Note that the Michels Commission recommended in 1993 that "[a]ll attorneys engaged in the private practice of law in New Jersey who do not carry professional malpractice insurance should be required to disclose such non-coverage to their clients." Report of the New Jersey Ethics Commission, 133 N.J.L.J. 905 (Supp. at 22) Recommendation No. 17 (Mar. 15, 1993). In its Administrative Determinations Relating to the 1993 Report, issued on July 14, 1994, the Supreme Court dealt with the recommendation in one sentence: "The Court rejects this recommendation."

4:5. Bona Fide Office.

Pursuant to R. 1:21-1(a), an attorney cannot practice law in New Jersey unless the attorney "maintains a bona fide office for the practice of law." An attorney who practices law in New Jersey, but fails to maintain a bona fide office, is engaged in the unauthorized practice of law in violation of RPC 5.5(a). Note, however, that attorneys employed full-time by a Federal government agency having an office in this state may represent the interests of that agency without personally maintaining a bona fide law office in New Jersey. R. 1:21-1(d).

A bona fide office may be located in any state or territory of the United States, Puerto Rico, or Washington D.C. R. 1:21-1(a). If an attorney who is not domiciled in this State chooses to maintain a bona fide office outside New Jersey, however, the attorney must designate the Clerk of the Supreme Court as agent upon whom process may be served in any action, including disciplinary actions, arising out of the attorney's practice of law. The bona fide office rule was amended in 2004 to eliminate the requirement that the bona fide office must be located in New Jersey.

A "bona fide office" is defined as follows:

> For the purpose of this section, a bona fide office is a place where clients are met, files are kept, the telephone is answered, mail is received and the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours to answer questions posed by the courts, clients or adversaries and to ensure that competent advice from the attorney can be obtained within a reasonable period of time.

R. 1:21-1(a). The Committee that recommended the changes, chaired by Justice Wallace and known as the Wallace Committee, reasoned that modern technology, when used effectively, can render an out-of-state office just as accessible to courts and clients as an in-state office. In addition, the Committee recognized the geographical reality of New Jersey's proximity to New York and Pennsylvania: in many instances, an out-of-state office may be closer to a court or a client than an in-state office. The Committee also expressed some doubt about the constitutionality of the in-state requirement, but the Supreme Court expressly disclaimed any reliance on that view. See Wallace Committee Comment on R. 1:21-1 (Appendix A-3). The Pollock Commission also observed that "it is difficult, if not impossible, to defend standards that serve as barriers to practice by out-of-State attorneys." Pollock Commission Comment on RPC 5.5 (Appendix A-1).

The elimination of the in-state requirement represents the culmination of a long battle over New Jersey's "residency" requirements, which have taken a variety of forms over the years. From 1981 until 1996, R. 1:21-1(a) required an in-state office and defined "bona fide office" simply as:

a place where the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours. A bona fide office is more than a maildrop, a summer home that is unattended during a substantial portion of the year, or an answering service unrelated to a place where business is conducted.

The articulated policy underlying the in-state office requirement was a desire for New Jersey attorneys to have sufficient contact and familiarity with the state, i.e., understand New Jersey substantive and procedural law, know local customs and legal developments, and remain accessible and accountable to clients, opposing counsel, judges and other authorities. N.J. Comm. on Attorney Advertising Op. 19 (Sept. 19, 1994). See also Tolchin v. Supreme Court of New Jersey, 111 F.3d 1099 (3d Cir.), cert. den. 522 U.S. 977 (1997). The rule was intended to prevent occasional appearances here by a New Jersey-admitted attorney who practiced primarily in another state.

To achieve this end, New Jersey, for many years, required all attorneys practicing in the state to be "domiciled" in this state. See R.R. 1:12-1(a)(2) (Revision of 1959). This requirement, however, created problems for attorneys who maintained practices in New Jersey, but wished to live in neighboring states. In 1969, the Supreme Court revised the rule to require either domicile or maintenance of a principal office as a condition to practicing law in New Jersey. R. 1:21-1 (1969). The rule was again amended in 1978 to require a domiciliary to maintain a bona fide office in the state as a means of controlling the occasional practice of law by domiciliaries who primarily practiced in other jurisdictions, while still requiring nondomiciliaries to maintain their principal offices here. The term "bona fide office" was thereafter defined by amendment effective September 1981. Nonetheless, the distinction between those domiciled in the State and those domiciled outside the State was retained in the 1981 amendment.

