net proceeds collected on a claimant agency's behalf by the Division and an accounting of the proceeds as specified under this section, the claimant agency shall credit the debtor's obligation with the gross proceeds collected.

(c) Under special circumstances and subject to the approval of the Director of the Division of Budget and Accounting, the Division may employ such alternative method of payment and billing as may be agreed upon with a claimant agency.

Recodified from N.J.A.C. 18:35-2.13 by R.1998 d.195, effective April 20, 1998.
See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

NEW JERSEY DIVISION OF REVENUE
SET-OFF INDIVIDUAL LIABILITY PROGRAM

CERTIFICATION STATEMENT

The _____, herewith
(Name of Agency)
transmits an input file to the Set-Off Individual Liability Program in accordance with the provisions of C.239, P.L. 1981. This file is being submitted in a computer readable format and contains debt information for each individual listed on the file.

I certify these to be liquidated debts in excess of \$25.00, and that the debt is one on which no payments have been received for at least six months or, in cases where the debt has been referred by this agency to a collection agency, it must have been returned as uncollectible by the agency, and that the Division of Taxation is authorized to set-off these accounts under the aforementioned Act and regulations promulgated by the Director, Division of Taxation.

(Authorized Signature)

DATE

NOTE: This statement is required as a condition of acceptance for input files.

* Please check off the type of media you are submitting.

_____ IBM Computer System Disk

_____ IBM 3490 Cartridge

_____ Internet Transfer of files

_____ Manual

**SET-OFF PROGRAM
NOTICE OF INTENDED SET-OFF
CHAPTER 239, P.L. 1981**

02/03/00

DEAR TAXPAYER:
WE HAVE CALCULATED YOUR 1998 GROSS INCOME TAX OVERPAYMENT TO BE
\$ 33.00. HOWEVER, THE AGENCY LISTED BELOW HAS REQUESTED THAT
\$ 33.00 OF THIS AMOUNT BE HELD BECAUSE OF A DELINQUENT ACCOUNT IN THE
NAME OF

OFFICE OF THE PUBLIC DEFENDER
25 MARKET ST, 1ST FL NORTH WING
PO BOX 036
TRENTON NJ 08625

BILLING DEPARTMENT
(609) 984-4023

IF YOU DISAGREE WITH THIS ACTION, YOU HAVE 35 DAYS TO RESOLVE THE MATTER
WITH THE AGENCY LISTED ABOVE. IF THE INFORMATION IS CORRECT, YOU DO NOT
NEED TO CONTACT ANYONE. THE \$ 33.00 WILL BE APPLIED TO THE DEBT.

NOTE: THE AMOUNT REFERENCED ABOVE MAY NOT REFLECT RECENT PAYMENTS OR
SET-OFFS. IF SO, A REFUND WILL BE SENT TO YOU IN A SEPARATE CHECK.

**SET-OFF PROGRAM
NOTICE OF INTENDED SET-OFF
CHAPTER 239, P.L. 1981**

02/03/00

DEAR TAXPAYER:
WE HAVE CALCULATED YOUR 1998 HOMESTEAD REBATE TO BE \$ 30.00.
HOWEVER, THE AGENCY LISTED BELOW HAS REQUESTED THAT \$ 30.00 OF THIS
AMOUNT BE HELD BECAUSE OF A DELINQUENT ACCOUNT IN THE NAME OF

OFFICE OF THE PUBLIC DEFENDER
25 MARKET ST, 1ST FL NORTH WING
PO BOX 036
TRENTON NJ 08625

BILLING DEPARTMENT
(609) 984-4023

IF YOU DISAGREE WITH THIS ACTION, YOU HAVE 35 DAYS TO RESOLVE THE MATTER
WITH THE AGENCY LISTED ABOVE. IF THE INFORMATION IS CORRECT, YOU DO NOT
NEED TO CONTACT ANYONE. THE \$ 30.00 WILL BE APPLIED TO THE DEBT.

NOTE: THE AMOUNT REFERENCED ABOVE MAY NOT REFLECT RECENT PAYMENTS OR
SET-OFFS. IF SO, A REFUND WILL BE SENT TO YOU IN A SEPARATE CHECK.

**SET-OFF PROGRAM
NOTICE OF INTENDED SET-OFF
CHAPTER 239, P.L. 1981**

02/03/00

DEAR TAXPAYER:
WE HAVE CALCULATED YOUR 1998 N J SAVER REBATE TO BE \$128.66.
HOWEVER, THE AGENCY LISTED BELOW HAS REQUESTED THAT \$ 88.80 OF THIS
AMOUNT BE HELD BECAUSE OF A DELINQUENT ACCOUNT IN THE NAME OF

**OFFICE OF THE PUBLIC DEFENDER
25 MARKET ST, 1ST FL NORTH WING
PO BOX 036
TRENTON NJ 08625**

**BILLING DEPARTMENT
(609) 984-4023**

**IF YOU DISAGREE WITH THIS ACTION, YOU HAVE 35 DAYS TO RESOLVE THE MATTER
WITH THE AGENCY LISTED ABOVE. IF THE INFORMATION IS CORRECT, YOU DO NOT
NEED TO CONTACT ANYONE. THE \$ 88.80 WILL BE APPLIED TO THE DEBT.**

**NOTE: THE AMOUNT REFERENCED ABOVE MAY NOT REFLECT RECENT PAYMENTS OR
SET-OFFS. IF SO, A REFUND WILL BE SENT TO YOU IN A SEPARATE CHECK.**

EXHIBIT "II"

OUTLINE OF COMMON BANKRUPTCY RULES & PROCEDURES

(This Outline cannot replace a thorough reading of the Rules)
(The Local Rules refer to New Jersey Only)

Notice to Creditors –

FRBP 2002 – creditors shall receive at least 20 days notice by mail of the meeting of creditors, proposed sale of property, settlement hearing, etc.

FRBP 2003 – Chapter 7 creditors meeting no fewer than 20 days & no more than 40 days after order for relief.

Proof of Claim –

FRBP 3001 – use official form, include copy of judgment or order

FRBP 3002 – must be filed not later than 90 days after the first date set for the meeting of creditors

Complaint –

Local Bank R. 7001 – deliver complaint & summons & notice of pretrial conference to Clerk for issuance of summons & notice of pretrial conference

- use standard forms available on bankruptcy website
- plaintiff to serve summons & complaint on defendant within 120 days
- provide proof of service to Court

Fed. R. Civ. P. 4 – defines contents of a summons, issuance, service & waiver

Fed. R. Civ. P. 8 – general rules of pleading

Pre-Trial Conference –

Local Civ. R. 16.1 – scheduled by the Judge

- plaintiff to confer with defendant early enough for discussions
- plaintiff to prepare scheduling order & attempt to get agreement

Local Civ. R. 26.1 – discovery

- summarized in scheduling order, joint discovery plan
- parties shall meet at least 21 days before scheduling conference
- discovery plan shall be delivered to Judge within 14 days
- specify timing & deadlines

Fed. R. Civ. P. 16 – scheduling order by Judge within 120 days after complaint Served or 90 days after defendant appeared

- sanctions for failure to participate or follow schedule

Fed. R. Civ. P. 37(f) – failure to participate in framing of discovery plan may result in Court granting expenses to other party

Default –

Local Bank R. 7055 – file application requesting entry of default

- With supporting affidavit including:
 - o opposing party has been served with summons & complaint
 - o opposing party failed to timely plead or defend
 - o opposing party did not request extension of time
- with application for default judgment
 - o with request to enter default judgment
 - o affidavit in support of default judgment
 - o documentary evidence to support affidavit
 - o defendant's military status
 - o defendant is not an infant or incompetent
 - o form of judgment
 - o notice shall be served per Fed. R. Civ. P. 55(b)(2)

Fed. R. Civ. P. 8 – general rules of pleading

Fed. R. Civ. P. 55 – apply to the Court

- for failure to plead or otherwise defend
- if party against whom default is sought appeared, they shall be served with written notice of application at least 3 days prior to hearing

Discovery –

Local Civ. R. 26.1 – must be done expeditiously & diligently

- summarized in scheduling order
- parties shall meet at least 21 days before scheduling conference
- discovery plan shall be delivered to Judge within 14 days
- specify timing & deadlines

Local Civ. R. 37 - counsel shall confer to resolve disputes unless pro se litigant

- discovery motions must include affidavit that plaintiff conferred with defendant in good faith
- motions shall be filed at least 24 days before argument date
- opposition may be made at least 14 days prior to argument
- no reply permitted without leave of Court

Fed. R. Civ. P. 26 – initial disclosures must be provided without discovery

Request at or within 14 days of scheduling conference – see list

- disclose identity of experts
- pretrial disclosures – names of witness & copies of documents
- disclosures must be made in writing
- Court may limit discovery – see reasons R. 26(b)(2)(C)
- party who made disclosure has duty to disclose supplemental or corrected discovery
- parties shall meet at least 21 days before scheduling conference
- parties must submit discovery plan within 14 days after conference
- make a motion for protective order if necessary R. 26(c)

Requests for Admissions –

- Local Civ. R. 36 – after each question, space must be left to respond
 - must respond with specificity
 - objections must be made with particularity
- Fed. R. Civ. P. 36 – may not be served before meeting to form discovery plan
 - may be served without leave of Court
 - copies of documents shall be served with request
 - response must be within 30 days of service
 - matters are deemed admitted if no response
 - admit or deny with specificity

Interrogatories –

- Local Civ. R. 33 – after each question, space must be left to respond
 - must respond with specificity
 - objections must be made with particularity
- Fed. R. Civ. P. 33 – may be served without leave of Court
 - no more than 25 written interrogatories, including subparts, requires leave to serve more
 - each shall be answered separately and fully in writing under oath
 - answers shall be served within 30 days after service
 - objections shall be stated with specificity, if not then waived

Requests for Documents –

- Local Civ. R. 34 – objections must be made with particularity
- Fed. R. Civ. P. 34 – written response due within 30 days after service
 - objection to part must specify the part & permit inspection of the rest

Depositions –

- Local Bank R. 2004 – interested party can serve subpoena without filing a motion
 - date must be at least 14 days after service
 - upon motion, Court may quash
 - filing of motion to quash stays subpoena until Court rules
- Fed. R. Civ. P. 27 – pending appeal –
 - petition Court at least 20 days before hearing date
 - petitioner must serve copy of petition & notice stating time & place
- Fed. R. Civ. P. 30 – oral depositions can be taken without leave of Court
 - witness may be compelled by subpoena (see Rule 45)
 - party must obtain leave of Court if parties have not stipulated to the deposition or if person has already been deposed

- reasonable notice to all parties in writing
- notice must state time & place (limit 1 day of 7 hours), names & method of recording
- documents must be marked for identification & attached to deposition
- party taking deposition shall bear cost
- deposition shall be conducted before an officer
- objections shall be concise, not argumentative or suggestive
- Court may limit duration & scope
- Deponent has 30 days to review transcript & request changes

Fed. R. Civ. P. 32 – using deposition in court proceedings

Subpoenas –

Fed. R. Civ. P. 45 – must state name of Court, title of action & #

- must state name of person summoned, time & place, what is requested
- must state method of recording for deposition
- clerk shall issue subpoena, signed but blank, to party requesting it
- requestor shall complete subpoena before service
- any person 18 & not a party may serve a subpoena
- service shall include fees and mileage
- avoid imposing undue burden or expense on person
- within 14 days of service, serve written objection
- Court may quash or modify subpoena on timely motion

Sanctions –

Local Civ. R. 37 & 11.3 – all sanctions applications must be filed prior to the entry of final judgment

Fed. R. Civ. P. 37 – motion to compel discovery

- evasive or incomplete response is same as failure to respond
- Court may grant expenses
- See list for not obeying a discovery order – R. 37(b)

Motions –

Local Civ R. 7.1 – must send Clerk acknowledgment of service

- send brief with notice of motion & proposed order
- specify nature of remedy & purpose & grounds for relief sought
- opposition must be sent at least 14 days prior to motion date
- moving party may reply to opposition within 7 days
- Automatic extension of 14 days
- Cross motion must relate to subject matter of original motion
- Motion for reconsideration shall be served & filed within 10 days of order or judgment
- Narrative statements in lieu of legal argument are not sufficient

Local Bank R. 9013 – state grounds & nature of relief sought

- papers filed & served 20 days before return date
- uncontested unless response filed & served at least 7 days before return Date
- all cross motions deemed contested
- motion for reconsideration shall be filed within 10 days of judgment
- movant shall confer with adversary prior to hearing to resolve issues
- brief required, double spaced
- certificate of service required

Local Bank R. 9072 – order or judgment is separate document

- title of order or judgment shall identify relief granted
- if ruling differs from proposed order, prevailing party shall file & serve revised form of order within 5 days
- all parties have 5 days to file & serve an objection & alternative form

Local Civ. R. 72 – may appeal within 10 days after served with order on non-dispositive matter

- failure to appeal a non-dispositive order in a timely fashion acts as a bar to raising the issues resolved by the order later

Fed. R. Civ. P. 6 – motion & notice of hearing shall be served not less than 5 days before hearing, see rule re: computing time

- opposing affidavits may be served 1 day before hearing

Fed. R. Civ. P. 7 – application to Court for an order shall be made by motion

- complaint & answer
- reply to counterclaim or answer to cross-claim
- third-party complaint & answer
- state grounds & relief or order sought
- state defenses, admit or deny claims
- failure to deny may result in claims being admitted

Fed. R. Civ. P. 8 – general rules of pleading

Fed. R. Civ. P. 12 – answer required within 20 days after service of complaint

- answer to cross-claim or counterclaim required within 20 days
- US shall serve answer within 60 days (Fed Gov only)
- If Court denies motion, response due within 10 days

Fed. R. Civ. P. 13 – counterclaim & cross claim

Fed. R. Civ. P. 14 – third parties

Fed. R. Civ. P. 15 – amended & supplemental pleadings

Relief from Automatic Stay –

Local Bank R. 4001 – motion, certification or affidavit, supporting exhibits

Summary Judgment Motions –

Local Civ. R. 56 – requires statements of facts as well as other motion Requirements

- if facts in statement are not contested then deemed admitted
- affidavit required as well
- failure to respond may result in facts being admitted
- brief required
- failure to file statement of facts can result in denial of motion

Local Civ. R. 58 – plaintiff prepares order or judgment

- prevailing party shall serve order or judgment within 5 days to Court with notice to adversary
- if no objection filed within 7 days, judgment or order signed by Court

Fed. R. Civ. P. 8 – general rules of pleading

Fed. R. Civ. P. 56 – motion may be filed after 20 days from beginning of action

- motion shall be served at least 10 days before hearing date,
See Rule 6 re: computing time
- adverse party may serve opposing affidavits anytime prior to the day of the hearing
- affidavit must be made on personal knowledge
- opposing party's response must set out specific facts showing a genuine issue for trial
- if opposing party does not respond, summary judgment should be entered

Judgments –

Local Bank R. 9072 – order or judgment is separate document

- title of order or judgment shall identify relief granted
- if ruling differs from proposed order, prevailing party shall file & serve revised form of order within 5 days
- all parties have 5 days to file & serve an objection & alternative form

Fed. R. Civ. P. 54 – judgment costs

Fed. R. Civ. P. 55 – default judgments can be obtained when other party failed to defend

Fed. R. Civ. P. 56 – summary judgment (see above)

Fed. R. Civ. P. 58 – entry of judgment – separate document

Fed. R. Civ. P. 59 – any motion for a new trial shall be filed no later than 10 days after entry of judgment

Fed. R. Civ. P. 60 – relief from judgment is available for a variety of reasons

Fed. R. Civ. P. 68 – offer of judgment

Fed. R. Civ. P. 69 – execution – see state requirements

Costs –

Local Civ. R. 54 – notice of motion & a bill of costs & disbursements

Emergency Relief –

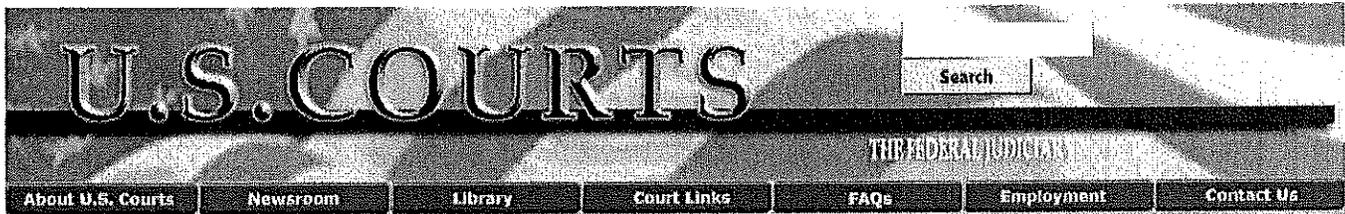
Local Civ. R. 65 – apply for an order

- clear & specific showing by affidavit or verified pleading
- deliver proposed orders & supporting papers to Clerk

Local Bank R. 9075 – emergency orders, orders to show cause

Fed. R. Civ. P. 65 – no preliminary injunctions shall be issued without notice to
The adverse party with some exceptions for temporary restraining orders

EXHIBIT "JJ"



Bankruptcy Basics

- ▣ [Process](#)
- ▣ [Discharge in Bankruptcy](#)
- ▣ [Chapter 7](#)
- ▣ [Chapter 13](#)
- ▣ [Chapter 11](#)
- ▣ [Chapter 12](#)
- ▣ [Chapter 9](#)
- ▣ [Chapter 15](#)
- ▣ [SCRA](#)
- ▣ [SIPA](#)
- ▣ [Glossary](#)
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SCRA. Servicemembers' Civil Relief Act

The Servicemembers' Civil Relief Act applies in bankruptcy cases. It provides protection to members of the military against the entry of default judgments and gives the court the ability to stay proceedings against military debtors.

