

III. OTHER RECOMMENDATIONS

A. Rule 1:21-7 -- Contingent Fees

An attorney had inquired of the Committee whether the limitations of *R. 1:21-7(c)* apply to civil rights actions brought under the New Jersey Law Against Discrimination (“LAD” cases) or to Federal §1983 actions. A subcommittee, chaired by Alan Medvin, Esq., was appointed to examine this question as well as the broader issue of the applicability to *R. 1:21-7(c)* to employment cases generally.

The subcommittee noted that, by administrative action of the Supreme Court, as memorialized in a 1972 Notice to the Bar, the rule’s sliding scale for contingent fees does not apply to business torts. That Notice states that the “Supreme Court intended to impose the fee limitations only on contingent fee arrangements in negligence cases, such as auto accident, slip and fall, or products liability cases, and, not on so-called ‘business torts,’ such as fraud or conspiracy to interfere with contractual relationships.”

The subcommittee also interviewed a number of attorneys who primarily represent plaintiffs in employment cases. Based on these interviews, and on the language of the Notice to the Bar, the subcommittee concluded that *R. 1:21-7(c)* does not apply in civil rights or employment cases. Such matters do not arise from tortious or negligent conduct, but rather are derived from a statutory scheme.

Further, the statutes underlying LAD and employment actions often provide for fees to be shifted to the losing party. In the subcommittee's view, the contingent fee rule was designed to protect plaintiffs from overreaching by their attorneys. It was not intended to limit, in a fee-shifting case, what a losing defendant may be required to pay.

Finally, the subcommittee also noted that all attorney's fees -- contingent or not -- are governed by RPC 1.5, which requires that they be "reasonable."

Based on the intent of the rule as expressed in the Notice to the Bar and the practice as it now exists, the subcommittee was of the unanimous view that RPC 1.5 and not *R. 1:21-7(c)* applies to employment and LAD cases.

The Committee agrees with the subcommittee's position and awaits direction from the Supreme Court regarding a) whether the Court is of the same view as the subcommittee and the Committee, and b) if so, how should this view be memorialized -- *e.g.*, in a directive, in the comments to the rule?

The report of the *Rule 1:21-7(c)* Subcommittee is included as Appendix B to this Report.