Thereafter, in In re Sackman, 90 N.J. 521, 523 (1982), the Supreme Court, "[e]xercising [its] plenary power over the practice of law... decided that henceforth all licensed New Jersey attorneys shall be treated alike, whether they live here or not. The only requirement for both, in order to practice in New Jersey, shall be that they maintain a bona fide office here." In so holding, the Court concluded that the public would be better served if licensed New Jersey attorneys residing in New York and Philadelphia, for example, were subject to no greater restrictions in their practice in New Jersey than those residing in Newark and Camden. The Court found that the public had an interest in having more qualified lawyers available to New Jersey's citizens, and specifically determined that any financial interest of the New Jersey Bar is irrelevant "unless and until that financial interest can be equated with the public interest," which the Court doubted it ever could. Sackman, 90 N.J. at 529-531.

Following Sackman, the rule was amended effective August 13, 1982 to eliminate all but one remaining distinction between those domiciled within and without New Jersey: all nondomiciliary attorneys were required to "designate the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions, including disciplinary actions, that may arise out of the practice of law and activities related thereto, in the event that service cannot otherwise be effectuated pursuant to the appropriate Rules of Court. The designation of the Clerk as agent shall be made on a form approved by the Supreme Court." R. 1:21-1(a).

Thereafter, the Committee on Attorney Advertising was called on to construe the definition of a bona fide office, and concluded that it prohibited situations in which an attorney merely arranged to have access to another attorney's conference room or to technology that automatically forwarded New Jersey calls to telephones outside the state. See N.J. Comm. on Attorney Advertising Op. 19 (Sept. 19, 1994). The Committee explained that a bona fide office must be a place where an attorney meets clients, keeps files, answers telephones, and receives mail or where a responsible person is present to act on the attorney's behalf during normal business hours, i.e., supply information about the attorney's schedule and cases, accept service of process or other documents, and be able to contact the attorney to obtain competent advice within a reasonable time period.

Joint Opinion 718 of the Advisory Committee on Professional Ethics (ACPE) and Opinion 41 of the Committee on Attorney Advertising (March 25, 2010) concluded that a "virtual office" defined as "a type of time-share arrangement whereby one leases the right to reserve space in an office building on an hourly or daily basis" does not qualify as a bona fide office. According to these Committees, R. 1:21-1(a) requires that an attorney or responsible person acting on the attorney's behalf be present in person or by telephone to answer questions. In the virtual office situation, no one is present during regular business hours unless the space has been reserved. The Committees also stated that a receptionist at a virtual office should not be fielding telephone calls to the attorney because of the concern about disclosure of confidential information. In addition, the Committees disallowed the practice of law from an office "embedded" within the premises of a nonlegal business (i.e., an office used on an as-needed basis, with no outward indication of the separate nature of the attorney's practice). The opinion acknowledged, however, that a home office can serve as a bona fide office, provided it meets the Rule's requirements and appropriate steps are taken to protect confidential information.

The Joint Opinion has spawned controversy because of the demands it places on attorneys who do not have support staff or practice part-time. The Opinion provides that:

> The ACPE recognizes that many solo practitioners do not have support staff and so when they are in court, meeting clients, filing papers, or otherwise not in the office, no one is there during normal business hours. Attorneys who are out of their offices generally are accessible by telephone, as calls to the office can readily be routed to a cell phone or other hand-held device. But Rule 1:21-1(a) also requires regular physical presence by the attorney at the office during business hours. An attorney who is out of the office during normal business hours does not violate the bona fide office rule provided the absence from the office is occasional and the attorney is otherwise reachable by telephone, email, or the like. If the attorney is regularly out of the office during normal business hours, then a responsible person must be present at the office.

The opinion creates difficulty for part-time practitioners who do not have a full-time person "present at the office" during business hours. In the electronic age, which allows practitioners to be reached from nearly every location both by voice and email, it seems extraordinary that the Committee would require a practitioner to shoulder the expense of a full-time support person to maintain a physical presence throughout the day. For part-time practitioners, the economics

of such an arrangement may prove prohibitive. Lawyers need to be available and responsive, but their physical presence is required only for specific undertakings and not throughout the day. The requirement of a bona fide office, whether at home or elsewhere, remains valid. The insistence on the physical presence of an attorney or support person at the office throughout the business day (other than occasionally) is an indirect and unnecessarily burdensome means to ensure accessibility. The Court should demand accessibility, eliminate the requirement of a physical presence, and insist that attorneys be reachable by electronic or other means within a reasonable (or prescribed) period of time during regular business hours.