- a. [General Provisions](#)
- b. [Applicability to Bankruptcy Proceedings](#)

Background

The Servicemembers' Civil Relief Act ("SCRA") is found at 50 U.S.C. app. §§ 501 et seq. The purpose of the SCRA is strengthen and expedite national defense by giving servicemembers certain protections in civil actions. By providing for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect servicemembers during their military service, the SCRA enables servicemembers to focus their energy on the defense of the United States. Among other things, the SCRA allows for forbearance and reduced interest on certain obligations incurred prior to military service, and it restricts default judgments against servicemembers and rental evictions of servicemembers and all their dependents. The SCRA applies to all members of the United States military on active duty, and to U.S. citizens serving in the military of United States allies in the prosecution of a war or military action. The provisions of the SCRA generally end when a servicemember is discharged from active duty or within 90 days of discharge, or when the servicemember dies. Portions of the SCRA also apply to reservists and inductees who have received orders but not yet reported to active duty or induction into the military service.

General Provisions

There are three primary areas of coverage under the SCRA: (1) protection against the entry of default judgments; (2) stay of proceedings where the servicemember has notice of the proceeding; and (3) stay or vacation of execution of judgments, attachments and garnishments. 50 U.S.C. app. §§ 521, 522 and 524.

Protection Against Default Judgements

Section 521 of the SCRA establishes certain procedures that must be followed in all civil proceedings in order to protect servicemember defendants against the entry of default judgements. These procedures are outlined below:

- ▣ If a defendant is in default for failure to appear in the action filed by the plaintiff, the plaintiff must file an affidavit (1) with the court before a default judgment may be entered. The affidavit must state whether the defendant is in the military, or that the plaintiff was unable to determine whether the defendant is in the military.

- If, based on the filed affidavits, the court cannot determine whether the defendant is in the military, it may condition entry of judgment against the defendant upon the plaintiff's filing of a bond. The bond would indemnify the defendant against any loss or damage incurred because of the judgment if the judgment is later set aside in whole or in part.
- The court may not order entry of judgment against the defendant if the defendant is in the military until after the court appoints an attorney to represent the defendant.
- If requested by counsel for a servicemember defendant, or upon the court's own motion, the court will grant a stay of proceedings for no less than 90 days if it determines that (1) there may be a defense and the defense cannot be presented without the defendant's presence; or (2) after due diligence the defendant's attorney has not been able to contact the defendant or otherwise determine if a meritorious defense exists.
- The court may, in its discretion, make further orders or enter further judgments to protect the rights of the defendant under the SCRA.
- If a judgment is entered against the defendant while he or she is in military service or within 60 days of discharge from military service, and the defendant was prejudiced in making his or her defense because of his or her military service, the judgment may, upon application by the defendant, be opened by the court and the defendant may then provide a defense. Before the judgment may be opened, however, the defendant must show that he or she has a meritorious or legal defense to some or all of the action.

Stay of Proceedings Where Servicemember Has Notice

Outside the default context, and at any time before final judgment in a civil action, a person covered by the SCRA who has received notice of a proceeding may ask the court to stay the proceeding. 50 U.S.C. app. § 522. The court may also order a stay on its own motion. *Id.* The court will grant the servicemember's stay application and will stay the proceeding for at least 90 days if the application includes: (1) a letter or other communication setting forth facts demonstrating that the individual's current military duty requirements materially affect the servicemember's ability to appear along with a date when the servicemember will be able to appear; and (2) a letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents his or her appearance and that military leave is not authorized for the servicemember at the time of the letter. The court has discretion to grant additional stays upon further application.

Stay or Vacation of Execution of Judgements, Attachments and Garnishments

In addition to the court's ability to regulate default judgments and stay proceedings, the court may on its own motion and must upon application: (1) stay the execution of any judgment or order entered against a servicemember; and (2) vacate or stay any attachment or garnishment of the servicemember's property or assets, whether before or after judgment if it finds that the servicemember's ability to comply with the judgment or garnishment is materially affected by military service. 50 U.S.C. app. § 524. The stay of execution may be ordered for any part of the servicemember's military service plus 90 days after discharge from the service. The court may also order the servicemember to make installment payments during any stay ordered.

Additional Protections

Several additional rights are available under the SCRA. For example, when an action for compliance with a contract is stayed under the SCRA, contractual penalties do not

accrue during the period of the stay. 50 U.S.C. app. § 523. The SCRA also provides in most instances that a landlord cannot evict a servicemember or dependants from a primary residence without a court order. In an eviction proceeding, the court may also adjust the lease obligations to protect the interests of the parties. 50 U.S.C. app. § 531. If the court stay the eviction proceeding, it may provide equitable relief to the landlord by ordering garnishment of a portion of the servicemember's pay. *Id.* Under the SCRA a servicemember may terminate residential and automotive leases if he or she is transferred after the lease is made. 50 U.S.C. app. § 535. A court may also extend some of the protections afforded a servicemember under the SCRA to persons co-liable or secondarily liable on the servicemember's obligation. 50 U.S.C. app. § 513.

Applicability to Bankruptcy Proceedings

The language of the SCRA states that it is generally applicable in any action or proceeding commenced in any court. 50 U.S.C. app. §§ 521, 522 and 524. Therefore, absent contravening language with respect to bankruptcy proceedings, the SCRA applies to all actions or proceedings before a bankruptcy court.

The applicability of the SCRA in bankruptcy proceedings is also evident in the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure. For example, the advisory committee note to Federal Rule for default judgments, Fed. R. Civ. P. 55 (b), states that it is directly affected by the SCRA. (2) Under Fed. R. Bankr. P. 7055 and 9014 of the Federal Rules of Bankruptcy Procedure, Fed. R. Civ. P. 55 is applicable in bankruptcy adversary proceedings and contested matters. Thus, the default judgment protections of the SCRA clearly apply in bankruptcy cases.

[Top](#)

The bankruptcy court clerk's office is aware of the requirement that the plaintiff must provide an affidavit stating whether the defendant is in the military before default may be entered against the defendant. Bankruptcy Procedural Forms B260, B261A, and B261B, and their accompanying instructions, provide additional guidance concerning the applicability of the SCRA to default judgments and related procedural requirements.

NOTES

1. The requirement for an affidavit may be satisfied by a statement, declaration, verification, or certificate in writing subscribed and certified or declared to be true under penalty of perjury. 50 U.S.C. app. § 521(4). [return to text](#)
2. The advisory committee note to Fed. R. Civ. P. 55 comments on the applicability of the Servicemembers' Civil Relief Act (formally known as the Soldiers' and Sailors' Civil Relief Act of 1940) to default judgements as follows:
 - The operation of Rule 55(b) (Judgment) is directly affected by the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. Appendix, § 501 et seq. Section 200 of the Act [50 U.S.C. Appendix, § 520] imposes specific requirements which must be fulfilled before a default judgment can be entered, e.g., *Ledwith v. Storkan*, D.Neb.1942, 6 Fed. Rules Serv. 60b.24, Case 2, 2 F.R.D. 539, and also provides for the vacation of a judgment in certain circumstances. See discussion in Commentary, Effect of Conscription Legislation on the Federal Rules, 1940, 3 Fed. Rules Serv. 725; 3 *Moore's Federal Practice*, 1938, Cum. Supplement § 55.02. [return to text](#)

EXHIBIT "KK"

U.S. BANKRUPTCY COURT
PROOF OF CLAIM
NEWARK, NJ

UNITED STATES BANKRUPTCY COURT DISTRICT OF New Jersey (Newark)

Name of Debtor
Maria P. Fornaro

Case Number
07-20842-RG

07 SEP 25 AM 9:42

JAMES J. WALDRON

DEPUTY CLERK

THIS SPACE IS FOR COURT USE ONLY

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property):

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

NJ Lawyers' Fund for Client Protection

Name and address where notices should be sent:

Check box if you have never received any notices from the bankruptcy court in this case.

P.O. Box 961
Trenton, NJ 08625

Check box if the address differs from the address on the envelope sent to you by the court.

Telephone number: (609) 633-2434

Last four digits of account or other number by which creditor identifies debtor:

Check here replaces amends a previously filed claim, dated: _____
if this claim

CPF-698

1. Basis for Claim

- Goods sold
- Services performed
- Money loaned
- Personal injury/wrongful death
- Taxes
- Retiree benefits as defined in 11 U.S.C. § 1114(a)
- Other Fraud
- Wages, salaries, and compensation (fill out below)
Last four digits of your SS #: _____
Unpaid compensation for services performed
From _____ to _____
(date) (date)

2. Date debt was incurred: March 18, 1999

3. If court judgment, date obtained: May 10, 2006

4. Classification of Claim. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time the case was filed. See reverse side for important explanations.

Unsecured Nonpriority Claim \$ 245.00

Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or c) none or only part of your claim is entitled to priority.

Secured Claim

Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:

- Real Estate
- Motor Vehicle
- Other income & property tax refunds subject to set-off

Value of Collateral: \$ 2,005.00

Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____

Unsecured Priority Claim

Check this box if you have an unsecured claim, all or part of which is entitled to priority.

Amount entitled to priority \$ _____

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries, or commissions (up to \$10,950)* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).

- Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(_____).

*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

5. Total Amount of Claim at Time Case Filed: \$ 245.00 2,005.00 -0- 2,250.00
(unsecured) (secured) (priority) (total)

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

6. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

7. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

Date

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)

9/20/2007

Ruby D. Cochran Ruby D. Cochran, Deputy Counsel

RECORDED AS A LIEN MAY 2 5 2006

DONALD F. MELAN
CLERK OF SUPERIOR COURT
SUPERIOR COURT OF N.J.
MERCER COUNTY
RECEIVED AND FILED

New Jersey Lawyers' Fund for Client Protection
Richard J. Hughes Justice Complex
25 West Market Street, PO Box 961
Trenton, NJ 08625-0961
Daniel R. Hendi, Esq.
(609) 292-8008
CPF-698

A True Copy

Sue Regan
SUE REGAN
Deputy Clerk of Superior Court

MAY 10 2006

Sue Regan
SUE REGAN
DEPUTY CLERK OF SUPERIOR COURT

NEW JERSEY LAWYERS' FUND FOR
CLIENT PROTECTION

Plaintiff,

v.

MARIA P. FORNARO,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CIVIL PART
MERCER COUNTY

Docket No. MER-L-817-03

CIVIL ACTION

JUDGMENT

J

131 968-06

THIS MATTER having come to trial on April 24 & 25, 2006, before the Court sitting without a jury, and the Court having heard the evidence and arguments of the plaintiff and the defendant and finding in favor of the Plaintiff for all the reasons stated on the record on April 25, 2006, including but not limited to the credibility of the witnesses, and the Court being of the opinion that Judgment should be entered in favor of the plaintiff, New Jersey Lawyers' Fund for Client Protection, for the relief demanded in the complaint:

IT IS on this 10th day of May, 2006,

ORDERED that Judgment be entered in favor of the Plaintiff, New Jersey Lawyers' Fund for Client Protection, and against the Defendant, Maria P. Fornaro, in the sum of \$2,250.00 together with interest from the date of Judgment.

Paul Innes

PAUL INNES, J.S.C.

K:\Joanne\Sword\docs\SummaryJudgment\Fornaro\Judgment.doc

A COPY OF THIS ORDER SHALL BE SERVED ON ALL PARTIES
WITHIN SEVEN (7) DAYS OF THE DATE HEREOF.

EXHIBIT "LL"

United States Bankruptcy Court

District Of New Jersey

OCT 29 2007

U.S. BANKRUPTCY COURT
TRENTON, NJ
DEPUTY

In re Maria P. Fornaro)
Debtor)
New Jersey Lawyers' Fund)
for Client Protection)
Plaintiff)
v.)
Maria P. Fornaro)
Defendant)

Case No. 07-20842-RG
Chapter 7

Adv. Proc. No. 07-2277

SUMMONS AND NOTICE OF PRETRIAL CONFERENCE IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to file a motion or answer to the complaint which is attached to this summons with the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall file a motion or answer to the complaint within 35 days.

Address of Clerk James G. Waldron, Clerk
United States Bankruptcy Court
50 Walnut Street, 3rd Floor
Newark, NJ 07102

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney
Ruby D. Cochran, Esq., NJ Lawyers' Fund for Client Protection
25 W. Market St., P.O. Box 961, Trenton, NJ 08625-0961

If you make a motion, your time to answer is governed by Fed. R. Bankr. P. 7012.

YOU ARE NOTIFIED that a pretrial conference of the proceeding commenced by the filing of the complaint will be held at the following time and place.

Address	US Bankruptcy Court 50 Walnut Street 3rd Floor Newark, NJ 07102	Room	E
		Date and Time	2/13/08 at 10:00 am

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

JAMES J. WALDRON
Clerk of the Bankruptcy Court

By [Signature]
Deputy Clerk

Date 10/29/07



CERTIFICATE OF SERVICE

I, RUBY D. COCHRAN, certify that I am, and at all times during the

(name)

service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made. I further certify that the service of this summons and a copy of the complaint was made _____

by: November 2, 2007
(date)

Mail Service: Regular, first class United States mail, postage fully pre-paid, addressed to:

Maria P. Fornaro
45 Park Place 296
Morristown, NJ 07960-3949

Maria P. Fornaro
7 Hamilton Road
Morristown, NJ 07960

David Alan Ast, P.C.
222 Ridgedale Ave.
P.O. Box 1309
Morristown, NJ 07962-1309

Personal Service: By leaving the process with defendant or with an officer or agent of defendant at:

Residence Service: By leaving the process with the following adult at:

Certified Mail Service on an Insured Depository Institution: By sending the process by certified mail addressed to the following officer of the defendant at:

Publication: The defendant was served as follows: [Describe briefly]

State Law: The defendant was served pursuant to the laws of the State of _____
as follows: [Describe briefly] (name of state)

FILED
JAMES J. WALDRON, CLERK
NOV 13 2007
U.S. BANKRUPTCY COURT
NEWARK, N.J.
BY DEPUTY

Under penalty of perjury, I declare that the foregoing is true and correct.

RECEIVED
NOV 16 2007
NJ LAWYERS' FUND FOR
CLIENT PROTECTION

November 2, 2007
Date

Ruby D. Cochran
Signature
Ruby D. Cochran

Print Name	Ruby D. Cochran, Esquire	
New Jersey Lawyers' Fund for Client Protection		
Business Address	25 West Market Street	
	P.O. Box 961	
City	State	Zip
Trenton	NJ	08625-0951

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Case No.: 07-20842

Adv. No.: 07-2277

The pre-trial conference in this matter has been scheduled for:

Date: 2/13/08

Time: 10:00 am

Courtroom: E

Address: US Bankruptcy Ct
50 Walnut St, 3rd Fl, Newark, NJ 07102

PLAINTIFF SHALL SERVE ALL PARTIES WITH A COPY OF THESE INSTRUCTIONS AND THE PROPOSED *JOINT ORDER SCHEDULING PRETRIAL PROCEEDINGS AND TRIAL* WHEN SERVING THE SUMMONS AND COMPLAINT.

All parties are directed to exchange initial discovery under Fed. R. Civ. Proc. 26(a) within 10 days of the date the answer is filed.

Parties are to submit a Joint Proposed Scheduling Order in the attached form, establishing a discovery and pre trial motion schedule, and an estimated length of trial. If the parties agree to pursue mediation to resolve disputed matters, a separate mediation order selecting a mediator and providing for a mediation schedule shall be submitted within ten (10) days of the submission of the scheduling order. The court will fix a trial date and enter the scheduling order **without the necessity of an appearance**.

If the Joint Proposed Scheduling Order is not filed, each party must file a pre-trial memorandum with the court and serve a copy on every party 10 days prior to the scheduled pre-trial date. The pre-trial memorandum must include the following numbered items:

1. A concise statement of the nature of the action, including the statutory basis for the relief sought.
2. A report on the status of discovery conducted to date and a description of the type and extent of the discovery anticipated.
3. A list of the factual issues to be determined at trial.
4. A list of the legal issues to be determined at trial.
5. An itemized statement of damages sought.
6. A statement why a Joint Proposed Scheduling Order was not submitted.
7. An estimated date for trial readiness.
8. An estimated length for trial.
9. A witness list.
10. Any other information of which the court should be aware prior to scheduling the matter for trial.

Pre-trial Conferences, if necessary, are conducted in the courtroom, on the record, and are not conducted by telephone. Failure to appear will result in pleadings being stricken.

THE PLAINTIFF'S FAILURE TO TIMELY FILE A REQUEST TO ENTER DEFAULT, IF AN ANSWER HAS NOT BEEN FILED, MAY RESULT IN DISMISSAL FOR LACK OF PROSECUTION AT THE PRE TRIAL CONFERENCE.

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY Caption in Compliance with D.N.J. LBR 9004-2(c)	
In Re: Maria P. Fornaro	Case No.: <u>07-20842</u>
NJ Lawyers' Fund for Client Protection	Adv. No.: <u>07-2277</u>
Plaintiff(s)	Pre Trial Date: <u>2/13/08 @ 10:00 am</u>
v. Maria P. Fornaro	Judge: <u>RG</u>
Defendant(s)	

**JOINT ORDER SCHEDULING
PRETRIAL PROCEEDINGS AND TRIAL**

The relief set forth on the following pages, numbered two (2) through four (4) is hereby ORDERED.

A pretrial conference having been scheduled pursuant to *Fed.R.Civ.P* 16(b) and (e), made applicable to these proceedings by *Fed.R.Bankr.P.* 7016, it is

ORDERED that

1. All discovery is to be completed by _____.

Any motions to compel discovery are to be made so that the court can rule and the discovery can be obtained before that date. Late filed discovery motions shall not constitute cause for an adjournment of the scheduled trial date.

2. All other motions shall be filed no later than _____, and returnable no later than _____. Late filed motions shall not constitute cause for an adjournment of the scheduled trial date.

3. (CHECK IF APPLICABLE) The parties agree to pursue mediation to attempt to resolve disputed matters. A separate mediation order selecting a mediator and providing for a mediation schedule shall be submitted within ten (10) days.

4. Plaintiff shall file a joint stipulation of all undisputed facts and all parties shall file and serve proposed findings of disputed facts, proposed conclusions of law, trial briefs if desired by the party, and binders with copies of pre-marked exhibits no later than _____.
The parties anticipate a trial of approximately _____.

5. All parties shall bring to the trial sufficient copies of their exhibit lists to provide two to the court and one for each adversary. All parties shall also bring to trial a binder containing the originals of their respective exhibits.

6. Trial will commence on _____ at _____ or
as soon thereafter as the matter may be heard, at:

United States Bankruptcy Court

Address: _____

Courtroom #: _____

PARTIES MUST BE PREPARED TO PROCEED TO TRIAL ON THE SCHEDULED DATE. ADJOURNMENTS WILL BE GRANTED ONLY FOR COMPELLING REASONS BEYOND THE CONTROL OF THE PARTIES. ADJOURNMENT REQUESTS MUST BE RECEIVED NO LATER THAN THE THIRD BUSINESS DAY BEFORE THE SCHEDULED TRIAL DATE.

Defendant's debt to the Fund arose as a result of the Fund's having paid this claim pursuant to its authority under R. 1:28 et seq. and having obtained an assignment of the payee's rights against the defendant. After a full bench trial, the Fund obtained a Judgment against defendant on May 10, 2006 in the Superior Court of New Jersey, Law Division, Civil Part (Mercer County), docket number MER-L-817-03, in the amount of \$2,250.00. The Judgment was recorded as a lien on May 25, 2006 under judgment number J-131968-06. Defendant has made no payments on this obligation.

The Fund alleges that defendant's obligation to the Fund is nondischargeable under 11 U.S.C. 523(a)(2)(A), 11 U.S.C. 523(a)(4).

2. Status of Discovery

Discovery was obtained through the trial court proceedings under docket number MER-L-817-03. No further discovery is required for this trial.

3. Factual Issues to be Determined at Trial

There are no factual issues to be determined at trial.

4. Legal Issues to be Determined at Trial

Whether debtor can discharge a debt that has already been adjudicated in trial court and judgment entered pursuant to the Complaint in fraud.

5. Itemized Statement of Damages Sought

The Fund seeks to recover from defendant the sum of \$2,250.00 that it paid to the former client.

6. Statement why a Joint Proposed Scheduling Order was not Submitted

Pro Se Defendant and Plaintiff did not communicate. Plaintiff's attempt to work out a joint order on the date the pre-trial memo was due was not possible partially due to the fact that Pro Se defendant did not have access to a fax machine.

7. An Estimated Date for Trial Readiness

June 12, 2008 (120 days from pre-trial conference).

8. An Estimated Length for Trial

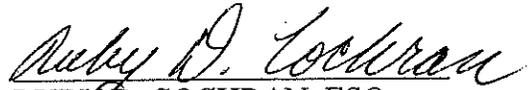
One day

9. A Witness List

All parties to the action and their representatives.

10. Any Other Information of which the Court should be aware prior to scheduling the matter for trial.

Plaintiff, the New Jersey Lawyers' Fund for Client Protection, after a full bench trial before the Honorable Judge Paul Innes, J.S.C., Superior Court of New Jersey, Law Division, Civil Part (Mercer County), a Judgment was entered against defendant, a former attorney of the State of New Jersey, to reimburse the Fund the sum of money it paid to defendant's former client under R. 1:28-1 et seq. of the Rules Governing the Courts of New Jersey. Specifically, the Fund paid this claim on the basis of dishonest conduct and the judgment itself reads that defendant's testimony was not credible. This is not a simple debtor/creditor case, but an attempt by the debtor at a second "bite at the apple" after full adjudication. Potential further abuse upon her former client if the former client is once again subjected to testimony after a prior trial, deposition, Ethics review, and Fund proceedings is real.


RUBY D. COCHRAN, ESQ.
Deputy Counsel
New Jersey Lawyers' Fund
for Client Protection

Dated: February 1, 2008

EXHIBIT "MM"



Bankruptcy Basics

Process

Discharge in Bankruptcy

Chapter 7

Chapter 13

Chapter 11

Chapter 12

Chapter 9

Chapter 15

SCRA

SIPA

Glossary

The Discharge in Bankruptcy

The bankruptcy discharge varies depending on the type of case a debtor files: chapter 7, 11, 12, or 13. Bankruptcy Basics attempts to answer some basic questions about the discharge available to *individual debtors* under all four chapters including:

- a. [Discharge in bankruptcy](#)
- b. [Timing of the discharge](#)
- c. [Receipt of discharge](#)
- d. [Debts that can be discharged](#)
- e. [Right to a discharge](#)
- f. [Number of discharges](#)
- g. [Revoke a discharge](#)
- h. [Discharge debt payment](#)
- i. [Collection by creditor](#)
- j. [Employment and failure to pay discharge](#)
- k. [Obtain another copy of the discharge order](#)

[Return to Bankruptcy Basics](#)

[Return to Library](#)

What is a discharge in bankruptcy?

A bankruptcy discharge releases the debtor from personal liability for certain specified types of debts. In other words, the debtor is no longer legally required to pay any debts that are discharged. The discharge is a permanent order prohibiting the creditors of the debtor from taking any form of collection action on discharged debts, including legal action and communications with the debtor, such as telephone calls, letters, and personal contacts.

Although a debtor is not personally liable for discharged debts, a valid lien (*i.e.*, a charge upon specific property to secure payment of a debt) that has not been avoided (*i.e.*, made unenforceable) in the bankruptcy case will remain after the bankruptcy case. Therefore, a secured creditor may enforce the lien to recover the property secured by the lien.

When does the discharge occur?

The timing of the discharge varies, depending on the chapter under which the case is filed. In a chapter 7 (liquidation) case, for example, the court usually grants the discharge promptly on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case for substantial abuse (60 days following the first date set for the 341 meeting). Typically, this occurs about four months after the date the debtor files the petition with the clerk of the bankruptcy court. In individual chapter 11 cases, and in cases under chapter 12 (adjustment of debts of a family farmer or fisherman) and 13 (adjustment of debts of an individual with regular income), the court generally grants the discharge as soon as practicable after the debtor

completes all payments under the plan. Since a chapter 12 or chapter 13 plan may provide for payments to be made over three to five years, the discharge typically occurs about four years after the date of filing. The court may deny an individual debtor's discharge in a chapter 7 or 13 case if the debtor fails to complete "an instructional course concerning financial management." The Bankruptcy Code provides limited exceptions to the "financial management" requirement if the U.S. trustee or bankruptcy administrator determines there are inadequate educational programs available, or if the debtor is disabled or incapacitated or on active military duty in a combat zone.

How does the debtor get a discharge?

Unless there is litigation involving objections to the discharge, the debtor will usually automatically receive a discharge. The Federal Rules of Bankruptcy Procedure provide for the clerk of the bankruptcy court to mail a copy of the order of discharge to all creditors, the U.S. trustee, the trustee in the case, and the trustee's attorney, if any. The debtor and the debtor's attorney also receive copies of the discharge order. The notice, which is simply a copy of the final order of discharge, is not specific as to those debts determined by the court to be non-dischargeable, *i.e.*, not covered by the discharge. The notice informs creditors generally that the debts owed to them have been discharged and that they should not attempt any further collection. They are cautioned in the notice that continuing collection efforts could subject them to punishment for contempt. Any inadvertent failure on the part of the clerk to send the debtor or any creditor a copy of the discharge order promptly within the time required by the rules does not affect the validity of the order granting the discharge.

Are all of the debtor's debts discharged or only some?

Not all debts are discharged. The debts discharged vary under each chapter of the Bankruptcy Code. Section 523(a) of the Code specifically excepts various categories of debts from the discharge granted to individual debtors. Therefore, the debtor must still repay those debts after bankruptcy. Congress has determined that these types of debts are not dischargeable for public policy reasons (based either on the nature of the debt or the fact that the debts were incurred due to improper behavior of the debtor, such as the debtor's drunken driving).

There are 19 categories of debt excepted from discharge under chapters 7, 11, and 12. A more limited list of exceptions applies to cases under chapter 13.

Generally speaking, the exceptions to discharge apply automatically if the language prescribed by section 523(a) applies. The most common types of nondischargeable debts are certain types of tax claims, debts not set forth by the debtor on the lists and schedules the debtor must file with the court, debts for spousal or child support or alimony, debts for willful and malicious injuries to person or property, debts to governmental units for fines and penalties, debts for most government funded or guaranteed educational loans or benefit overpayments, debts for personal injury caused by the debtor's operation of a motor vehicle while intoxicated, debts owed to certain tax-advantaged retirement plans, and debts for

certain condominium or cooperative housing fees.

The types of debts described in sections 523(a)(2), (4) and (6) (obligations affected by fraud or maliciousness) are not automatically excepted from discharge. Creditors must ask the court to determine that these debts are excepted from discharge. In the absence of an affirmative request by the creditor and the granting of the request by the court, the types of debts set out in sections 523(a)(2), (4) and (6) will be discharged.

A slightly broader discharge of debts is available to a debtor in a chapter 13 case than in a chapter 7 case. Debts dischargeable in a chapter 13, but not in chapter 7, include debts for willful and malicious injury to property, debts incurred to pay non-dischargeable tax obligations, and debts arising from property settlements in divorce or separation proceedings. Although a chapter 13 debtor generally receives a discharge only after completing all payments required by the court-approved (*i.e.*, "confirmed") repayment plan, there are some limited circumstances under which the debtor may request the court to grant a "hardship discharge" even though the debtor has failed to complete plan payments. Such a discharge is available only to a debtor whose failure to complete plan payments is due to circumstances beyond the debtor's control. The scope of a chapter 13 "hardship discharge" is similar to that in a chapter 7 case with regard to the types of debts that are excepted from the discharge. A hardship discharge also is available in chapter 12 if the failure to complete plan payments is due to "circumstances for which the debtor should not justly be held accountable."

Does the debtor have the right to a discharge or can creditors object to the discharge?

In chapter 7 cases, the debtor does not have an absolute right to a discharge. An objection to the debtor's discharge may be filed by a creditor, by the trustee in the case, or by the U.S. trustee. Creditors receive a notice shortly after the case is filed that sets forth much important information, including the deadline for objecting to the discharge. To object to the debtor's discharge, a creditor must file a complaint in the bankruptcy court before the deadline set out in the notice. Filing a complaint starts a lawsuit referred to in bankruptcy as an "adversary proceeding."

The court may deny a chapter 7 discharge for any of the reasons described in section 727(a) of the Bankruptcy Code, including failure to provide requested tax documents; failure to complete a course on personal financial management; transfer or concealment of property with intent to hinder, delay, or defraud creditors; destruction or concealment of books or records; perjury and other fraudulent acts; failure to account for the loss of assets; violation of a court order or an earlier discharge in an earlier case commenced within certain time frames (discussed below) before the date the petition was filed. If the issue of the debtor's right to a discharge goes to trial, the objecting party has the burden of proving all the facts essential to the objection.

In chapter 12 and chapter 13 cases, the debtor is usually entitled to a discharge upon completion of all payments under the plan. As in chapter

7, however, discharge may not occur in chapter 13 if the debtor fails to complete a required course on personal financial management. A debtor is also ineligible for a discharge in chapter 13 if he or she received a prior discharge in another case commenced within time frames discussed the next paragraph. Unlike chapter 7, creditors do not have standing to object to the discharge of a chapter 12 or chapter 13 debtor. Creditors can object to confirmation of the repayment plan, but cannot object to the discharge if the debtor has completed making plan payments.

Can a debtor receive a second discharge in a later chapter 7 case?

The court will deny a discharge in a later chapter 7 case if the debtor received a discharge under chapter 7 or chapter 11 in a case filed within eight years before the second petition is filed. The court will also deny a chapter 7 discharge if the debtor previously received a discharge in a chapter 12 or chapter 13 case filed within six years before the date of the filing of the second case unless (1) the debtor paid all "allowed unsecured" claims in the earlier case in full, or (2) the debtor made payments under the plan in the earlier case totaling at least 70 percent of the allowed unsecured claims and the debtor's plan was proposed in good faith and the payments represented the debtor's best effort. A debtor is ineligible for discharge under chapter 13 if he or she received a prior discharge in a chapter 7, 11, or 12 case filed four years before the current case or in a chapter 13 case filed two years before the current case.

Can the discharge be revoked?

The court may revoke a discharge under certain circumstances. For example, a trustee, creditor, or the U.S. trustee may request that the court revoke the debtor's discharge in a chapter 7 case based on allegations that the debtor: obtained the discharge fraudulently; failed to disclose the fact that he or she acquired or became entitled to acquire property that would constitute property of the bankruptcy estate; committed one of several acts of impropriety described in section 727(a) (6) of the Bankruptcy Code; or failed to explain any misstatements discovered in an audit of the case or fails to provide documents or information requested in an audit of the case. Typically, a request to revoke the debtor's discharge must be filed within one year of the discharge or, in some cases, before the date that the case is closed. The court will decide whether such allegations are true and, if so, whether to revoke the discharge.

In a chapter 11, 12 and 13 cases, if confirmation of a plan or the discharge is obtained through fraud, the court can revoke the order of confirmation or discharge.

May the debtor pay a discharged debt after the bankruptcy case has been concluded?

A debtor who has received a discharge may voluntarily repay any discharged debt. A debtor may repay a discharged debt even though it can no longer be legally enforced. Sometimes a debtor agrees to repay a debt because it is owed to a family member or because it represents an obligation to an individual for whom the debtor's reputation is important, such as a family doctor.

What can the debtor do if a creditor attempts to collect a discharged debt after the case is concluded?

If a creditor attempts collection efforts on a discharged debt, the debtor can file a motion with the court, reporting the action and asking that the case be reopened to address the matter. The bankruptcy court will often do so to ensure that the discharge is not violated. The discharge constitutes a permanent statutory injunction prohibiting creditors from taking any action, including the filing of a lawsuit, designed to collect a discharged debt. A creditor can be sanctioned by the court for violating the discharge injunction. The normal sanction for violating the discharge injunction is civil contempt, which is often punishable by a fine.

May an employer terminate a debtor's employment solely because the person was a debtor or failed to pay a discharged debt?

The law provides express prohibitions against discriminatory treatment of debtors by both governmental units and private employers. A governmental unit or private employer may not discriminate against a person solely because the person was a debtor, was insolvent before or during the case, or has not paid a debt that was discharged in the case. The law prohibits the following forms of governmental discrimination: terminating an employee; discriminating with respect to hiring; or denying, revoking, suspending, or declining to renew a license, franchise, or similar privilege. A private employer may not discriminate with respect to employment if the discrimination is based solely upon the bankruptcy filing.

How can the Debtor obtain another Copy of the Discharge Order?

If the debtor loses or misplaces the discharge order, another copy can be obtained by contacting the clerk of the bankruptcy court that entered the order. The clerk will charge a fee for searching the court records and there will be additional fees for making and certifying copies. If the case has been closed and archived there will also be a retrieval fee, and obtaining the copy will take longer.

The discharge order may be available electronically. The PACER system provides the public with electronic access to selected case information through a personal computer located in many clerk's offices. The debtor can also access PACER. Users must set up an account to acquire access to PACER, and must pay a per-page fee to download and copy documents filed electronically.

EXHIBIT "NN"

U.S. BANKRUPTCY COURT
FILED
TRENTON, NJ

07 OCT 26 PM 3: 31

JAMES J. WALDRON

BY: JK
DEPUTY CLERK

New Jersey Lawyers' Fund for Client Protection
Richard J. Hughes Justice Complex
25 W. Market Street, P.O. Box 961
Trenton, New Jersey 08625-0961
Ruby D. Cochran, Deputy Counsel
(609) 633-2434; CPF-698

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

\$250.00
FILING FEE PAID

IN RE

MARIA P. FORNARO

DEBTOR

NEW JERSEY LAWYERS' FUND FOR
CLIENT PROTECTION

PLAINTIFF

v.

MARIA P. FORNARO

DEFENDANT

CASE NO. 07-20842

ADVERSARY PROCEEDING NO.

**COMPLAINT TO DETERMINE
NON-DISCHARGEABILITY OF
CERTAIN DEBTS OF THE DEBTOR
UNDER CHAPTER 7**

The New Jersey Lawyers' Fund for Client Protection (the "Fund"), Plaintiff in the captioned Adversary Proceeding, respectfully represents:

1) The Fund is a creditor of the Debtor-Defendant, Maria P. Fornaro ("Defendant") as set forth below. The Fund brings this Adversary Proceeding in connection with Defendant's Chapter 7 Case No. 07-20842, which is pending in the United States Bankruptcy Court for the District of New Jersey.