The inability of a court to reach an attorney within a reasonable amount of time precipitated a disciplinary complaint in In re Kasson, 141 N.J. 83, 84-85 (1995), where the Court broadly construed the bona fide office requirement. In Kasson, a disciplinary proceeding was instituted against an attorney after a trial judge was unable to reach the attorney at his office to discuss a pending case. A disciplinary investigator went to the address set forth on respondent's letterhead as the New Jersey office of Spencer Wertheimer, a Pennsylvania attorney. The investigator attempted to locate the office on the second floor and throughout the rest of the building, but was unable to find it. The rental agent for the building informed the investigator that although rent was being paid, the agent had never seen anyone use the property as an office. A formal complaint was then filed for violation of the bona fide office rule and the rule requiring the attorney to maintain specific bank accounts.

The attorney argued that he should not be disciplined because he was simply Wertheimer's employee and, as such, had no control over the office. The Court noted Kasson's legitimate frustrations with his employer's failure to adequately support the office, but concluded that such problems were no grounds to excuse a New Jersey attorney for failing to adhere to this State's ethical constraints. Still, the Court added that "although we believe that respondent should be reprimanded for his failure to maintain a bona fide office for the practice of law in New Jersey, his employer should not escape responsibility, having created the conditions that placed the respondent in this untenable situation." 141 N.J. at 88. It therefore assessed administrative costs against the employer and held that: "In future disciplinary matters concerning the failure to maintain a bona fide office in New Jersey, notice of such potential responsibility shall be given to employers who have the managerial responsibility to provide New Jersey attorneys with bona fide offices." Id.

The Court also noted that the concept of a bona fide office was broader than the bare-bones definition then extant in the court rule: "Th[e] Rule requires more than an occasional attendance in a bona fide office by an attorney and more than an answering service unrelated to a place where business is conducted. It requires a responsible person at the office to answer questions posed by courts, clients, or adversaries so that accurate information about the attorney's whereabouts and competent advice from the attorney can be obtained within a reasonable period of time. It is insufficient for an employee to receive and transmit messages with nothing more." Id. at 86.

This additional language in Kasson, taken together with the Advertising Committee's concerns in Op. 19, formed the basis for the 1996 amendment to R. 1:21-1(a), which remained in effect until 2003:

> A bona fide office is more than a maildrop, a summer home that is unattended during a substantial portion of the year, an answering service unrelated to a place where business is conducted or a place where an on-site agent of the attorney receives and transmits messages only. For the purpose of this section, a bona fide office is a place where clients are met, files are kept, the telephone is answered, mail is received and the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours to answer questions posed by the courts, clients or adversaries and to ensure that competent advice from the attorney can be obtained within a reasonable period of time.

July 28, 1996 amendment to R. 1:21-1(a), effective September 1, 1996. As discussed above, the Supreme Court eliminated the first sentence of that definition in 2004.

The bona fide office requirement was challenged on constitutional grounds by a New York lawyer, joined by amicus Pennsylvania lawyers, in Tolchin v. Supreme Court of New Jersey, 111 F.3d 1099, 1113 (3d Cir.), cert. den. 522 U.S. 977 (1997). The Third Circuit Court of Appeals rejected claims that the 1996 version of the rule violated the Commerce Clause, the Privileges and Immunities Clause and the Equal Protection guarantee of the Fourteenth Amendment and upheld the rule as rationally related to a valid state interest: that of "ensuring that attorneys admitted to practice in New Jersey are available to New Jersey courts."

The federal appeals court rejected the State's claims that the rule promoted greater attorney competence and greater attorney accountability -- two of the three bases offered by the Court in defense of the rule. Nonetheless, it held that "a rational relationship exists between the benefit of attorney accessibility and the bona fide office rule." 111 F.3d at 1108. In support of that conclusion, the federal court pointed to the facts in Kasson, stating that "this case demonstrates that there is a satisfactory basis to find a rational relationship between the bona fide office requirement and the intended benefit of attorney accessibility." 111 F.3d at 1109. The court added that such a requirement was noted with approval by the United States Supreme Court in dicta in Supreme Court of Virginia v. Friedman, 487 U.S. 59, 69-70 (1988). Id. at 1109 n.4. On that basis, the Tolchin court found the rule did not violate the Commerce Clause. The Third Circuit rejected the Privileges and Immunities and Equal Protection arguments offered by the plaintiff since the office requirement clearly affected both resident and non-resident attorneys equally. 111 F.3d at 1113-1116.