2) The Court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. Section 157, 28 U.S.C. Section 1334, and 11 U.S.C. Section 523. This is a core proceeding

under 28 U.S.C. Section 157(b)(2)(I).

3) The Plaintiff is a Committee of the Supreme Court of New Jersey. The Fund was established under R. 1:28-1 et seq. of the Rules Governing the Courts of the State of New Jersey for the purpose of reimbursing clients for losses caused by the dishonest conduct of attorneys who have been admitted to the New Jersey Bar and who have been disciplined (suspended or disbarred) by the Supreme Court of New Jersey.

4) Defendant Maria P. Fornaro was such an attorney. Defendant was admitted to the Bar of the State of New Jersey in 1989 and maintained offices for the practice of law in Westfield, New Jersey.

5) Defendant was suspended for three (3) months effective March 24, 1998; reprimanded on July 15, 1999; suspended for two (2) years and until further Order of the the Court effective December 15, 1999; and suspended for three (3) years and until further Order of the Court effective immediately by Order entered by the Supreme Court of New Jersey on February 20, 2003. The Court ordered that prior to reinstatement she must comply with a series of conditions. (**Exhibit "A"**).

6) The Fund paid one (1) claim to Defendant's former client in the amount of **TWO THOUSAND THREE HUNDRED DOLLARS AND no/100 DOLLARS (\$2,300.00)**. Pursuant to R. 1:28-3(1), as a condition of paying the claim, the Board of Trustees which governs the Fund determined (1) that Defendant acted as an attorney or in a fiduciary capacity to the claimant when Defendant caused claimant's loss; and (2) that Defendant caused claimant's loss through her dishonest conduct.

7) Pursuant to R. 1:28-3(e) and as a further condition of paying the claim, the Fund

took a written assignment of rights from the claimant and became subrogated to the claimant's rights, claims and interests against Defendant. (**Exhibit "B"**).

8) The Fund filed suit against Defendant in the Superior Court of New Jersey, the Complaint stating a cause of action for embezzlement and conversion. (**Exhibit "C"**).

9) The matter was tried, and on May 10, 2006, the Superior Court of New Jersey, Law Division, Civil Part, Mercer County, the Honorable Paul Innes, entered a Judgment (J-131968-06) against Defendant and in favor of Plaintiff in the amount of Two Thousand Two Hundred Fifty Dollars (\$2,250.00). (**Exhibit "D"**).

10) Defendant has not made any payments to the Fund.

11) On December 4, 2006, the New Jersey Lawyers' Fund for Client Protection, as assignee and subrogee to the interests of its claimants, filed a list of debtors with the NJ Division of Revenue under the Set-Off Individual Liability (SOIL) Program. The Defendant's name was included on this list.

12) On or about July 20, 2007, the Fund received notice that the Debtor's New Jersey state income tax refunds for calendar years 2004, 2005, and 2006, and a 2006 homestead rebate, totaling \$2,005.00, were available under the Soil Program to be used to offset her debt to the Fund.

13) The Fund received notice on or about August 1, 2007 that the Defendant filed bankruptcy causing this action to be stayed.

COUNT ONE
(Julie Lewis Corcoran - \$2,250.00) (CPF-698:02-98)

14) The Defendant became indebted to Fund's claimant, Julie Lewis Corcoran (herein referred to as "claimant Corcoran"), in the amount of \$2,250.00 on a debt for fraud, embezzlement or defalcation while acting in a fiduciary capacity as follows:

15) In or about June 1992, claimant Corcoran hired Defendant Fornaro to represent her in an immigration matter and paid Defendant a \$50.00 consultation fee and an additional \$2,250.00 to represent her in connection with that matter.

16) From 1992 through 1996, while serving in a fiduciary capacity as attorney for claimant Corcoran, Defendant Fornaro embezzled, misapplied and converted to her own use the sum of \$2,250.00 given to her as payment for legal services that Defendant Fornaro failed to perform.

17) Claimant Corcoran filed a claim with the Plaintiff on account of the dishonest conduct of Defendant Fornaro, and Plaintiff paid the sum of \$2,300.00 as a result of the claim against Defendant Fornaro, receiving an assignment of claimant Corcoran's rights as set forth in paragraphs 1 through 8 above.

18) Plaintiff filed a complaint (**Exhibit "C"**) against Defendant stating a cause of action for embezzlement and conversion and, after a trial, judgment was granted in favor of Plaintiff in the amount of \$2,250.00. The doctrine of collateral estoppel precludes re-litigation of the underlying matter.

19) The debt of \$2,250.00 which Defendant owes the Fund is nondischargeable under 11 U.S.C. Section 523(a)(2)(A) or in the alternative under 11 U.S.C. Section 523(a)(4).

20) Defendant incurred the debt through false pretenses, false representation or actual fraud, 11 U.S.C. Section 523(a)(2)(A) and/or, in the alternative, through fraud or defalcation

while acting in a fiduciary capacity, 11 U.S.C. Section 523(a)(4).

WHEREFORE, Plaintiff New Jersey Lawyers' Fund for Client Protection prays that the Court determine that the total debt owed by the debtor in the amount of **TWO THOUSAND TWO HUNDRED FIFTY and no/100 DOLLARS (\$2,250.00)** is non-dischargeable; and further that the Court render judgment for the Plaintiff in the amount of **TWO THOUSAND TWO HUNDRED FIFTY and no/100 DOLLARS (\$2,250.00)** plus interest and attorney's fees; and further that the Court determine the remaining issues and grant such other relief as it deems equitable and just.

NEW JERSEY LAWYERS' FUND
FOR CLIENT PROTECTION



RUBY D. COCHRAN, ESQ.
Attorney for Plaintiff

Dated: October 26, 2007
K:\Ruby\Adversary-Proceeding.wpd

CERTIFICATION

I, Ruby Diana Cochran, Esq., of full age, do hereby certify that I have read the above Complaint and that, to the best of my knowledge, understanding and belief, formed after reasonable inquiry, the Complaint is well-grounded in fact, is warranted by existing law, and is not interposed for any improper purpose, such as to harass, to cause delay, or to increase the cost of litigation.

Ruby D. Cochran
RUBY D. COCHRAN, ESQ.
Attorney for Plaintiff

Dated: October 26, 2007

EXHIBIT "A"

FILED

FEB 24 2003

SUPREME COURT OF NEW JERSEY
10-151 September Term 2001

IN THE MATTER OF

Robert J. ...
CLERK

MARIA P. FORNARO,

AN ATTORNEY AT LAW

(Attorney No. 041281989)

ORDER

FEB 26 2003

RECEIVED
SECTION

The Disciplinary Review Board having filed with the Court its decision in DRB 01-260, recommending that MARIA P. FORNARO of MORRISTOWN, who was admitted to the bar of this State in 1989, and who has been suspended from the practice of law pursuant to Orders of this Court since March 24, 1998, be disbarred for violating RPC 1.7(b) (conflict of interest), RPC 3.3(a)(5) (failure to disclose material fact to a tribunal), RPC 3.7(a) (failure to withdraw when lawyer may be called as witness), RPC 8.4(c) (conduct involving dishonesty, deceit or misrepresentation), Rule 1:20-20(5) (use of attorney letterhead while suspended), and Rule 1:20-20(10) (turning a pending matter over to another attorney during suspension);

And MARIA P. FORNARO having been ordered to show cause why she should not be disbarred or otherwise disciplined;

And good cause appearing;

It is ORDERED that MARIA P. FORNARO is suspended from the practice of law for a period of three years, and until the further Order of the Court, effective immediately; and it is further

ORDERED that prior to reinstatement to practice, respondent shall enroll in and successfully complete (1) the Skills and Methods Core Courses offered by the Institute for Continuing Legal Education, (2) eight hours of courses in professional responsibility approved by the Office of Attorney Ethics, and (3) a course in law office management approved by the Office of Attorney Ethics; and it is further

EXHIBIT "A"

ORDERED that within thirty days after the filing date of this order, respondent shall arrange to be evaluated by a mental health professional approved by the Office of Attorney Ethics, and if said professional recommends counseling or treatment for respondent, respondent shall participate in the recommended counseling or treatment until discharged and until the further Order of the Court; and it is further

ORDERED that prior to reinstatement to practice, respondent shall demonstrate that she is fit to practice law as attested to by a mental health professional approved by the Office of Attorney Ethics; and it is further

ORDERED that on reinstatement to practice, respondent shall practice law under the supervision of an attorney approved by the Office of Attorney Ethics for a period of three years, and until the further Order of the Court; and it is further

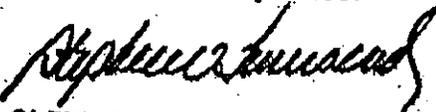
ORDERED that the entire record of this matter be made a permanent part of respondent's file as an attorney at law of this State; and it is further

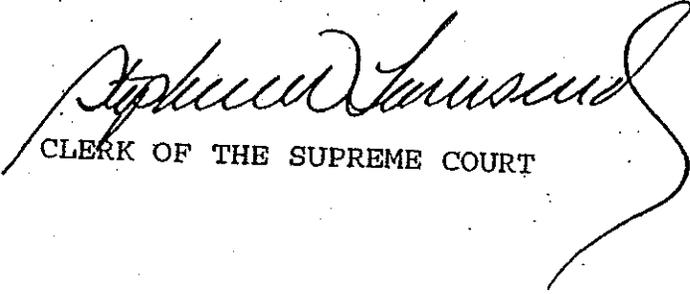
ORDERED that respondent continue to be restrained and enjoined from practicing law during the period of suspension and that she continue to comply with Rule 1:20-20; and it is further

ORDERED that respondent reimburse the Disciplinary Oversight Committee for appropriate administrative costs incurred in the prosecution of this matter.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice,
at Trenton, this 20th day of February, 2003.

The foregoing is a true copy of the
original on file in my office.


CLERK OF THE SUPREME COURT
OF NEW JERSEY


CLERK OF THE SUPREME COURT

152 N.J. 449, *, 705 A.2d 1210, **;
1998 N.J. LEXIS 122, ***

5 of 7 DOCUMENTS

IN THE MATTER OF MARIA P. FORNARO, AN ATTORNEY AT LAW

D-24 September Term 1997

SUPREME COURT OF NEW JERSEY

152 N.J. 449; 705 A.2d 1210; 1998 N.J. LEXIS 122

February 24, 1998, Decided

February 26, 1998, Filed

CASE SUMMARY:

PROCEDURAL POSTURE: The Disciplinary Review Board (New Jersey) recommended that respondent attorney be suspended from the practice of law for three months because of various ethical violations.

OVERVIEW: The Disciplinary Review Board recommended that respondent attorney be suspended from the practice of law for three months because she had violated ethical prohibitions against gross neglect, lack of diligence, failure to communicate, failure to communicate basis of fee in writing, failure to surrender client's file, making a false statement of material fact to a tribunal, failure to cooperate with disciplinary officials, making a false statement of material fact in connection with a disciplinary matter, and conduct involving dishonesty, fraud, deceit and misrepresentation. The court accepted the recommendation, suspended respondent and also required respondent to take courses in legal education and to practice under the supervision of another attorney upon reinstatement.

OUTCOME: The court accepted the recommendation that respondent attorney be suspended from the practice of law for three months because of various ethical violations. The court also ordered respondent to take legal education courses and, upon reinstatement, to practice under the supervision of another attorney.

OPINION: [*1]**

[*450] [**1210] ORDER

The Disciplinary Review Board on April 24, 1997, having filed with the Court its decision concluding that MARIA P. FORNARO of MORRISTOWN, who was

admitted to the bar of this State in 1989, should be suspended from the practice of law for a period of three months for violating *RPC 1.1(a)* (gross neglect), *RPC 1.3* (lack of diligence), *RPC 1.4* (failure to communicate), *RPC 1.5(b)* (failure to communicate basis of fee in writing), *RPC 1.16(d)* (failure to surrender client's file), *REC 3.3(a)* (making a false statement of material fact to a tribunal), *RPC 8.1(a)* and (b) (failure to cooperate with disciplinary officials and making a false statement of material fact in connection with a disciplinary matter), and *RPC 8.4(c)* (conduct involving dishonesty, fraud, deceit, or misrepresentation);

And the Disciplinary Review Board having further concluded that respondent should complete the Skills and Methods course offered by the Institute for Continuing Legal Education and, on reinstatement, practice under supervision for a period of two years;

And good cause appearing;

It is ORDERED that MARIA P. FORNARO is hereby suspended from the practice of law for a period [***2] of three months, [*451] effective March 24, 1998, and until further Order of the Court; and it is further

ORDERED that respondent shall enroll in and successfully complete the Skills and Methods Course offered by the Institute for [**1211] Continuing Legal Education; and it is further

ORDERED that on reinstatement to practice respondent shall practice under the supervision of a practicing attorney approved by the Office of Attorney Ethics for a period of two years and until further Order of the Court; and it is further

ORDERED that the entire record of this matter be made a permanent part of respondent's file as an attorney at law of this State; and it is further

159 N.J. 525; 732 A.2d 514, *;
1999 N.J. LEXIS 849, **

3 of 7 DOCUMENTS

**IN THE MATTER OF
MARIA P. FORNARO,
AN ATTORNEY AT
LAW**

**D-148 September Term
1998**

**SUPREME COURT OF
NEW JERSEY**

*159 N.J. 525; 732
A.2d 514; 1999 N.J.
LEXIS 849*

**July 15, 1999, Decided
July 16, 1999, Filed**

JUDGES: [**1] Deborah T. Poritz, Chief Justice.

OPINIONBY: Deborah T. Poritz

OPINION: [*514]

ORDER

The Disciplinary Review Board on December 23, 1998, having filed a report with the Court concluding that MARIA P. FORNARO of MORRISTOWN, and who was suspended from practice for a period of three months effective March 24, 1998, and who remains suspended at this time, should be reprimanded for violating *RPC 1.3* (lack of diligence) and *RPC 1.4(a)* (failing to give client an accounting of services rendered), and good cause appearing;

It is ORDERED that MARIA P. FORNARO is hereby reprimanded; and it is further

ORDERED that the entire record of this matter be made a permanent part of respondent's file as an attorney at law of this State; and it is further

ORDERED that respondent reimburse the Disciplinary Oversight Committee for [*515] appropriate administrative costs incurred in the prosecution of this matter.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 15th day of July, 1999.

163 N.J. 88, *, 747 A.2d 782, **;
2000 N.J. LEXIS 366, ***

2 of 7 DOCUMENTS

**IN THE MATTER OF
MARIA P. FORNARO,
AN ATTORNEY AT
LAW**

D-71

**SUPREME COURT OF
NEW JERSEY**

*163 N.J. 88; 747 A.2d
782; 2000 N.J. LEXIS 366*

**March 21, 2000, Decided
March 24, 2000, Filed**

OPINION: [782] [***1] [*89]**

ORDER

The Disciplinary Review Board on December 15, 1999, having filed with the Court its decision concluding that MARIA P. FORNARO, formerly of MORRISTOWN, who was admitted to the bar of this State in 1989, and who thereafter was [**783] suspended from the practice of law for a period of three months, effective March 24, 1998, and who remains suspended at this time, should be suspended from the practice of law for a period of two years for violating *RPC 1.1(a)* (gross neglect), *RPC 1.1(b)* (pattern of neglect), *RPC 1.3* (lack of diligence), *RPC 1.4(a)* (failure to communicate), *RPC 1.5(b)* (failure to provide client with written fee agreement), *RPC 1.16(d)* (failure to

terminate representation properly), and *RPC 8.1(b)* (failure to cooperate with ethics authorities), and good cause appearing;

It is ORDERED that MARIA P. FORNARO is suspended from the practice of law for a period of two years and until the further Order of the Court, retroactive to December 15, 1999; and it is further

ORDERED that the conditions established by the Court in the Order of three-month suspension dated February 26, 1998, which require respondent to complete the Skills and Methods Courses offered [***2] by Institute for Continuing Legal Education prior to any application for reinstatement and that on reinstatement to practice, [*90] respondent shall practice under the supervision of a practicing attorney approved by the Office of Attorney Ethics for a period of two years, and until further Order of the Court, are hereby made a part of this Order; and it is further

ORDERED that the entire record of this matter be made a permanent part of respondent's file as an attorney at law of this State; and it is further

ORDERED that respondent continue to be restrained and enjoined from practicing law during the period of suspension and that respondent continue to comply with *Rule 1:20-20*; and it is further

ORDERED that respondent reimburse the Disciplinary Oversight Committee for appropriate administrative costs incurred in the prosecution of this matter.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 21st day of March, 2000.

175 N.J. 450, *; 815 A.2d 960, **;
2003 N.J. LEXIS 179, ***

1 of 7 DOCUMENTS

IN THE MATTER OF
MARIA P. FORNARO,
AN ATTORNEY AT
LAW (Attorney No.
041281989)

D-151 September Term
2001

SUPREME COURT OF
NEW JERSEY

175 N.J. 450; 815
A.2d 960; 2003 N.J.
LEXIS 179

February 20, 2003,
Decided
February 24, 2003, Filed

DISPOSITION: Attorney suspended for three years with conditions.

CASE SUMMARY:

PROCEDURAL POSTURE: The New Jersey Disciplinary Review Board recommended that respondent attorney, who was previously suspended under a prior order, be disbarred for violating various rules of professional conduct. The attorney was ordered to show cause, and the instant matter followed.

OVERVIEW: After filing a decision, the Board recommended disbarment as a sanction for the attorney for violations of conflict of interest rules, lack of disclosure and candor, committing acts of dishonesty, deceit or misrepresentation, acting as an attorney while suspended, and turning a pending matter over to another attorney during suspension. The instant court held that good cause having been shown, a three-year suspension was ordered. Attached to said order were conditions the attorney would have to meet upon reinstatement, including completion of certain coursework, a mental health evaluation, practice under the supervision of an attorney approved by the Office of Attorney Ethics for three years, and compliance with N.J. Ct. R. Prof. Conduct 1:20-20.

OUTCOME: A three year suspension with various conditions attached was ordered.

OPINION: [**960] [***1] [*450]

ORDER

The Disciplinary Review Board having filed with the Court its decision in DRB 01-260, recommending that MARIA P. FORNARO of MORRISTOWN, who was admitted to the bar of this State in 1989, and who has been suspended from the practice of law pursuant to Orders of this [**961] Court since March 24, 1998, be disbarred for violating *RPC 1.7(b)* (conflict of interest), *RPC 3.3(a)(5)* (failure to disclose material fact to a tribunal), *RPC 3.7(a)* (failure to withdraw when lawyer may be called as witness), *RPC 8.4(c)* (conduct involving dishonesty, deceit or misrepresentation), *Rule 1:20-20[b](5)* (use of attorney letterhead while suspended), and *Rule 1:20-20[b](10)* (turning a pending matter over to another attorney during suspension)

And MARIA P. FORNARO having been ordered to show cause why she should not be disbarred or otherwise disciplined;

And good cause appearing;

It is ORDERED that MARIA P. FORNARO is suspended from the practice of law for a period of three years, and until the further Order of the Court, effective immediately; and it is further

ORDERED that prior to reinstatement to practice, respondent shall enroll in and successfully complete (1) the Skills and Methods [***2] Core Courses offered by the Institute for Continuing Legal Education, (2) eight hours of courses in professional responsibility approved by the Office of Attorney Ethics, and (3) a course in law office management approved by the Office of Attorney Ethics; and it is further

[*451] ORDERED that within, thirty days after the filing date of this Order, respondent shall arrange to be evaluated by a mental health professional approved by the Office of Attorney Ethics, and if said professional recommends counseling or treatment for respondent, respondent shall participate in the recommended counseling or treatment until discharged and until the further Order of the Court; and it is further

ORDERED that prior to reinstatement to practice, respondent shall demonstrate that she is fit to practice law as attested to by a mental health professional approved by the Office of Attorney Ethics; and it is further

ORDERED that on reinstatement to practice, respondent shall practice law under the supervision of an attorney approved by the Office of Attorney Ethics for a period of three years, and until the further Order of the Court; and it is further

175 N.J. 450, *; 815 A.2d 960, **;
2003 N.J. LEXIS 179, ***

ORDERED that the entire record of this matter be made [***3] a permanent part of respondent's file as an attorney at law of this State; and it is further

ORDERED that respondent continue to be restrained and enjoined from practicing law during the period of suspension and that she continue to comply with *Rule 1:20-20*; and it is further

ORDERED that respondent reimburse the Disciplinary Oversight Committee for appropriate administrative costs incurred in the prosecution of this matter.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 20th day of February, 2003.

EXHIBIT "B"

**NEW JERSEY LAWYERS' FUND
FOR
CLIENT PROTECTION**

TRUSTEES
THOMAS W. SUMNERS, JR., CHAIR
KYRAN CONNOR, VICE CHAIR
BRENDA J. STEWART, TREASURER
AUREA VASCONCELOS
ROBERT J. GILSON
SUSAN E. LAWRENCE
JOHN MCFEELEY, III

ASSISTANT TREASURER
FRANK C. FARR

STREET ADDRESS:
25 WEST MARKET STREET
TRENTON, N.J. 08625-0961



RICHARD J. HUGHES JUSTICE COMPLEX
P. O. Box 961
TRENTON, NJ 08625-0961

DIRECTOR & COUNSEL
KENNETH J. BOSSONG

SENIOR COUNSEL
DANIEL R. HENDI
WILLIAM J. THOMAS

**DEPUTY COUNSEL
& SECRETARY**
MICHAEL T. MCCORMICK

**CLAIMS: (609) 292-8008
FAX: (609) 394-3637**

RELEASE, ASSIGNMENT AND SUBROGATION AGREEMENT

This Agreement is between the NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION, Richard J. Hughes Justice Complex, 25 West Market Street, P. O. Box 961, Trenton, New Jersey 08625 and Julie Lewis Corcoran, 143 Littleton Road, Morris Plains, New Jersey 07950-2533.

The Trustees of the New Jersey Lawyers' Fund for Client Protection, pursuant to R. 1:28-3, having considered the claim of Julie Lewis Corcoran, arising from the dishonest conduct of her former attorney, Maria P. Fornaro, it is now mutually agreed:

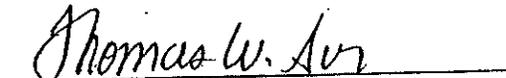
1. The New Jersey Lawyers' Fund for Client Protection will pay to Julie Lewis Corcoran the sum of \$2,300.00 upon execution of this Agreement by all parties.
2. On behalf of her heirs, executors, administrators and assigns, Julie Lewis Corcoran releases the New Jersey Lawyers' Fund for Client Protection, its successors and assigns, from all claims.
3. Further, Julie Lewis Corcoran certifies that she will lend her complete cooperation to the New Jersey Lawyers' Fund for Client Protection in any legal action brought by the Fund or on its behalf against Maria P. Fornaro, or any other appropriate party, to recover these monies and that payment of said monies is contingent upon such cooperation.

4. Julie Lewis Corcoran hereby assigns to the New Jersey Lawyers' Fund for Client Protection all her rights, claims and interests against Maria P. Fornaro, or any other party involved in the transaction giving rise to this claim. She understands that nothing herein shall obligate the Fund to pursue the rights assigned to it under this Agreement and, therefore, any recovery or attempt to secure recovery pursuant to this assignment of rights shall be at the sole option of the Trustees.

ATTEST:


Michael T. McCormick
Secretary

NEW JERSEY LAWYERS' FUND FOR
CLIENT PROTECTION


Chair, Board of Trustees


Julie Lewis Corcoran

State of New Jersey :
County of : ss.

Be it remembered that on this 23 day of Feb, 1999, before me, the subscriber, personally appeared Julie Lewis Corcoran, who I am satisfied is the person named in and who executed the above instrument, and acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

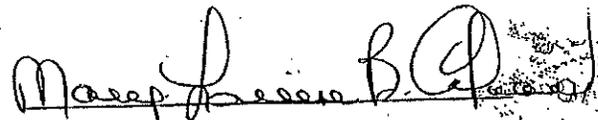

MARY-LOUISE B. CALNAN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Feb. 16, 2000

EXHIBIT "C"



New Jersey Lawyers' Fund for Client Protection
 Richard J. Hughes Justice Complex
 25 W. Market Street, P.O. Box 961
 Trenton, New Jersey 08625-0961
 Joanne M. Dietrich, Esq., Deputy Counsel
 (609) 984-7179; CPF-698

NEW JERSEY LAWYERS' FUND FOR
 CLIENT PROTECTION

PLAINTIFF

MARIA P. FORNARO

DEFENDANT

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION-CIVIL PART
 MERCER COUNTY

DOCKET NO. MER L- 817-03

CIVIL ACTION

COMPLAINT

The Plaintiff, New Jersey Lawyers' Fund for Client Protection, an entity established by the Supreme Court of New Jersey under R. 1:28-1 et seq., located at the Richard J. Hughes Justice Complex, 25 West Market Street, P. O. Box 961, Trenton, New Jersey 08625-0961, complaining against the Defendant, Maria P. Fornaro, says:

1. The Plaintiff was established to reimburse clients for losses caused by the dishonest conduct of members of the Bar of New Jersey.
2. Defendant, Maria P. Fornaro, maintained an office for the practice of law at 41 Elm Street, Suite 1W, Morristown, New Jersey.
3. Defendant was admitted to the practice of law in 1989. The Defendant was suspended for a period of three (3) months effective March 24, 1998. The Defendant was reprimanded on July 15, 1999. The Defendant was suspended from the practice of law for two years retroactive to December 5, 1999. Finally, Defendant was suspended from the practice of law for a period of three (3) years effective February 20, 2003.

4. In or about 1992, and thereafter, while representing Julie Lewis Coreoran, Defendant Fornaro, embezzled, misapplied and converted to her own use the sum of \$2,300.00 given to her in payment for legal services for which the Defendant failed to perform.

5. The individual named in paragraph 4 of this Complaint filed a claim with Plaintiff because of the dishonest conduct of the Defendant and the Plaintiff has paid a total of \$2,300.00 in this claim against Defendant.

6. Pursuant to R. 1:28-1 et seq. of the Rules Governing the Courts of New Jersey, the Plaintiff has paid the claim of the individual named in paragraph 4 and has received an assignment of all of her rights, claims and interests against the Defendant.

7. To date Plaintiff has not made recovery from Defendant or any other source towards the outstanding balance due to the Plaintiff.

8. The Defendant owes to the Plaintiff the sum of \$2,300.00 for the claim paid on behalf of Defendant's former clients.

WHEREFORE, Plaintiff demands judgment against the Defendant, Fornaro, for damages in the amount of **TWO THOUSAND THREE HUNDRED and 00/100 (\$2,300.00)** plus interest from the date of entry of Judgment and costs of suit.

NEW JERSEY LAWYERS' FUND
FOR CLIENT PROTECTION

BY: 
JOANNE M. DIETRICH, ESQ.

Dated: March 26, 2003.

DESIGNATION OF TRIAL COUNSEL

Joanne M. Dietrich, Esq., Deputy Counsel, is hereby designated as trial counsel in the referenced matter.

JURY DEMAND

Plaintiff hereby demands trial by jury as to all issues pursuant to R. 4:35-1.

CERTIFICATION

I hereby certify pursuant to R. 4:5-1 that, to my knowledge, the matter in controversy is not the subject of any action pending in any court nor is there any pending arbitration proceeding, nor is any such action or arbitration contemplated. I further certify that there are no other parties who should be joined in this action.

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


JOANNE M. DIETRICH, ESQ.

Dated: March 26, 2003.

k. j. d. named Formaro Complaint.wpd

EXHIBIT "D"

New Jersey Lawyers' Fund for Client Protection
Richard J. Hughes Justice Complex
25 West Market Street, PO Box 961
Trenton, NJ 08625-0961
Daniel R. Hendi, Esq.
(609) 292-8008
CPF-698

A True Copy
Sue Regan
SUE REGAN
Deputy Clerk of Superior Court

DONALD F. PHELAN
CLERK OF SUPERIOR COURT
SUPERIOR COURT OF N.J.
MERCER COUNTY
RECEIVED AND FILED

MAY 10 2006

Sue Regan
SUE REGAN
DEPUTY CLERK OF SUPERIOR COURT

NEW JERSEY LAWYERS' FUND FOR
CLIENT PROTECTION

Plaintiff,

v.

MARIA P. FORNARO,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CIVIL PART
MERCER COUNTY

Docket No. MBR-L-817-03

CIVIL ACTION

JUDGMENT

THIS MATTER having come to trial on April 24 & 25, 2006, before the Court sitting without a jury, and the Court having heard the evidence and arguments of the plaintiff and the defendant and finding in favor of the Plaintiff for all the reasons stated on the record on April 25, 2006, including but not limited to the credibility of the witnesses, and the Court being of the opinion that Judgment should be entered in favor of the plaintiff, New Jersey Lawyers' Fund for Client Protection, for the relief demanded in the complaint:

IT IS on this 10th day of May, 2006,

ORDERED that Judgment be entered in favor of the Plaintiff, New Jersey Lawyers' Fund for Client Protection, and against the Defendant, Maria P. Fornaro, in the sum of **\$2,250.00** together with interest from the date of Judgment.

Paul Innes
PAUL INNES, J.S.C.

K:\JoanneS\worddocs\SummaryJudgment\Fornaro\Judgment.doc

A COPY OF THIS ORDER SHALL BE SERVED ON ALL PARTIES WITHIN SEVEN (7) DAYS OF THE DATE HEREOF.

EXHIBIT "OO"

**NEW JERSEY LAWYERS' FUND
FOR
CLIENT PROTECTION**

TRUSTEES

JOHN MCFEELEY, III, CHAIR
WILLIAM E. HINKES, VICE CHAIR
ALFRED T. GIULIANO,
TREASURER
ROBERT J. DEL TUFO
JOHN N. UKEGBU
ALAN L. WILLIAMS
PATRICIA B. ROE

ASSISTANT TREASURER
FRANK C. FARR

STREET ADDRESS:
25 WEST MARKET STREET
5TH FLOOR, NORTH WING
TRENTON, N.J. 08625



RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 961
TRENTON, N.J. 08625-0961

DIRECTOR & COUNSEL
KENNETH J. BOSSONG

SENIOR COUNSEL
DANIEL R. HENDI
WILLIAM J. THOMAS

DEPUTY COUNSEL
JOANNE M. DIETRICH

BOARD SECRETARY
RUBY D. COCHRAN

CLAIMS: (609) 984-7179
BILLING (609) 292-8079
FAX: (609) 394-3637

Writer's Direct Dial: (609) 633-9708

April 4, 2003

Mr. James J. Waldron (File Pleadings)
Clerk, United States Bankruptcy Court
District of New Jersey
MLK Jr. Federal Building
50 Walnut Street
Newark, NJ 07102

Re: New Jersey Lawyers' Fund for Client Protection v. Lewis M. Seagull
Case No. 02-40452; Our File No. CPF-799

Dear Mr. Waldron:

Enclosed for filing please find the following documents:

- 1) Original and two copies of Plaintiff's Notice of Cross-Motion for Summary Judgment;
- 2) Original and two copies of Affidavit;
- 3) Entry of Default
- 4) Original and two copies of Letter Brief in Opposition to Defendant's Cross Motion.
- 5) Original and two copies of Certification of Service of Cross-Motion, Affidavit and Letter Brief;
- 6) Original and two copies of Order and Judgment.

Please file and return a copy of the filed documents in the self-addressed, stamped envelope provided. Thank you.

Sincerely,

JOANNE M. DIETRICH

JMD:sjb

Enclosures

cc: Lewis M. Seagull, pro se
Carmen Maggio, Trustee
Office of the United States Trustee

New Jersey Lawyers' Fund for Client Protection
Richard J. Hughes Justice Complex
25 W. Market Street, P.O. Box 961
Trenton, New Jersey 08625-0961
Joanne M. Dietrich, Deputy Counsel
(609) 984-7179; CPF-799

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE	:	CASE NO. 02-40452
	:	
LEWIS M. SEAGULL	:	CHAPTER 7
ss.: 155-38-1810 and	:	
GAIL W. SEAGULL	:	
ss.: 082-38-9910	:	
DEBTORS	:	
<hr/>		
NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION	:	ADV. PROCEEDING NO. 02-03932-MS
	:	
PLAINTIFF	:	
	:	
v.	:	
	:	
LEWIS M. SEAGULL	:	APPLICATION FOR
	:	ENTRY OF DEFAULT
DEFENDANT	:	PURSUANT TO <u>LBR 7055-1(a)</u>

TO: Clerk of the United States Bankruptcy Court
for the District of New Jersey

PLEASE TAKE NOTICE that Plaintiff New Jersey Lawyers' Fund for Client Protection respectfully requests that the Clerk of the United States Bankruptcy Court for the District of New Jersey enter default against Defendant Lewis M. Seagull pursuant to Fed. R. Civ. P. 55(a) and LBR 7055-1(a) for failing to plead or otherwise to defend as provided by the Rules of the Bankruptcy Court.

NEW JERSEY LAWYERS' FUND
FOR CLIENT PROTECTION



JOANNE M. DIETRICH, ESQ.

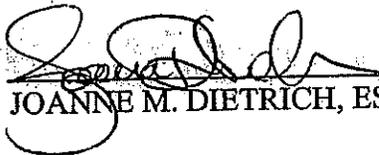
Dated: March 4, 2003

CERTIFICATION OF SERVICE

I certify that the original and one (1) copy of this Application for Entry of Default and supporting documents were mailed to the Chambers of the Honorable Morris Stern, Judge of the United States Bankruptcy Court, Attention: Joe Egan, United States Bankruptcy Court, 3rd Floor, M. L. King Jr. Fed. Bldg. & Courthouse, 50 Walnut Street, Newark, NJ 07102 via overnight mail.

I certify that two (2) copies of this Application for Entry of Default and supporting documents were mailed simultaneously to Lewis M. Seagull, 726 South Avenue West, Westfield, New Jersey 07090 via first class mail in conformance to Bank. R. 7005 and Fed. R. Civ. P. 5(a) and (b) but as a courtesy as to the initial application.

I certify that the foregoing statements made by me are true. I understand that, if any of the foregoing statements made by me are wilfully false, I am subject to punishment.


JOANNE M. DIETRICH, ESQ.