Note that the bona fide office requirement represents the one substantive difference between the requirements for practice in New Jersey pursuant to the Court Rules on the one hand and practice before the United States District Court for the District of New Jersey on the other. The District Court deleted its requirement for a bona fide office in a local rule amendment in 1988. Theoretically, then, any attorney in good standing in the State of New Jersey may be admitted to the federal bar and, thereafter, need not maintain a bona fide office to practice in New Jersey federal court. See Shamshoum v. Bombay Cafe, 257 F. Supp. 2d 777, 781-782 (D.N.J. 2003) (admission to practice in New Jersey federal court requires compliance only with New Jersey state licensing requirements, not the additional practice requirements such as a bona fide office). But cf. Kelley Drye & Warren v. Murray Industries, Inc., 623 F. Supp. 522, 525-526 (D.N.J. 1985) (New Jersey-admitted firm practicing in federal court must comply with

State court rules governing fee arbitration). For more information on the distinction, see *Lite, Current N.J. Federal Practice Rules (GANN)*, Comment 7 on L.Civ.R. 101.1 and Comment 3 on L.Civ.R. 104.1.

Discipline for violation of the bona fide office rule is initially considered by the Committee on Attorney Advertising. See, e.g., In re Schutzman, 145 N.J. 568 (1996); In re Brewington, 143 N.J. 3 (1995). When the sole violation is the lack of a bona fide office, an admonition is the common discipline. See e.g. In re Young, 144 N.J. 165 (1996); In re Beck, 143 N.J. 308 (1996). When the attorney also fails to maintain required trust accounts in New Jersey banks, however, a reprimand is more common. E.g., In re Gaskins, 151 N.J. 3 (1997); In re Gajewski, 139 N.J. 389 (1995).

4:6. Pro Bono Registration and Service.

RPC 6.1 provides that "[e]very lawyer has a professional responsibility to render public interest legal service." The rule offers a number of options for fulfilling what it calls a "responsibility," ranging from "providing professional services at no fee" to providing "financial support for organizations that provide legal services to persons of limited means." The Supreme Court amended this rule in 2004, changing its title from "Voluntary Pro Bono Publico Service" to "Voluntary Public Interest Legal Service." In addition, the Court revised the opening phrase to refer to a lawyer's professional responsibility to render public interest service. The prior rule had stated only that a lawyer "should" render such service. See Supreme Court Comment on RPC 6.1 (Appendix A-1).

The Supreme Court has required both registration and service as pro bono counsel of every plenary licensee in the State. Since 1795, New Jersey has made provision for the appointment of counsel to represent indigent citizens in certain types of cases (usually, but not exclusively, criminal in nature), Madden v. Delran Tp., 126 N.J. 591, 601 n.2 (1992), and those uncompensated appointments have repeatedly been held constitutional. See id. See also Rule 3:4-2 (amended in 1995 to incorporate provisions of former Rule 3:27-1 and -2); Guardianship of C.A.B., Jr., 140 N.J. 33 (1995) (attorneys may be required to represent parents and children in termination hearings but attorneys have no obligation to expend their personal funds when undertaking such appointed representation); Div. of Youth & Family Serv. v. D.C., 118 N.J. 388, 402 (1990) (attorneys may be assigned without compensation to represent parents and children in termination cases); Rodriguez v. Rosenblatt, et al., 58 N.J. 281 (1971) (counsel may be appointed without pay to represent indigent defendants in certain non-indictable municipal court cases); State in Interest of Anthony Antini, Jr., 53 N.J. 488 (1969) (constitutional to appoint counsel without compensation to represent indigent juveniles); State v. Rush, 46 N.J. 399 (1966) (attorneys may be appointed without compensation to represent indigent defendants in criminal cases other than homicides); Bolyard v. Berman, 274 N.J. Super. 565 (App. Div.), certif. den. 138 N.J. 272 (1994) (assignment of private counsel to indigents in parole revocation hearings is constitutional).

The Court in State v. Rush, 46 N.J. at 410, explained:

> The duty to defend the indigent without charge is not a personal duty in the conventional sense of an obligation owed by one man to another, for the breach or nonperformance of which the other is entitled to dollar or other relief. A lawyer does not owe free representation to any and every indigent who chooses to demand it of him. Rather the duty is owed to the