Dated: March 4, 2003

K:\joanned\Seagull\Bankr-app-entry-def.wpd

New Jersey Lawyers' Fund for Client Protection
Richard J. Hughes Justice Complex
25 W. Market Street, P.O. Box 961
Trenton, New Jersey 08625-0961
Joanne M. Dietrich, Deputy Counsel
(609) 984-7179; CPF-799

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE	:	CASE NO. 02-40452 (MS)
	:	
LEWIS M. SEAGULL and ss: 155-38-1810 and GAIL W. SEAGULL ss: 082-38-9910	:	CHAPTER 7
	:	
DEBTORS	:	ADV. PROCEEDING NO. 02-03932-MS
	:	
NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION	:	AFFIDAVIT IN SUPPORT OF APPLICATION FOR ENTRY OF DEFAULT PURSUANT TO <u>LBR</u> 7055-1(a)
	:	
PLAINTIFF	:	
	:	
v.	:	
	:	
LEWIS M. SEAGULL	:	
	:	
DEFENDANT	:	

I, Joanne M. Dietrich, of full age, being sworn upon her oath deposes and says:

1. I am an attorney at law of the State of New Jersey and serve as Deputy Counsel to the New Jersey Lawyers' Fund for Client Protection ("the Fund"), Plaintiff in the captioned matter and am familiar with the facts of this case. I have been entrusted with obtaining the Order and Judgment of Non-dischargeability against Defendant, Lewis M. Seagull, ("Defendant") in the amount of **\$69,077.47**.

2. I make this Affidavit in support of my Application to the Clerk of the United States

Bankruptcy Court for the District of New Jersey to Enter Default against Defendant pursuant to Fed. R. Civ. P. 55(a) and to LBR 7055-1(a) as Defendant has failed to plead or otherwise answer.

3. Plaintiff filed the adversary complaint on December 4, 2002. The Court filed the Summons on December 11, 2002. Plaintiff duly served Defendant as provided by Bankr. R. 7004(b)(9) and Fed. R. Civ. P. 4 via first class mail from this office on January 17, 2003. The default date was February 18, 2003.

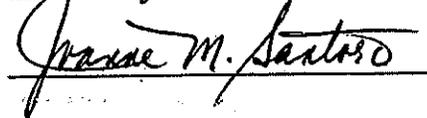
4. Defendant has failed to plead or otherwise answer the Adversary Complaint filed against him. The Defendant has not contacted the Plaintiff requesting additional time to file an answer to the Adversary Complaint. The Defendant has not requested and has not been granted an extension of time to plead or otherwise to defend.

5. Plaintiff, therefore, respectfully requests that the Clerk of the Court enter default against Defendant, Lewis M. Seagull, for failing to plead or otherwise to defend within the time prescribed by Court Rule.

NEW JERSEY LAWYERS' FUND
FOR CLIENT PROTECTION


JOANNE M. DIETRICH, ESQ.

Sworn and subscribed to before me
this 4th day of March 2003.



JOANNE M. SANTORO
NOTARY PUBLIC OF NEW JERSEY
COMMISSION EXPIRES JUNE 18, 2006

K:\joanned\Seagull\Bankruptcy-Affidavit.wpd

New Jersey Lawyers' Fund for Client Protection
Richard J. Hughes Justice Complex
25 W. Market Street, P.O. Box 961
Trenton, New Jersey 08625-0961
Joanne M. Dietrich, Deputy Counsel
(JMD-5470)
(609) 984-7179; CPF-799

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	:	Chapter 7
LEWIS M. SEAGULL and	:	
GAIL W. SEAGULL	:	Case No. 02-40452 (MS)
	:	
Debtors	:	

NEW JERSEY LAWYERS' FUND FOR	:	
CLIENT PROTECTION	:	
	:	
Plaintiff	:	

v.

	:	Adv. Proc. No. 02-03932 (MS)
LEWIS M. SEAGULL	:	
	:	
Defendant.	:	

ENTRY OF DEFAULT AS TO DEFENDANT
LEWIS M. SEAGULL

THIS MATTER having come before the Court upon the application of Plaintiff, New Jersey Lawyers' Fund for Client Protection (the "Plaintiff"), by and through its undersigned counsel, New Jersey Lawyers' Fund for Client Protection, in support of its request for entry of default as to Defendant, Lewis M. Seagull, (the "Defendant") for failure to plead or otherwise defend in the above-captioned adversary proceeding, as provided for by Rule 7055(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and the Court having considered the moving papers and having

found that service of the (i) original Summons and Notice of Pretrial Conference (the "Summons"); and a (ii) copy of the Complaint To Bar Discharge Of Debts Pursuant to 11 U.S.C. § 523 And Objecting to Debtors' Discharge Pursuant to 11 U.S.C. § 727 (the "Complaint") were properly made upon the Defendant, in accordance with Bankruptcy Rule 7005; and the Defendant having failed to file an answer or otherwise plead in response to the Summons and Complaint; and for good cause shown;

IT IS on this _____ day of _____, 2003;

ORDERED that default of the Defendant, as authorized by Bankruptcy Rule 7055(a), be and hereby is entered upon the docket for failure to plead or otherwise defend in response to the Summons and Complaint.

JAMES J. WALDRON, CLERK
UNITED STATES BANKRUPTCY
COURT FOR THE DISTRICT
OF NEW JERSEY

By: _____
Deputy Clerk

Dated:

New Jersey Lawyers' Fund for Client Protection
Richard J. Hughes Justice Complex
25 W. Market Street, P.O. Box 961
Trenton, New Jersey 08625-0961
Joanne M. Dietrich, Deputy Counsel
(609) 984-7179; CPF-799

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

<hr/>	:	CASE NO. 02-40452 (MS)
IN RE	:	
	:	
LEWIS M. SEAGULL and	:	CHAPTER 7
ss.: 155-38-1810 and	:	
GAIL W. SEAGULL	:	
ss.: 082-38-9910	:	
	:	
DEBTORS	:	
	:	ADV. PROCEEDING NO. 02-03932-MS
<hr/>	:	
NEW JERSEY LAWYERS' FUND FOR	:	
CLIENT PROTECTION	:	
	:	
PLAINTIFF	:	
	:	
v.	:	APPLICATION FOR ENTRY OF THE
	:	ORDER FOR NON-DISCHARGEABILITY
LEWIS M. SEAGULL	:	AND JUDGMENT BY DEFAULT
	:	PURSUANT TO <u>LBR 7055-1(b)</u>
DEFENDANT	:	
<hr/>	:	

TO: Clerk of the United States Bankruptcy Court
for the District of New Jersey

PLEASE TAKE NOTICE that Plaintiff New Jersey Lawyers' Fund for Client Protection respectfully requests that the Clerk of the United States Bankruptcy Court for the District of New Jersey enter Order for Non-Dischargeability and Judgment by Default against Defendant Lewis M.

Seagull pursuant to Fed. R. Civ. P. 55(b)(1) and LBR 7055-1(b) for sum certain in the amount of
\$69,077.47

NEW JERSEY LAWYERS' FUND
FOR CLIENT PROTECTION



JOANNE M. DIETRICH, ESQ.

CERTIFICATION OF SERVICE

I certify that the original and one (1) copy of this Application for Entry of the Order for Non-dischargeability and Judgment by Default and supporting documents were mailed to the Chambers of the Honorable Morris Stern, Judge of the United States Bankruptcy Court, Attention: Joe Egan, United States Bankruptcy Court, 3rd Floor, 50 Walnut Street, Newark, New Jersey 07102-2506, via overnight mail.

I certify that two (2) copies of this Application for Entry of the Order for Non-dischargeability and Judgment by Default and supporting documents were mailed to Lewis M. Seagull, 726 South Avenue West, Westfield, New Jersey 07090, via first class mail in conformance to Bank. R. 7005 and Fed. R. Civ. P. 5(a) and (b), but simultaneously with filing as a courtesy to defendant.

I certify that the foregoing statements made by me are true. I understand that, if any of the foregoing statements made by me are wilfully false, I am subject to punishment.



JOANNE M. DIETRICH, ESQ.

Dated: March 4, 2003

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Bankruptcy Court for the District of New Jersey to enter the Order for Non-dischargeability and Judgment by Default against Defendant pursuant to Fed R. Civ. P. 55(b)(1) and to LBR 7055-1(b) for sum certain in the amount of **\$69,077.47**. Plaintiff requested entry of default by separate application on this date pursuant to Fed. R. Civ. P. 55(a) and LBR 7055-1(a).

3. Defendant is not, to the best of undersigned counsel's knowledge, an infant or incompetent person. The Fund has determined through an application to the New Jersey Division of Motor Vehicles pursuant to N.J.S.A. 39:2-3.4(c) that Defendant's date of birth is October 27, 1952.

4. Defendant is not, to the best of undersigned counsel's knowledge and pursuant to 50 App. U.S.C. Section 520, in active service in any branch of the military and currently resides at 726 South Avenue West, Westfield, (Union County) New Jersey 07090.

5. The Plaintiff New Jersey Lawyers' Fund for Client Protection is a Committee of the Supreme Court of New Jersey. The Fund was established under R. 1:28-1 et seq. of the Rules Governing the Courts of the State of New Jersey for the purpose of reimbursing clients for losses caused by the dishonest conduct of attorneys who have been admitted to the New Jersey Bar and who have been disciplined (suspended or disbarred) by the Supreme Court of New Jersey. Defendant Lewis M. Seagull was such an attorney. The Supreme Court of New Jersey disbarred Defendant by Order entered on January 12, 2001.

6. The New Jersey Lawyers' Fund for Client Protection ("the Fund"), paid a total of five (5) claims to Defendant's former clients in the aggregate amount of **\$69,077.47** as set forth below. For each claim paid by the Fund, the Board of Trustees which governs the Fund pursuant to R. 1:28-1 made a finding that Defendant committed dishonest conduct in the discharge of his duty when he was acting as attorney or in a fiduciary capacity to the claimants. For each count of the Complaint

the Fund therefore alleged that the debt which Defendant Lewis M. Seagull owes the Fund, as assignee and subrogee of the rights and interests of his former clients, is non-dischargeable under 28 U.S.C. Section 523(a)(2)(A), under 28 U.S.C. Section 523(a)(4), and/or in the alternative under 28 U.S.C. 523(a)(6). As a condition of paying each claim, pursuant to R. 1:28-3(a), the Fund took a written assignment of rights from each claimant and became subrogated to each claimant's rights, claims and interests against Defendant:

<u>Claim Number</u>	<u>Claimant</u>	<u>Amt. Pd.</u>	<u>Date Paid</u>
CPF-799:01-01	Joseph DeGroat	50,797.63	June 28, 2001
CPF-799-2-01	Scott and Theresa Daisey	2,700.00	June 28, 2001
CPF-799-03-01	Joanne Lynch	5,590.00	December 18, 2001
CPF-799-04-01	Joanette Hinnant	7,489.84	January 25, 2002
CPF-799-05-01	Floyd Wright, Jr.	2,500.00	May 24, 2002
TOTAL		\$69,077.47	

The Fund has recovered nothing to date against this obligation, so that the outstanding balance which Defendant owes the Fund and which is the object of the adversary proceeding is **\$69,077.47.**

with the Application for Entry of Default and with the Application for Entry of the Order for Non-dischargeability and Default Judgment and upon review of the pleadings, and for good cause having been shown,

IT IS on this _____ day of _____ 2003 ORDERED, ADJUDGED and DECREED

1. That the debt of Defendant Lewis M. Seagull to the New Jersey Lawyers' Fund for Client Protection in the amount of **SIXTY-NINE THOUSAND SEVENTY-SEVEN and 47/100 DOLLARS (\$69,077.47)** is non-dischargeable in bankruptcy; and

2. That judgment shall be entered in favor of the Plaintiff New Jersey Lawyers' Fund for Client Protection ("the Fund") against Defendant Lewis M. Seagull in the amount of **SIXTY-NINE THOUSAND SEVENTY-SEVEN and 47/100 DOLLARS (\$69,077.47)**.

EXHIBIT "PP"

If you do not want the court to grant the motion for Summary Judgment, or if you want the court to consider your views on the Motion for Summary Judgment, then on or before _____, 2008, at _____, you or your attorney must:

File with the court a written request for a hearing (or if the court requires a written response, an answer, explaining your position) at:

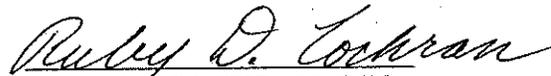
James G. Waldron, Clerk
United States Bankruptcy Court
50 Walnut Street, 3rd Floor
Newark, New Jersey 07102

If you mail your request or response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

You must also mail a copy to:

New Jersey Lawyers' Fund for Client Protection
P.O. Box 961
Trenton, New Jersey 08625-0961
Attn: Ruby D. Cochran, Deputy Counsel

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.


RUBY D. COCHRAN, ESQ.
Deputy Counsel
New Jersey Lawyers' Fund for
Client Protection

March 31, 2008

3) The Fund is a Committee of the Supreme Court of New Jersey established under Rule 1:28 et. seq. of the Rules Governing the Courts of New Jersey for the purpose of reimbursing clients for losses caused by the dishonest conduct of attorneys who have been admitted to the New Jersey Bar and who have been suspended or disbarred by the Supreme Court of New Jersey.

4) Defendant was suspended for three (3) months effective March 24, 1998; reprimanded on July 15, 1999; suspended for two (2) years and until further Order of the Court effective December 15, 1999; and suspended for three (3) years and until further Order of the Court effective immediately by Order entered by the Supreme Court of New Jersey on February 20, 2003. The Court ordered that prior to reinstatement she must comply with a series of conditions. (see paragraph 6 and **Exhibit "A"** of Affidavit). The defendant has not, to Plaintiff's knowledge, applied for reinstatement.

5) On March 18, 1999, the Fund paid an award of \$2,300.00 to defendant's former client pursuant to Rule 1:28 et seq. and obtained a written Release, Assignment and Subrogation Agreement from the former client, and became subrogated to the former client's rights and interests against the defendant. (see paragraph 7 and **Exhibit "B"** of Affidavit).

6) On or about April 11, 2003, the Fund filed suit against defendant, the Complaint stating a cause of action for embezzlement and conversion. (see paragraph 8 and **Exhibit "C"** of Affidavit).

7) The matter was fully tried on or about late April and early May 2006, before the Honorable Paul Innes, J.S.C., the Superior Court of New Jersey, Law Division, Civil Part, Mercer County. On May 10, 2006, the Honorable Paul Innes, entered a

Judgment (J-131968-06) against Defendant and in favor of Plaintiff in the amount of Two Thousand Two Hundred Fifty Dollars (\$2,250.00) based upon the allegations in the Complaint. (see paragraph 9 and **Exhibit "D"** of Affidavit).

8) Defendant has not made any payments to the Fund and presently remains indebted, to the Fund in the amount of \$2,250.00.


RUBY D. COCHRAN, ESQ.
Deputy Counsel
New Jersey Lawyers' Fund for
Client Protection

March 31, 2008

**NEW JERSEY LAWYERS' FUND
FOR
CLIENT PROTECTION**

TRUSTEES

JEAN M. RAMATOWSKI, CHAIR
TINA E. BERNSTEIN, VICE CHAIR
EMMETT E. PRIMAS, JR., TREASURER
SUSAN E. LAWRENCE
JAMES H. LASKEY
LUIS R. SANCHEZ
FRANK C. FARR

ASSISTANT TREASURER
CHRISTINA P. HIGGINS

ADDRESS FOR COURIERS &
DELIVERY SERVICES ONLY:
25 WEST MARKET STREET
5TH FLOOR, NORTH WING
TRENTON, N.J. 08625



RICHARD J. HUGHES JUSTICE COMPLEX
P.O. Box 961
TRENTON, N.J. 08625-0961

DIRECTOR & COUNSEL
KENNETH J. BOSSONG

DEPUTY DIRECTOR
DANIEL R. HENDI

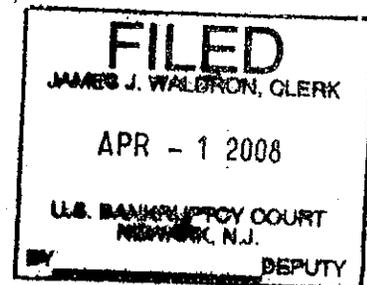
SENIOR COUNSEL
EDWARD T. EHLER

DEPUTY COUNSEL
RUBY D. COCHRAN

(609) 984-7179
CLAIMS: (609) 292-8008
BILLING (609) 292-8079
FAX: (609) 394-3637

March 31, 2008

The Honorable Rosemary Gambardella
United States Bankruptcy Court
District of New Jersey
M.L. King Jr. Federal Building
50 Walnut Street
Newark, NJ 07102



**Re: In Re Maria P. Fornaro – Case No. 07-20842-RG
New Jersey Lawyers' Fund for Client Protection v. Maria P. Fornaro
Adversary Proceeding No. 07-02277-RG; Our File No. CPF-698**

Dear Judge Gambardella:

Please accept this letter brief in lieu of a more formal brief setting forth the Fund's position in support of the Fund's Motion for Summary Judgment against the Debtor, Maria P. Fornaro.

FACTS

The New Jersey Lawyers' Fund for Client Protection (the "Fund") is a Committee of the Supreme Court of New Jersey. The Fund is established under Rule 1:28 *et seq.* of the Rules Governing the Courts of New Jersey for the purpose of reimbursing clients for losses caused by the dishonest conduct of attorneys who have been admitted to the New Jersey Bar and who have been suspended or disbarred by the Supreme Court of New Jersey. Under the Constitution of the State of New Jersey, Article VI, Section II, Paragraph 3, the Supreme Court of New Jersey is vested with original and exclusive jurisdiction as it concerns the admission, practice and discipline of New Jersey lawyers.

The Honorable Rosemary Gambardella
March 31, 2008
Adv. Pro. No. 07-02277-RG
Page 2

New Jersey Constitution, Article VI, Section II, Paragraph 3, reads:

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

The Fund falls within this jurisdiction.

On September 15, 1998, the Fund received a claim from one of the defendant's former clients, whose claim was paid according to the above provision on March 18, 1999. The Fund received an Assignment of that client's rights. On May 10, 2006, pursuant to a Complaint filed in the Superior Court of New Jersey, after a bench trial was held, the Honorable Judge Paul Innes entered Judgment in the sum of \$2,250.00 in favor of the Fund. This case has been adjudicated in full and the defendant has been found liable.

LEGAL ARGUMENT

POINT I

The pleadings and evidence, even when viewed in the light most favorable to the Defendant, present no genuine issues of material fact.

A party is entitled to a summary judgment if “the pleading, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). Material facts are those that under the governing law may affect the outcome of the suit. Weeks Marine, Inc. v. Fireman's Fund Ins. Co., 340 F.3d 233 (5th Cir. 2003)(citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986)). All evidence is viewed in the light most favorable to the nonmoving party. Armstrong v. Am. Home Shield Corp., 333 F.3d 566,568 (5th Cir. 2003). Presently, there are no genuine issues of material fact and the plaintiff is entitled to a summary judgment as a matter of law in order to avoid the waste of an unnecessary trial.

The plaintiff is entitled to summary judgment because the defendant's Answer to the Complaint does not raise any genuine issues of material fact. The defendant provides nothing to this Court by way of pleading, discovery or affidavit to create an issue of material fact. The defendant provides no

evidence that, even when viewed in a light most favorable to the defendant, presents genuine issues of material fact that require submission to a trier of fact. Therefore, there are no genuine issues of material fact and trial would be an unnecessary and wasteful expenditure of judicial resources.

POINT II

The debt due the Fund is not dischargeable pursuant to §523(a)(2)(A) of the Bankruptcy Code.

Per Section 523(a)(2)(A), a debt is exempted from discharge in a Chapter 7 proceeding where an individual debtor incurs any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained, by (a) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition..." Plaintiff requests that the Court except from discharge the debt that was incurred by Maria P. Fornaro as a result of fraud in accordance with §523(a)(2)(A) of the Bankruptcy Code, and as adjudication in the Superior Court afforded extensive discovery by defendant and a full bench trial.

"Section 523(a) of the Bankruptcy Code provides that a discharge in bankruptcy shall not discharge an individual debtor from certain kinds of obligations, including those for money obtained by 'actual fraud.'" Grogan v. Garner, 498 U.S. 278, 280 (1991). The standard of proof that a creditor must satisfy in order for a debt not to be discharged under §523(a) of the Bankruptcy Code is the preponderance of the evidence standard. Id at 291. The bench trial already satisfied that requirement, and it is well settled that the doctrine of collateral estoppel applies in dischargeability proceedings in bankruptcy court pursuant to §523(a). Grogan v. Garner, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed. 2d 755 (1991). Also see In Re Docteroff, 133 F.3d 210, 214 (3rd Cir. 1997) and In Re Graham, 973 F.2d 1089, 1096 (3rd Cir. 1992), (see more on this in Point IV).

In the bench trial, it was established that the defendant represented that she would handle an immigration matter for her client if paid a retainer. Fornaro extracted payment from her client under the pretense that if the retainer were paid, then Fornaro would pursue her case. Once Fornaro received the retainer she did not perform the services for which she was retained. Fornaro's statements were both material and false. As a result of Fornaro's material misrepresentation, she was able to obtain money from her client, so Judge Innes found, and knew at the time she agreed to represent this client that she did not intend to perform the services for which she was retained. Further, Fornaro failed to properly account for the services she allegedly provided, as required by law, and Fornaro failed to return any or all of the retainer to her former client.

The Court in In Re Trombadore, 201 B.R.710 (D.N.J. 1996), determined that failing to disclose a fact is sufficient as a matter of law to establish fraud under §523(a)(2), if it satisfies a two prong test.

The Court set forth the test as follows: whether silence can be a "representation as required under §523(a)(2)(A) and second, assuming silence can be a representation, whether silence..., can, on its own, rise to the level of fraud." *Id.* At 713. The Trombadore case adopted the holding of the 8th Circuit case In Re Van Horne which held that a Debtor's silence as to a material fact may constitute fraud in a §523 action. 823 F.2d 1285, 1288. The Trombadore Court found that silence can rise to the level of fraud. *Id.* At 714. The Trombadore Court further held that for a creditor to prove that a debt is not dischargeable under §523, the creditor must establish by a preponderance of the evidence that the debt was incurred via fraud. *Id.* At 715, citing Grogan v. Garner, 498 U.S. 279,291 (1991).

Maria Fornaro intended for her client to rely on her false statements, which is evident by the money she received. Fornaro's client was justified to rely on Fornaro's representations. Her client placed her confidence in the integrity and trustworthiness of Fornaro, who was an attorney licensed to practice law in the State of New Jersey. As a result of Fornaro's material misrepresentations, her client suffered a loss which was a direct and proximate result of Fornaro's false statements.

The debt that the defendant owes to the Fund, and as established after a full trial in the Superior Court, is nondischargeable under 11 U.S.C. §523(a)(2)(A).

POINT III

Defendant's debt as a fiduciary is nondischargeable under the fraud provision of Bankruptcy Code §523(a)(4).

A Debtor is not entitled to discharge of a debt that is procured through fraud or defalcation while acting in a fiduciary capacity, pursuant to §523(a)(4) of the Bankruptcy Code. An attorney acts as a fiduciary within the meaning of §523(a)(4) despite the absence of an express or technical trust. In re Hayes, 183 F.3d 162 (2d Cir. 1999). The Bankruptcy Code defines embezzlement as the taking of property from another by one to whom the property was entrusted. Mill v. J.D. Abrams Inc. (In re Miller), 156 F.3d 598, 602 (5th Cir. 1998)(quoting Greyhound Lines Inc. v. Thurston (In re Thurston), 18 B.R. 545, 550(M.D. Ga. 1982).

Defendant misappropriated and converted the funds of her client when she accepted a retainer and did nothing of benefit to her client to earn that retainer. Maria Fornaro had established an attorney-client relationship with her former client by promising to represent her in her immigration matter. Maria Fornaro cannot contest whether a fiduciary relationship existed between them. Defendant did not earn the attorney fees she received from her former client in good faith and she failed to perform the legal services for which she was retained. Defendant acted in bad faith and breached her fiduciary duty. This too was the Trial Court's finding in the Superior Court case.

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As established in Hayes, an attorney-client relationship without more constitutes a “fiduciary relationship” within the meaning of the defalcation discharge exception of the Bankruptcy Code §523(a)(4). In re Hayes, 183 F.3d 162, 170 (2d Cir. 1999). The Hayes Court stated “the term defalcation may well not fit comfortably when used in the context of a dispute over the value of legal services, at least where no bad faith or other breach of fiduciary duty is shown. Lawyer or other fiduciary is allowed to act in his or her self-interest in charging for services in “good faith”. Id. at 172.

To prove non-dischargeability based upon fraud or defalcation by a fiduciary, a creditor must establish that the Debtor was acting in a fiduciary capacity and that the Debtor committed an act of defalcation. In Re Kaczynsky, 188 B.R. 770, 773 (D.N.J. 1995). The Debtor constitutes a “fiduciary” within its meaning under the bankruptcy definition of the term.

POINT IV

The debtor is estopped from Discharging the debt owed to the Fund as the matter has been fully adjudicated.

A federal court must give a state court judgment the same preclusive effect it would have under the law of the state in which judgment was rendered. Migra v. Warren City School District Board of Education, 465 U.S. 75, 81, 104 S.Ct. 892, 896, 79 L.Ed. 2d 56 (1984). Indeed, after the bench trial, on May 10, 2006, the Superior Court of New Jersey, Law Division, Civil Part, Mercer County, the Honorable Paul Innes, entered a Judgment (J-131968-06) in favor of the Fund in the amount of Two Thousand Two Hundred Fifty Dollars (\$2,250.00). Defendant did not file an appeal or take any action in State Court to contest the judgment. Therefore, defendant is now precluded from presenting any defenses that the debt owed to the Fund is not dischargeable in Bankruptcy.

Collateral estoppel precludes Fornaro from presenting to this Court any defense that the debt owed to the Fund is dischargeable in bankruptcy. As a threshold issue, collateral estoppel precludes the Bankruptcy Court from re-litigating previously decided issues. In Re Halpern, 810 F.2d 1061, 1064 (11th Cir. 1987). The bankruptcy courts have exclusive jurisdiction to determine dischargeability issues. Brown v. Felson, 442 U.S. 127 (1979). “While the Bankruptcy Court decides whether a debt is dischargeable, the doctrine of collateral estoppel has been invoked to foreclose relitigation of certain facts underlying the determination of dischargeability.” In Re Martin, 130 B.R. 930, 942 (Bankr. N.D. Ill. 1991).

In Klingman v. Levenson, 831 F.2d 1292 (7th Cir. 1987), the Court found that “where a State Court determines factual questions using the same standards as the Bankruptcy Court would use, collateral estoppel should be applied to promote judicial economy by encouraging the parties to present their

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strongest arguments.” Id. At 1295. Collateral estoppel can be invoked by the Bankruptcy Court to preclude relitigation of facts if the following test has been satisfied:

- 1) the issue sought to be precluded is the same as in the prior action;
- 2) the issue must have been actually litigated;
- 3) it must have been determined by a valid and final judgment; and
- 4) the determination must have been essential to the final judgment.

Matter of Ross, 602 F.2d 604, 608 (3rd Cir. 1979).

Here all elements have been met in the bench trial held on or about April 15 and 26, 2006, before the Honorable Paul Innes, J.S.C.

CONCLUSION

An Order of Nondischargeability in favor of the Fund should be granted.

The Fund has presented to the Court evidence that the case against Maria Fornaro has been fully tried and adjudicated on grounds of defalcation and misappropriated, and that she converted money given to her by her client. The debt is exempted from discharge in accordance with §523(a)(2)(A) and §523(a)(4) of the Bankruptcy Code. Maria Fornaro misappropriated and converted the funds when she accepted a retainer, did nothing of benefit to her client to earn that retainer, and refused to refund the unearned retainer. Public policy militates against allowing dishonest debtors to profit at the expense of their victims. Grogan, 498 U.S. at 286-87. Judicial efficiency prohibits retrial of the same subject matter. In Grogan, the Supreme Court emphasized that the “fresh start” policy of the bankruptcy code was the “opportunity for a completely unencumbered new beginning to the honest but unfortunate debtor. Where a debtor has committed fraud under the code, he is not entitled to the benefit of a policy of liberal construction against creditors.” Id.

For the foregoing reasons, the Plaintiff, New Jersey Lawyers’ Fund for Client Protection, respectfully moves the Court to grant its motion to enter Summary Judgment against the Defendant, Maria Fornaro, and enter an Order of Non-Dischargeability in the amount of \$2,250.00, and further relief that the Court may deem appropriate.

Respectfully submitted,


Ruby D. Cochran

This matter having been brought before the Court on Motion of the Plaintiff, New Jersey Lawyers' Fund for Client Protection, seeking an Order for Summary Judgment against the defendant, Maria P. Fornaro, notice having been provided to all interested parties, the court having reviewed the papers filed; and good cause otherwise appearing therefore:

IT IS on this ____ day of _____, 2008, hereby ORDERED AND DECREED:

1. Summary Judgment is hereby entered in favor of the Plaintiff, New Jersey Lawyers' Fund for Client Protection, and against Defendant, Maria P. Fornaro, to deem the debt to the New Jersey Lawyers' Fund for Client Protection, in the amount of **TWO THOUSAND TWO HUNDRED FIFTY DOLLARS & 00/100 (\$2,250.00)** nondischargeable in bankruptcy.

2. A copy of this Order shall be served on all parties within ____ days of the date hereof.

EXHIBIT "QQ"



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Chapter 13

Individual Debt Adjustment

The chapter of the Bankruptcy Code providing for adjustment of debts of an individual with regular income. (Chapter 13 allows a debtor to keep property and pay debts over time, usually three to five years.)

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Background

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A chapter 13 bankruptcy is also called a wage earner's plan. It enables individuals with regular income to develop a plan to repay all or part of their debts. Under this chapter, debtors propose a repayment plan to make installments to creditors over three to five years. If the debtor's current monthly income is less than the applicable state median, the plan will be for three years unless the court approves a longer period "for cause." (1) If the debtor's current monthly income is greater than the applicable state median, the plan generally must be for five years. In no case may a plan provide for payments over a period longer than five years. 11 U.S.C. §1322(d). During this time the law forbids creditors from starting or continuing collection efforts.

This chapter discusses six aspects of a chapter 13 proceeding: the advantages of choosing chapter 13, the chapter 13 eligibility requirements, how a chapter 13 proceeding works, what may be included in chapter 13 repayment plan and how it is confirmed, making the plan work, and the special chapter 13 discharge.

Advantages of Chapter 13

Chapter 13 offers individuals a number of advantages over liquidation under chapter 7. Perhaps most significantly, chapter 13 offers individuals an opportunity to save their homes from foreclosure. By filing under this chapter, individuals can stop foreclosure proceedings and may cure delinquent mortgage payments over time. Nevertheless, they must still make all mortgage payments that come due during the chapter 13 plan on time. Another advantage of chapter 13 is that it allows individuals to reschedule secured debts (other than a mortgage for their primary residence) and extend them over the life of the chapter 13 plan. Doing this may lower the payments. Chapter 13 also has a special provision that protects third parties who are liable with the debtor on "consumer debts." This provision may protect co-signers. Finally, chapter 13 acts like a consolidation loan under which the individual makes the plan

payments to a chapter 13 trustee who then distributes payments to creditors. Individuals will have no direct contact with creditors while under chapter 13 protection.

Chapter 13 Eligibility

Any individual, even if self-employed or operating an unincorporated business, is eligible for chapter 13 relief as long as the individual's unsecured debts are less than \$307,675 and secured debts are less than \$922,975. 11 U.S.C. § 109(e). These amounts are adjusted periodically to reflect changes in the consumer price index. A corporation or partnership may not be a chapter 13 debtor. *Id.*

An individual cannot file under chapter 13 or any other chapter if, during the preceding 180 days, a prior bankruptcy petition was dismissed due to the debtor's willful failure to appear before the court or comply with orders of the court or was voluntarily dismissed after creditors sought relief from the bankruptcy court to recover property upon which they hold liens. 11 U.S.C. §§ 109(g), 362(d) and (e). In addition, no individual may be a debtor under chapter 13 or any chapter of the Bankruptcy Code unless he or she has, within 180 days before filing, received credit counseling from an approved credit counseling agency either in an individual or group briefing. 11 U.S.C. §§ 109, 111. There are exceptions in emergency situations or where the U.S. trustee (or bankruptcy administrator) has determined that there are insufficient approved agencies to provide the required counseling. If a debt management plan is developed during required credit counseling, it must be filed with the court.

How Chapter 13 Works

A chapter 13 case begins by filing a petition with the bankruptcy court serving the area where the debtor has a domicile or residence. Unless the court orders otherwise, the debtor must also file with the court: (1) schedules of assets and liabilities; (2) a schedule of current income and expenditures; (3) a schedule of executory contracts and unexpired leases; and (4) a statement of financial affairs. Fed. R. Bankr. P. 1007 (b). The debtor must also file a certificate of credit counseling and a copy of any debt repayment plan developed through credit counseling; evidence of payment from employers, if any, received 60 days before filing; a statement of monthly net income and any anticipated increase in income or expenses after filing; and a record of any interest the debtor has in federal or state qualified education or tuition accounts. 11 U.S.C. § 521. The debtor must provide the chapter 13 case trustee with a copy of the tax return or transcripts for the most recent tax year as well as tax returns filed during the case (including tax returns for prior years that had not been filed when the case began). *Id.* A husband and wife may file a joint petition or individual petitions. 11 U.S.C. § 302(a). (The Official Forms may be purchased at legal stationery stores or downloaded from the Internet at www.uscourts.gov/bkforms/index.html. They are not available from the court.)

The courts must charge a \$235 case filing fee and a \$39 miscellaneous administrative fee. Normally the fees must be paid to the clerk of the court upon filing. With the court's permission, however, they may be paid in installments. 28 U.S.C. § 1930(a); Fed. R. Bankr. P. 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8. The number of installments is limited to four, and the debtor must make the final installment no later than 120 days after filing the petition. Fed. R. Bankr. P. 1006(b). For cause shown, the court may extend the time of any installment, as long as the last installment is paid no later than 180 days after filing the petition. *Id.* The debtor may also pay the \$39 administrative fee in installments. If a joint petition is filed,

only one filing fee and one administrative fee are charged. Debtors should be aware that failure to pay these fees may result in dismissal of the case. 11 U.S.C. § 1307(c) (2).

In order to complete the Official Bankruptcy Forms that make up the petition, statement of financial affairs, and schedules, the debtor must compile the following information:

1. A list of all creditors and the amounts and nature of their claims;
2. The source, amount, and frequency of the debtor's income;
3. A list of all of the debtor's property; and
4. A detailed list of the debtor's monthly living expenses, *i.e.*, food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

Married individuals must gather this information for their spouse regardless of whether they are filing a joint petition, separate individual petitions, or even if only one spouse is filing. In a situation where only one spouse files, the income and expenses of the non-filing spouse is required so that the court, the trustee and creditors can evaluate the household's financial position.

When an individual files a chapter 13 petition, an impartial trustee is appointed to administer the case. 11 U.S.C. § 1302. In some districts, the U.S. trustee or bankruptcy administrator (2) appoints a standing trustee to serve in all chapter 13 cases. 28 U.S.C. § 586(b). The chapter 13 trustee both evaluates the case and serves as a disbursing agent, collecting payments from the debtor and making distributions to creditors. 11 U.S.C. § 1302(b).

Filing the petition under chapter 13 "automatically stays" (stops) most collection actions against the debtor or the debtor's property. 11 U.S.C. § 362. Filing the petition does not, however, stay certain types of actions listed under 11 U.S.C. § 362 (b), and the stay may be effective only for a short time in some situations. The stay arises by operation of law and requires no judicial action. As long as the stay is in effect, creditors generally may not initiate or continue lawsuits, wage garnishments, or even make telephone calls demanding payments. The bankruptcy clerk gives notice of the bankruptcy case to all creditors whose names and addresses are provided by the debtor.

Chapter 13 also contains a special automatic stay provision that protects co-debtors. Unless the bankruptcy court authorizes otherwise, a creditor may not seek to collect a "consumer debt" from any individual who is liable along with the debtor. 11 U.S.C. § 1301(a). Consumer debts are those incurred by an individual primarily for a personal, family, or household purpose. 11 U.S.C. § 101(8).

Individuals may use a chapter 13 proceeding to save their home from foreclosure. The automatic stay stops the foreclosure proceeding as soon as the individual files the chapter 13 petition. The individual may then bring the past-due payments current over a reasonable period of time. Nevertheless, the debtor may still lose the home if the mortgage company completes the foreclosure sale under state law before the debtor files the petition. 11 U.S.C. § 1322(c). The debtor may also lose the home if he or she fails to make the regular mortgage payments that come due after the chapter 13 filing.

Between 20 and 50 days after the debtor files the chapter 13 petition, the chapter 13 trustee will hold a meeting of creditors. If the U.S. trustee or bankruptcy administrator schedules the meeting at a place that does not have regular U.S. trustee or bankruptcy administrator staffing, the meeting may be held no more than

60 days after the debtor files. Fed. R. Bankr. P. 2003(a). During this meeting, the trustee places the debtor under oath, and both the trustee and creditors may ask questions. The debtor must attend the meeting and answer questions regarding his or her financial affairs and the proposed terms of the plan. 11 U.S.C. § 343. If a husband and wife file a joint petition, they both must attend the creditors' meeting and answer questions. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending the creditors' meeting. 11 U.S.C. § 341(c). The parties typically resolve problems with the plan either during or shortly after the creditors' meeting. Generally, the debtor can avoid problems by making sure that the petition and plan are complete and accurate, and by consulting with the trustee prior to the meeting.

In a chapter 13 case, to participate in distributions from the bankruptcy estate, unsecured creditors must file their claims with the court within 90 days after the first date set for the meeting of creditors. Fed. R. Bankr. P. 3002(c). A governmental unit, however, has 180 days from the date the case is filed file a proof of claim. 11 U.S.C. § 502(b)(9).

After the meeting of creditors, the debtor, the chapter 13 trustee, and those creditors who wish to attend will come to court for a hearing on the debtor's chapter 13 repayment plan.

The Chapter 13 Plan and Confirmation Hearing

Unless the court grants an extension, the debtor must file a repayment plan with the petition or within 15 days after the petition is filed. Fed. R. Bankr. P. 3015. A plan must be submitted for court approval and must provide for payments of fixed amounts to the trustee on a regular basis, typically biweekly or monthly. The trustee then distributes the funds to creditors according to the terms of the plan, which may offer creditors less than full payment on their claims.

There are three types of claims: priority, secured, and unsecured. Priority claims are those granted special status by the bankruptcy law, such as most taxes and the costs of bankruptcy proceeding. (3) Secured claims are those for which the creditor has the right take back certain property (*i.e.*, the collateral) if the debtor does not pay the underlying debt. In contrast to secured claims, unsecured claims are generally those for which the creditor has no special rights to collect against particular property owned by the debtor.

The plan must pay priority claims in full unless a particular priority creditor agrees to different treatment of the claim or, in the case of a domestic support obligation, unless the debtor contributes all "disposable income" - discussed below - to a five-year plan. 11 U.S.C. § 1322(a).

If the debtor wants to keep the collateral securing a particular claim, the plan must provide that the holder of the secured claim receive at least the value of the collateral. If the obligation underlying the secured claim was used to buy the collateral (e.g., a car loan), and the debt was incurred within certain time frames before the bankruptcy filing, the plan must provide for full payment of the debt, not just the value of the collateral (which may be less due to depreciation). Payments to certain secured creditors (*i.e.*, the home mortgage lender), may be made over the original loan repayment schedule (which may be longer than the plan) so long as any arrearage is made up during the plan. The debtor should consult an attorney to determine the proper treatment of secured claims in the plan.

The plan need not pay unsecured claims in full as long it provides that the debtor will pay all projected "disposable income" over an "applicable commitment period," and as long as unsecured creditors receive at least as much under the plan as they would receive if the debtor's assets were liquidated under chapter 7. 11 U.S.C. § 1325. In chapter 13, "disposable income" is income (other than child support payments received by the debtor) less amounts reasonably necessary for the maintenance or support of the debtor or dependents and less charitable contributions up to 15% of the debtor's gross income. If the debtor operates a business, the definition of disposable income excludes those amounts which are necessary for ordinary operating expenses. 11 U.S.C. § 1325(b)(2)(A) and (B). The "applicable commitment period" depends on the debtor's current monthly income. The applicable commitment period must be three years if current monthly income is less than the state median for a family of the same size - and five years if the current monthly income is greater than a family of the same size. 11 U.S.C. § 1325(d). The plan may be less than the applicable commitment period (three or five years) only if unsecured debt is paid in full over a shorter period.

Within 30 days after filing the bankruptcy case, even if the plan has not yet been approved by the court, the debtor must start making plan payments to the trustee. 11 U.S.C. § 1326(a)(1). If any secured loan payments or lease payments come due before the debtor's plan is confirmed (typically home and automobile payments), the debtor must make adequate protection payments directly to the secured lender or lessor - deducting the amount paid from the amount that would otherwise be paid to the trustee. *Id.*

No later than 45 days after the meeting of creditors, the bankruptcy judge must hold a confirmation hearing and decide whether the plan is feasible and meets the standards for confirmation set forth in the Bankruptcy Code. 11 U.S.C. §§ 1324, 1325. Creditors will receive 25 days' notice of the hearing and may object to confirmation. Fed. R. Bankr. P. 2002(b). While a variety of objections may be made, the most frequent ones are that payments offered under the plan are less than creditors would receive if the debtor's assets were liquidated or that the debtor's plan does not commit all of the debtor's projected disposable income for the three or five year applicable commitment period.

If the court confirms the plan, the chapter 13 trustee will distribute funds received under the plan "as soon as is practicable." 11 U.S.C. § 1326(a)(2). If the court declines to confirm the plan, the debtor may file a modified plan. 11 U.S.C. § 1323. The debtor may also convert the case to a liquidation case under chapter 7. (4) 11 U.S.C. § 1307(a). If the court declines to confirm the plan or the modified plan and instead dismisses the case, the court may authorize the trustee to keep some funds for costs, but the trustee must return all remaining funds to the debtor (other than funds already disbursed or due to creditors). 11 U.S.C. § 1326(a)(2).

Occasionally, a change in circumstances may compromise the debtor's ability to make plan payments. For example, a creditor may object or threaten to object to a plan, or the debtor may inadvertently have failed to list all creditors. In such instances, the plan may be modified either before or after confirmation. 11 U.S.C. §§ 1323, 1329. Modification after confirmation is not limited to an initiative by the debtor, but may be at the request of the trustee or an unsecured creditor. 11 U.S.C. § 1329(a).

Making the Plan Work

The provisions of a confirmed plan bind the debtor and each creditor. 11 U.S.C. § 1327. Once the court confirms the plan, the debtor must make the plan succeed. The

debtor must make regular payments to the trustee either directly or through payroll deduction, which will require adjustment to living on a fixed budget for a prolonged period. Furthermore, while confirmation of the plan entitles the debtor to retain property as long as payments are made, the debtor may not incur new debt without consulting the trustee, because additional debt may compromise the debtor's ability to complete the plan. 11 U.S.C. §§ 1305(c), 1322(a)(1), 1327.

A debtor may make plan payments through payroll deductions. This practice increases the likelihood that payments will be made on time and that the debtor will complete the plan. In any event, if the debtor fails to make the payments due under the confirmed plan, the court may dismiss the case or convert it to a liquidation case under chapter 7 of the Bankruptcy Code. 11 U.S.C. § 1307(c). The court may also dismiss or convert the debtor's case if the debtor fails to pay any post-filing domestic support obligations (*i.e.*, child support, alimony), or fails to make required tax filings during the case. 11 U.S.C. §§ 1307(c) and (e), 1308, 521.

The Chapter 13 Discharge

The bankruptcy law regarding the scope of the chapter 13 discharge is complex and has recently undergone major changes. Therefore, debtors should consult competent legal counsel prior to filing regarding the scope of the chapter 13 discharge.

A chapter 13 debtor is entitled to a discharge upon completion of all payments under the chapter 13 plan so long as the debtor: (1) certifies (if applicable) that all domestic support obligations that came due prior to making such certification have been paid; (2) has not received a discharge in a prior case filed within a certain time frame (two years for prior chapter 13 cases and four years for prior chapter 7, 11 and 12 cases); and (3) has completed an approved course in financial management (if the U.S. trustee or bankruptcy administrator for the debtor's district has determined that such courses are available to the debtor). 11 U.S.C. § 1328. The court will not enter the discharge, however, until it determines, after notice and a hearing, that there is no reason to believe there is any pending proceeding that might give rise to a limitation on the debtor's homestead exemption. 11 U.S.C. § 1328(h).

The discharge releases the debtor from all debts provided for by the plan or disallowed (under section 502), with limited exceptions. Creditors provided for in full or in part under the chapter 13 plan may no longer initiate or continue any legal or other action against the debtor to collect the discharged obligations.

As a general rule, the discharge releases the debtor from all debts provided for by the plan or disallowed, with the exception of certain debts referenced in 11 U.S.C. § 1328. Debts not discharged in chapter 13 include certain long term obligations (such as a home mortgage), debts for alimony or child support, certain taxes, debts for most government funded or guaranteed educational loans or benefit overpayments, debts arising from death or personal injury caused by driving while intoxicated or under the influence of drugs, and debts for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime. To the extent that they are not fully paid under the chapter 13 plan, the debtor will still be responsible for these debts after the bankruptcy case has concluded. Debts for money or property obtained by false pretenses, debts for fraud or defalcation while acting in a fiduciary capacity, and debts for restitution or damages awarded in a civil case for willful or malicious actions by the debtor that cause personal injury or death to a person will be discharged unless a creditor timely files and prevails in an action to have such debts declared nondischargeable. 11 U.S.C. §§ 1328, 523(c); Fed. R. Bankr. P. 4007(c).

The discharge in a chapter 13 case is somewhat broader than in a chapter 7 case. Debts dischargeable in a chapter 13, but not in chapter 7, include debts for willful and malicious injury to property (as opposed to a person), debts incurred to pay nondischargeable tax obligations, and debts arising from property settlements in divorce or separation proceedings. 11 U.S.C. § 1328(a).

The Chapter 13 Hardship Discharge

After confirmation of a plan, circumstances may arise that prevent the debtor from completing the plan. In such situations, the debtor may ask the court to grant a "hardship discharge." 11 U.S.C. § 1328(b). Generally, such a discharge is available only if: (1) the debtor's failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; (2) creditors have received at least as much as they would have received in a chapter 7 liquidation case; and (3) modification of the plan is not possible. Injury or illness that precludes employment sufficient to fund even a modified plan may serve as the basis for a hardship discharge. The hardship discharge is more limited than the discharge described above and does not apply to any debts that are nondischargeable in a chapter 7 case. 11 U.S.C. § 523.

NOTES

1. The "current monthly income" received by the debtor is a defined term in the Bankruptcy Code and means the average monthly income received over the six calendar months before commencement of the bankruptcy case, including regular contributions to household expenses from nondebtors and including income from the debtor's spouse if the petition is a joint petition, but not including social security income or certain payments made because the debtor is the victim of certain crimes. 11 U.S.C. § 101(10A). [return to text](#)
2. In North Carolina and Alabama, [bankruptcy administrators](#) perform similar functions that [U.S. trustees](#) perform in the remaining forty-eight states. The bankruptcy administrator program is administered by the Administrative Office of the United States Courts, while the U.S. trustee program is administered by the Department of Justice. For purposes of this publication, references to U.S. trustees are also applicable to bankruptcy administrators. [return to text](#)
3. Section 507 sets forth 10 categories of unsecured claims which Congress has, for public policy reasons, given priority of distribution over other unsecured claims. [return to text](#)
4. A fee of \$15 is charged for converting a case under chapter 13 to a case under chapter 7. [return to text](#)

EXHIBIT "RR"

SUBROGATION/LITIGATION THROUGH ENTRY OF JUDGMENT

The basic objective in your subrogation/litigation efforts is to maximize recoveries through procedures that accomplish that goal as efficiently as possible. This requires a broadened perspective on potential sources of recovery and creative approaches to tapping those sources. It is important to begin clarifying the subrogation picture as soon as a claim is filed, taking action to position your Fund for recovery from the sources identified.

(A) Some subrogation recovery opportunities are best approached early and nurtured as the process continues. They include:

- 1) Obtaining from the Claimant information concerning Respondent's income/assets and monitoring any litigation where the Claimant is suing the Respondent;
- 2) Putting Respondent's partner(s) or firm on notice of a claim and their potential liability, and requesting their response to the claim (Exh. I- Letter);
- 3) Identifying the malpractice carrier insuring Respondent's partner(s) or firm, and asserting a claim for coverage under the policy. The usual coverage exclusion for intentional/criminal acts may apply to Respondent, but not to the partner or firm;
- 4) If the matter involves a real estate transaction, identifying the title insurance carrier and asserting a claim (Exh. H - Letter);
- 5) If the matter involves a forged endorsement or drawer's signature on a check, notification to the bank(s) of a claim pursuant to the applicable section(s) of the Uniform Commercial Code;
- 6) If the Respondent has been charged criminally, notifying the prosecutor (initial letter and follow-up letter) and the sentencing judge (in anticipation of sentencing hearing), of the Fund's interest in receiving restitution (Exh. F – Letters);
- 7) If the Respondent is deceased, determining who has been appointed as representative (executor/administrator) of the estate and providing notice of a claim against the estate;
- 8) If the Respondent referred cases to another attorney as final discipline approached and is claiming entitlement to fees on a quantum meruit basis, contact with Respondent to discuss assignment of those fees to the Fund in a consent judgment (Exh. J – Consent Judgment paragraph re assignment of fees), or if that fails, executing a judgment on Respondent's right to receive those fees;

- 9) Determining whether an Attorney Trustee has been appointed to wind-up the practice and if so, providing notice of a claim against the income and assets of the practice;
- 10) Determining whether there are frozen trust account/business account funds and, if your jurisdiction provides for Fund priority to those funds (Exh. N – N.J. Court R. 1:20-23), planning to petition the court for release of those funds in reimbursement of claims paid;
- 11) In the rare instances where you learn that Respondent is attempting to abscond and/or fraudulently transfer assets, consideration should be given to filing an emergent Order to Show Cause seeking a Writ of Ne Exeat (civil arrest) and/or restraints against transfer of property and/or appointment of a Custodial Receiver.

(B) When a claim is paid, immediately available steps to secure reimbursement include:

- 1) Updating all of the persons listed in section (A) concerning the amount paid and assignment of rights, and making a specific demand for payment;
- 2) Putting the Respondent on notice of the award, demanding payment and inviting consideration of payment arrangements;
- 3) If the Claimant has obtained a judgment against Respondent, obtaining an assignment of that judgment (Exh. O – Partial Assignment of Judgment);
- 4) If there is pending litigation where Claimant is suing Respondent, consideration should be given to intervention in that action;
- 5) If, in the odd case, the claim involved Claimant receiving a mortgage or other security interest in property owned by Respondent or a third party, assignment of that interest to the Fund (Exh. P – Assignment of Mortgage).

(C) Litigation. The most efficient way to maximize subrogation recoveries is to consistently pursue reimbursement by way of the avenues set forth in sections (A) and (B) above, and not rely on litigation as the primary method. If you initiate the above approaches early on, by the time you are ready to file suit you may well have recovered all or part of what is due, and you will be in a good position to assess the prospects that continued resort to those approaches, without litigation, will yield further recoveries. Also, that process likely provided information useful in determining who should be named as defendants in the lawsuit and what causes of action are available.

offer and the outcome at trial is not at least 20% lower than your offer, defendant will be ordered to pay your attorney's fees and litigation costs incurred after non-acceptance. This is another way to move the case towards settlement by increasing the defendant's exposure.

A judgment should be docketed as soon as possible in every jurisdiction where the defendant owns property or works, in the manner prescribed by the jurisdiction for creating a lien on property and issuing process to enforce the judgment.